CENTER FOR CAPITAL MARKETS COMPETITIVENESS

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January 31, 2020

Ms. Vanessa A. Countryman
Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: **Procedural Requirements and Resubmission Thresholds under Exchange Act Rule 14a-8**
17 CFR Part 240; Release No. 34-87458; RIN 3235-AM49
File No. S7-23-19

Dear Secretary Countryman:

The U.S. Chamber of Commerce's Center for Capital Markets Competitiveness ("CCMC") appreciates the opportunity to comment on the proposed rules issued by the Securities and Exchange Commission (the "SEC" or "Commission") on November 5, 2019, entitled "Procedural Requirements and Resubmission Thresholds under Exchange Act Rule 14a-8" (the "Proposing Release").

Rule 14a-8 reform is long overdue. For example, shareholder ownership thresholds have not been updated since 1998 and resubmission thresholds have not been updated since 1954. For decades, the fundamental purpose of the shareholder proposal system was to allow investors to put forth constructive ideas on how to improve a company's governance and performance. The SEC took the position that proposals dealing with personal grievances, or those of a social or political nature, were not proper subjects for shareholders to vote on under Rule 14a-8, largely because such proposals sought to advance goals other than operating the business more efficiently and profitably. This balanced approach helped prevent abuse of the system while still affording shareholders a voice in the management of the companies in which they invested.

Over time, the Commission's prudential guardrails have steadily weakened, and the shareholder proposal system today has unnecessarily devolved into a free-for-all

that a small minority of interests use to advance idiosyncratic agendas at the expense of Main Street investors. As a result, proposals dealing with social or political issues and topics that the federal securities laws have long treated as not material are included in proxy statements with alarming frequency, even when such a proposal's subject matter is wholly unrelated to a company's long-term performance.[1] In fact, over 40% of all proposals submitted to Fortune 250 companies during the 2019 proxy season dealt with some type of social or policy-related matter.[2]

While a very small subset of investors have come to dominate the shareholder proposal system, the vast majority of investors—including those that routinely vote against social and political proposals—bear the costs. One study on shareholder proposals submitted in 2018 found that of the 387 proposals submitted concerning environmental, social and political matters, only eight (barely 2%) received a majority of the shareholder vote.[3] More than one-third of all shareholder proposals in 2019 at Fortune 250 companies were sponsored by four individual investors (two of whom are husband and wife), while 44% of proposals were sponsored by institutions with an explicit social, religious, or policy purpose.[4]

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[1] As the Commission is well aware, the guiding concept of "materiality," as laid out by the Supreme Court in seminal cases such as *TSC Industries v. Northway*, 426 U.S. 438 (1976) and *Basic Inc. v. Levinson*, 485 U.S. 224 (1988), has played the central role in our American capital markets for decades. Considering materiality through the eyes of a "reasonable investor" is a critical feature of the Supreme Court's test. Materiality does not turn on the needs of an investor that is not representative of investors more broadly or that is looking to advance some special interest. Nevertheless, in recent years, there has been a concerted effort to erode this longstanding approach to materiality. Some special interest groups want to expand what businesses are mandated to disclose in order to advance the groups' own political and social agendas and to further goals that are extraneous and contrary to the SEC's mission. We discuss materiality further in our white paper, ESSENTIAL INFORMATION: MODERNIZING OUR CORPORATE DISCLOSURE SYSTEM (Winter 2017), *available at* https://www.centerforcapitalmarkets.com/wp-content/uploads/2013/08/U.S.-Chamber-Essential-Information_Materiality-Report-W_FINAL-1.pdf.

[2] Proxy Monitor 2019: Proxy Season Overview, August 2019, *available at* https://www.manhattan-institute.org/proxy-monitor-2019-proxy-season-overview.

[3] M. Trevino, M. Sawyer, H. Cohen, and J. Hu, 2019 Proxy Season Review: Part 1 – Rule 14a-8 Shareholder Proposals, July 26, 2019, *available at* https://corpgov.law.harvard.edu/2019/07/26/2019-proxy-season-review-part-1-rule-14a-8-shareholder-proposals/.

[4] Proxy Monitor 2019, *supra* note 3.

Including a proposal in a proxy statement or seeking no-action relief from the SEC staff imposes significant costs on Main Street investors. Further, oftentimes proposals dealing with social or political matters can serve as a serious distraction for boards, whose responsibility it is to focus on the long-term best interests of the company and all its shareholders, not just a small activist minority. Frivolous proposals also obscure or lessen consideration of proposals that focus on how to improve a firm's performance that other shareholders have put forth. The need to discuss frivolous proposals limits the time available to discuss more significant proposals as well as respond to questions from investors that may be unrelated to ballot items. These problems are compounded when unscrupulous proponents use strawmen to circumvent Rule 14a-8's eligibility criteria. The broken Rule 14a-8 system is yet another burden on companies and their shareholders that only serves to foster short-termism and make the public company business model less attractive to the next generation of entrepreneurs.[5]

We believe that reform of the shareholder proposal process as contemplated by the Proposing Release is an incremental but important step toward rebalancing the scales for the benefit of Main Street investors. No company wants to go public only to find itself subject to endless politically-driven activist campaigns. And no small subset of activists should be able to commandeer the SEC's rules for their own parochial purposes.

As a summary of our comments on the Proposing Release:

- We support the modified eligibility requirements under Rule 14a-8(b), but urge the Commission to mandate that groups of co-sponsors or co-filers designate a single lead filer as the sole point of contact for companies.

- We also support expanding the eligibility and disclosure requirements for shareholders that use a representative to submit a proposal for inclusion in a company's proxy statement.

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[5] As the Chamber has frequently pointed out, the U.S. has about half the number of public companies than existed two decades ago, and we have fewer listed companies today than in 1976. This trend has occurred despite the fact that the U.S. is home to roughly 100 million more people than in 1976 and our economy is three times as large. While the 2012 Jumpstart Our Business Startups (JOBS) Act helped arrest some of this decline, too many businesses are unfortunately deciding that being public is not in the best interests of their shareholders.

- In addition, we support amending Rule 14a-8(b) to add a shareholder engagement component to the current eligibility requirements.
- We are in favor of limiting abuse of the "one proposal" rule and therefore support the proposed amendments to Rule 14a-8(c).
- Finally, we support the Commission's proposed increase in the resubmission thresholds under Rule 14a-8(i)(12).

In supporting these changes, we do not intend to chill constructive shareholder discourse or wish to impede the ability of professional asset managers to avail themselves of Rule 14a-8. Institutional investors should be wholly unaffected by the proposed rules. Nor do we believe that a fair reading of the Proposing Release would lead to a radical upset of the status quo, as investors who hold meaningful positions in public companies who craft constructive shareholder proposals will not be impeded from continuing to do so. But after many years of abuse of the system, we do seek to restore some measure of balance and constrain the worst of the worst bad actors.

Discussion

I. Rule 14a-8 Eligibility Requirements

Rule 14a-8(b) establishes the eligibility requirements a shareholder must satisfy to submit a proposal for inclusion in a company's proxy statement. Currently, in order to be eligible to submit a proposal under Rule 14a-8, a shareholder must hold at least $2,000 or one percent of the company's stock continuously for at least one year. We share the Commission's concern that the current thresholds do not adequately demonstrate a shareholder's meaningful economic or investment interest in a company. As the Commission observed as far back as 1997, Rule 14a-8 "is popular because it provides an opportunity for any shareholder owning a relatively small amount of the company's shares to have his or her own proposal placed alongside management's proposals in the company's proxy material. . . . "[6]

Under the current thresholds, shareholders may make, or threaten to make, a short-term, nominal investment in a company and then use the proposal process to lobby for social and political changes, irrespective of the proposal's long-term effect on the business or relevance to the company or Main Street investors. As an example,

[6] Proposed Rule: Amendments to Rules on Shareholder Proposals Release No. 34-39093. Sep. 19, 1997 ("SEC 1997 Proposal").

one of our members reports its experience with a social welfare organization that owned no shares of stock in the company and was trying to persuade the company to take action with which the company did not agree. When the company did not accede to the organization's demands, the organization's representative said that if the company would not change its position, the organization would purchase $2,000 worth of stock, wait a year, and then submit a shareholder proposal to separate the positions of Chairman and Chief Executive Officer, even though that issue was in no way related to the matter being discussed. Unfortunately, this kind of fact pattern regularly repeats itself at many companies. Abuse of the shareholder proposal process in this fashion has become far too common, and the SEC's proposal would help alleviate instances like these.

Thus, persons without any interest in a company's operations or long-term success, can (and do) use the current proposal process as a kind of soap box to promote their own personal agendas. Such proposals often concern strategic and operational decisions that properly are within the purview of the board of directors. And many proposals are counter to the interests of those companies and the other investors in them.

The proposed rule would remove the current one percent ownership threshold, which has historically not been utilized and establish a tiered threshold approach to the eligibility requirements, taking into account the amount of securities owned and the length of time held. Under amended Rule 14a-8, a shareholder would be eligible to submit a proposal for inclusion in a company's proxy statement if the shareholder has continuously held at least:

- (i) $2,000 of the company's securities entitled to vote on the proposal for at least three years;
- (ii) $15,000 of the company's securities entitled to vote on the proposal for at least two years; or
- (iii) $25,000 of the company's securities entitled to vote on the proposal for at least one year.

We agree with the Commission that the enhanced eligibility requirements under the proposed amendment better represent a shareholder's meaningful interest in a company, before a company must expend money and resources to include the shareholder's proposal in its proxy statement. We also believe that the Commission's proposed tiered approach appropriately considers the differing investment strategies

of various shareholders. By preserving the $2,000 threshold, but expanding the holding period to three years, for example, the amended rule allows a shareholder who own a relatively small amount of a company's securities to still take advantage of Rule 14a-8, while also ensuring such shareholder has a sufficient long-term interest in the company. Conversely, a $25,000 threshold for one year of ownership should serve to ensure that the hobbyists who have abused the system in the past have a more meaningful stake in the companies that they target before they spring into action.

In any event, we wholeheartedly reject the notion that the Commission's modest increases in eligibility standards will somehow "disenfranchise" shareholders or prevent them from engaging with management. For institutional shareholders who regularly measure their portfolios in the millions (or billions) of dollars—not hundreds or thousands—the proposed increases will have no impact at all. On the other hand, the new dollar thresholds are clearly tailored to permit even the smallest retail investor an opportunity to continue to participate in the Rule 14a-8 process. Those who abuse the system simply "to get management's attention" will have to have a little bit more skin in the game to do so—but they will not at all be prohibited from submitting proposals. And of course, there is no cost or eligibility threshold to communicate with management or boards outside of Rule 14a-8.

As the Commission itself notes, companies face significant costs responding to shareholder proposals, which effectively are borne by the company's other shareholders, including Main Street investors. The Commission cited commenters who estimated that the average cost of responding to a proposal for inclusion in the company's proxy statement can cost anywhere from $87,000 to $150,000 per proposal. Our members report that this is a fair estimate for a typical proposal, though some outliers (such as ones involving multiple rounds of correspondence with a proponent and the Commission) may exceed the high end of the range. Accordingly, we believe the proposed eligibility limits help safeguard company resources from being used by shareholders with no meaningful concern for the financial impact of their activities.

We also support amending Rule 14a-8 to prevent shareholders from aggregating their securities with other shareholders to meet the proposed ownership thresholds. Allowing shareholders to aggregate securities with other shareholders is at odds with the Commission's goal of ensuring shareholders that submit proposals for inclusion in a company's proxy statement have a sufficient investment interest in the company. Further, shareholders that wish to co-file or co-sponsor proposals as a group may still do so as long as each shareholder individually meets the eligibility requirements. We believe the proposed amendments, therefore, correctly take steps to

prevent abuse of the proposal process, while still preserving shareholders' ability to join together to illustrate a proposal's support to management.

The Proposing Release discusses whether proponents who form groups to submit proposals should be required to designate a lead filer to be the agent and single point of contact for the co-filers or co-sponsors. The Commission notes that doing so is a frequent (though not universal) practice among co-filers, and adds its support to declare that doing so is a best practice. The Proposing Release stops short of mandating the designation of a lead filer, however, stating that although the Commission is "not proposing to require this practice in our rules, we request comment as to whether we should revise the rules to require that co-filers identify a lead filer."

On the lead filer point, we urge the Commission to be more certain within Rule 14a-8. Thus, we believe final rules should incorporate specific provisions into Rule 14a-8 that require co-sponsors or co-filers to designate a single lead filer to serve as the sole point of contact for the Commission and the registrant, with full authority to negotiate with a given registrant and withdraw the proposal on behalf of the group of co-filers should it be desirable to do so. Our members report a series of administrative difficulties in interacting with co-filers that do not designate a lead filer under the current regime. These difficulties range from the simple cost and logistics associated with communicating with multiple members of a group (some of whom may be unresponsive to a registrant's outreach efforts necessitating multiple rounds of follow-up), to the odd dynamics of negotiating with a group whose individual members may not be entirely aligned in philosophy or objective, to in some cases acting as de facto mediator when cohesion of the group collapses and each member wishes to go in a separate direction after engagement with the company because they lack a leader. Requiring the designation of a lead filer would present no burden on co-filers but would go a long way towards removing substantial friction from this element of the shareholder proposal process.

Finally, Request for Comment number 16 inquires, "Does the Rule 14a-8 process work well?" The CCMC had occasion to consider this issue in our 2017 white paper, *Shareholder Proposal Reform: The Need to Protect Investors and Promote the Long-Term Value of Public Companies*.[7] We believe there are a number of additional opportunities to

[7] The entire white paper is available at https://www.centerforcapitalmarkets.com/wp-content/uploads/2013/08/023270_CCMC-SEC-Shareholder-Proposal-Reform-Report_Online_Report.pdf.

improve the operation of Rule 14a-8 that go beyond those discussed in the Proposing Release. They include:

- The SEC should withdraw Staff Legal Bulletin 14H, issued in October 2015, in order to restore certainty under the Rule 14a-8(i)(9) exemption. As the Commission is aware, Rule 14a-8(i)(9) allows the exclusion of a proposal if it conflicts with one of the company's own proposals.

- The SEC should offer more transparency to investors by requiring proponents and their representatives to provide sufficient disclosure regarding their economic interests and objectives. We discuss this concept further in Section II below.

- The Commission should reassert the "relevance rule" under Rule 14a-8(i)(5) by allowing excludability of a proposal if the subject matter impacts less than 5% of a company's total assets and 5% of net earnings.[8]

- The SEC should prohibit the use of images, photos, or graphs as part of proposals.

- The SEC should provide market participants with more certainty regarding its policing of Rule 14a-8(i)(4), which deals with proposals that relate to a redress of a personal claim or grievance.

- The SEC must allow for the exclusion of proposals that include materially false or misleading statements under Rule 14a-8(i)(3). In practice, the SEC staff has eroded the viability of this exemption by placing the burden on issuers to prove that a statement made by a proponent is materially false or misleading, even in cases where it will result in false or misleading information being included in an issuer's own proxy statement.

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[8] Staff Legal Bulletin 14I, issued shortly after the publication of our white paper, attempted to breathe some life back into Rule 14a-8(i)(5), but based on our members' experiences after several proxy seasons, the bar to excluding frivolous proposals under this provision still in practice seems to be set far higher than the Commission intended.

II. Proposals Submitted on Behalf of Shareholders

The proposed rule would expand the eligibility and disclosure requirements for shareholders that use a representative to submit a proposal for inclusion in a company's proxy statement. Current Rule 14a-8 does not address a shareholder's ability to submit a proposal through a representative, which has historically been governed by state agency law. As proposed, the amended rule would require shareholders that use a representative to submit a proposal under Rule 14a-8 to provide documentation that among other requirements, identifies the shareholder, includes a statement by the shareholder authorizing the representative to act on the shareholder's behalf and includes a statement indicating the shareholder's support for the proposal.

We share the Commission's concern that the current process is insufficient in facilitating transparency between the shareholder-proponent and the company. As the Commission noted, a shareholder's failure to provide sufficient documentation can be highly burdensome to a company seeking to verify a purported agency relationship. Furthermore, often times, uncertainties exist about whether a proposal submitted on behalf of a shareholder actually reflects the personal interests of the representative, and not the shareholder.

The CCMC believes that the proposed amendment will help reduce costs and increase transparency by requiring documentation of the shareholder's identity and confirmation of an agency relationship between a shareholder and its representative. We therefore support the Commission's proposed amendments. We also urge the Commission to increase required disclosure around the motives of the proponent and any representative, which we believe is material information to investors being asked to cast a vote on a proposal. Specifically, a proponent should also be required to (1) provide a description of any contracts or arrangements the proponent has with the representative or other third parties that provide any type of benefit to the proponent or representative in relation to the submission of the proposal, (2) disclose whether the proponent or its representative has submitted the same or a substantially similar proposal to another issuer, the year or years submitted, and the identify of such issuer or issuers and (3) provide documentation, such as a written statement confirming that the shareholder was not solicited by the representative to act as the proponent of the proposal and would have submitted the proposal directly if the shareholder did not need the technical assistance or advice of the representative

III. Shareholder Engagement

We support amending Rule 14a-8(b) to add a shareholder engagement component to the current eligibility requirements. Under the proposed amendment, each shareholder would be required to provide a statement confirming the shareholder's availability to meet with the company in person or via teleconference no less than 10 calendar days, nor more than 30 calendar days, after the submission of a shareholder proposal. The required statement must also provide the shareholder's contact information along with specific dates and times to discuss the proposal.

The current rule does not impose a requirement for shareholders to engage companies about a submitted proposal, which has led to some proponents refusing to engage at all with companies in the proposal process. Other proponents seem only to be available at irregular intervals or odd times. They barrage companies with voice messages and emails in the wee hours of the morning when company personnel are known to be asleep or otherwise not at their desks. Our members inform us that engagement with a proponent is a common first stage in responding to a shareholder proposal, and we believe the proposed amendment is a positive step to increase such engagement.

Although the proposed rules require proponents to identify business days that they are available to communicate with the company, proponents are only required to specify "specific times" for the discussion, which could be outside reasonable working hours. We believe these times should thus be limited to the particular company's regular business hours at its corporate headquarters. If such business hours are not disclosed in a company's proxy statement from the prior proxy season, then a proponent could designate any times between 9 a.m. and 5:30 p.m. in the headquarters time zone, which is consistent with the Commission's own business hours under Exchange Act Rule 0-2. Therefore, under this construct, a proponent could not select 4 a.m. or 10 p.m. for its availability, unless of course the company agreed to such an irregular time.

Additionally, since these provisions are intended to foster increased engagement and communication between shareholders, the rule should provide for a scenario when the proponent does not successfully engage in good faith with the company, such as after three, well-documented requests by the company. If a proponent repeatedly refuses to engage, then the company should be permitted to automatically exclude the shareholder proposal in that year and subsequent years, which is similar to the operation of existing Rule 14a-8(h)(3).

The CCMC has long promoted effective communication between public companies and their investors, which we believe to be a bedrock principle of our capital markets. Shareholders now regularly engage with the companies in which they invest, and constructive dialogue with shareholders has often led to significant changes in corporate governance.

Likewise, as the Commission notes, engagement between companies and shareholder proponents has increased in recent years, which has led to an increase in the number of proposals withdrawn. Such increased communication also mitigates the cost of responding to shareholder proposals. From 2015 to 2018, for example, the number of withdrawn proposals in the S&P 500 increased from 10 to 11.9 percent.[9] By facilitating communication between companies and proponents, we believe the amendment will further increase shareholder engagement and lead to a greater number of resolutions between parties, all of which inures to the benefit of Main Street investors.

IV. One-Proposal Limit

Currently, Rule 14a-8(c) prevents "each shareholder" from submitting more than one proposal to a company for a particular shareholders' meeting. The amended Rule 14a-8(c) would apply the one-proposal limit to "each person" rather than "each shareholder". As proposed, the rule would not permit a shareholder to submit one proposal in its own name and simultaneously submit a second proposal as a representative of another shareholder. Likewise, the proposed amendment would prevent a representative from submitting more than proposal to be considered at the same meeting, even if for different shareholders.

We support the Commission's amendment to Rule 14a-8(c) and believe the proposed language better reflects the purpose of the one-proposal limit. We also agree that the proposed amendment would alleviate the inconsistent application of Rule 14a-8(c) to shareholder representatives. As the Commission notes, shareholders may still seek assistance in drafting proposals under Rule 14a-8, as the amendment merely prevents a representative that submits a proposal on behalf of a shareholder from submitting any further proposals for the same meeting either on behalf of itself or another shareholder.

[9] M. Tonello, Proxy Voting Analytics (2015-2018), The Conference Board, November 26, 2018, *available at* https://law.rutgers.edu/sites/law/files/RR-1674-18-R.pdf.

We do not see any benefit to requiring companies to disclose the number of withdrawn proposals or the number of proposals excluded pursuant to a no-action request. This type of information is not material, and interested persons seeking statistical information on Rule 14a-8 no-action relief at a given company can easily obtain it from the Commission's public website where the Staff catalogs Rule 14a-8 matters.

V. Resubmission Threshold

Currently, Rule 14a-8(i)(12)allows a company to exclude a shareholder proposal *only* if it failed to receive the support of 3% of shareholders if voted on once in the last five years; 6%, twice in the last five years; and 10%, three or more times in the last five years. Thus, a proponent is allowed to resubmit a proposal even if nearly 90% of shareholders have rejected it on multiple occasions. These resubmissions make up a significant portion of all proposals. According to Proxy Monitor, 31% of the 3,392 proposals submitted to Fortune 250 companies from 2007 to 2016 had been submitted previously.[10]

Many shareholder proposals are submitted repeatedly under the current system, but never come close to gaining majority support, thus becoming what we have termed "zombie" proposals. Continuous resubmissions are a drain on shareholders and companies alike, requiring significant time and monetary resources to defend against proposals that have time and time again been rejected. Main Street Investors should be protected from the costs and hassle of having to repeatedly register their opposition to such proposals.

A recent survey, which analyzed proxy proposals that have been placed on company ballots over the last 17 years, illustrates the extent to which zombie proposals have continued to be introduced for three years or more without reaching a majority vote.[11] The paper examined 2,449 shareholder proposals submitted from 2001 to 2018 relating to special meetings, environmental and social, political and social, and human rights matters. According to the analysis:

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[10] J. Copland & M. O'Keefe, A Report on Corporate Governance and Shareholder Activism, Fall 2016, *available at* https://www.proxymonitor.org/Forms/pmr_13.aspx.

[11] 2018 Proxy Season Trends, August 27, 2018, *available at* https://fticommunications.com/2018/08/2018-proxy-season-trends/.

- Only 5% of these types of proposals passed.

- Zombie proposals (those submitted three or more times without garnering majority support) made up 32% of all failed proposals.

- Out of 2,449 total proposals examined, 723 (just under one-third) were zombie proposals.

More than twenty years ago, the Commission recognized that the current resubmission mechanism harms investors in key respects. In 1997—under the leadership of Chairman Arthur Levitt—the SEC proposed raising the resubmission thresholds under Rule 14a-8 so that proposals would have to elicit meaningful support before being proposed again.[12] As the SEC stated then: "[W]e believe that a proposal that has not achieved these [proposed] levels of support has been fairly tested and stands no significant chance of obtaining the level of voting support required for approval."[13]

While the SEC's 1997 rulemaking was never finalized, we believe that reform is needed even more today. Notwithstanding an ongoing campaign of misinformation that seeks to discredit the Proposing Release, updating the resubmission thresholds would not in any way "disenfranchise" shareholders. The proposed rules would still allow shareholders who meet eligibility requirements to submit a proposal, but they would not subject others to the costs and distractions that occur when unpopular proposals are repeatedly included in a company's proxy statement. Raising the resubmission thresholds under Rule 14a-8 is an important step towards rebalancing the system in favor of the vast majority of public company shareholders, including Main Street investors.

As the Proposing Release notes, over five years ago, the Chamber–along with eight other organizations–submitted a rulemaking petition to the SEC requesting that the Commission raise the thresholds to a more reasonable level.[14] As was explained in

[12] As the Proposing Release noted, the SEC's 1997 proposed rules would have increased the resubmission thresholds to 6% (if voted on once in previous five years), 15% (if voted on twice in last five years), and 30% (if voted on three or more times in last five years).

[13] SEC 1997 Proposal.

[14] Petition 4-675, Petition for Rulemaking Regarding Resubmission of Shareholder Proposals Failing to Elicit Meaningful Support (April 9, 2014), *available at* https://www.sec.gov/rules/petitions/2014/petn4-675.pdf.

that petition, the current resubmission rule "imposes adverse consequences on shareholders, in the form of (a) wasted shareholder resources, (b) diminished comprehension and attention of shareholders on matters of economic significance, and (c) diffused management attention better spent on economically significant matters." Several other organizations – representing a broad cross-section of American industry–have also called on the SEC to take action.[15]

We therefore support the Commission's proposed resubmission thresholds, including the so-called Momentum Requirement. We agree with the Commission that the new resubmission thresholds strike an appropriate balance between reducing costs to companies associated with responding to proposals that do not garner shareholder support and are unlikely to do so in the future, with preserving shareholders' ability to continue to engage companies and other shareholders. We also agree with the Commission's conclusion that the new thresholds are likely to lead to the submission of proposals that will evoke greater shareholder interest insofar as they will incentivize shareholders to submit proposals on matters that will resonate with a broader base to avoid future exclusion.

In response to the Commission's request for comment, we do not believe the Commission should alter its vote-counting methodology under Rule 14a-8(i)(12). There is no evidence in the record of a need to do so, and it we see no reason to treat votes on shareholder proposals differently than other matters submitted to a vote of shareholders. Further, vote counting is a matter properly left to state corporate law.

Conclusion

Again, we commend the Commission for its efforts to enact reform to the broken shareholder proposal process. This reform is long overdue. Today the shareholder proposal system has devolved into a mechanism that a small group of activists use to advance parochial agendas that are uncorrelated to enhancing the long-term value of public companies or their Main Street investors.

Compounding the problem, current SEC rules allow proposals that have received very low support to be resubmitted year after year, even if a vast majority of shareholders continually vote against them. In fact, over the last two decades, a large

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[15] See e.g. letter from Corporate Governance Coalition for Investor Value, July 17, 2017, *available at* https://www.centerforcapitalmarkets.com/wp-content/uploads/2017/07/20170717-CGCIV-Final-Resubmission-Thresholds-letter.pdf.

number of proposals have been submitted three or more times at companies without garnering majority support–thus becoming "zombie" proposals that persist long after shareholders have decided they have no merit.

The system poses enormous costs not just in terms of corporate resources spent to deal with proposals every year, but also in terms of the distractions they create for management and boards, which have a duty to focus on the long-term best interests of the company. As a result, the vast majority of public company shareholders—including Main Street investors—are disadvantaged by these outdated rules.

We thank you for your consideration of our comments, and we are available to discuss them with the Commissioners or Staff at your convenience.

Sincerely,

Tom Quaadman

cc: The Honorable Jay Clayton
The Honorable Robert J. Jackson, Jr.
The Honorable Hester M. Peirce
The Honorable Elad L. Roisman
The Honorable Allison Herren Lee