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Via Email: rule-comments@sec.gov

Office of the Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

RE: File No: S7-22-19 "Procedural Requirements and Resubmission Thresholds under Exchange Act Rule 14a-8"

Dear Ms. Countryman,

The Shareholder Commons is a nonprofit organization focused on ensuring that companies are acting in a manner that promotes the best interests and desires of their investors. In particular, we act as a voice for long-term, diversified shareholders, often called "universal owners."

Universal owners prosper only if the private sector avoids creating profits by overtaxing common resources and exploiting vulnerable populations. Otherwise, the economic value delivered by a healthy ecosystem and stable society will be sacrificed and investors as a class will suffer the consequences. Moreover, these shareholders may want to protect social and environmental systems for reasons beyond direct financial gain, including preserving the value of their own lived experience.

In order to protect the interests of the vast majority of American shareholders who fit within the category of universal owners, the Commission should account for their broad systemic interests when considering the efficacy of any proposed rule changes, and not just the interests of a hypothetical shareholder whose sole interest was in the financial performance of a single issuer subject to the laws and regulations overseen by the Commission. Such consideration should cause the Commission to reject the changes to ownership and voting thresholds proposed to Rule 14a-8.

I. Main Street Investors

A. Size of Holdings, Diversification and the Importance of Beta

The average 401(k) balance in 2019 Q3 was $105,200. *See* Fidelity Investments, *Building Financial Futures* ("Fidelity Report"), available at: https://sponsor.fidelity.com/bin-public/06_PSW_Website/documents/Building_Financial_Futures.pdf. More than 100 million Americans participate in these or similar workplace sponsored defined benefit plans. (Others have noted that relevant measures are even lower—see, for example, Commissioner Lee's statement that "for context, an analysis of retail investor portfolios indicates that the median portfolio value is approximately $27,700." *See* Commissioner Allison Herron Lee, Public Statement, *Statement on Shareholder Rights,* available at https://www.sec.gov/news/public-statement/statement-lee-2019-11-05-shareholder-rights.

Sound investing practice requires these Main Street investors to diversify their holdings. *See generally*, Burton G. Malkiel, A Random Walk Down Wall Street (2015). Diversification allows investors to reap the increased returns available from risky securities, but greatly reduce that risk—this is the critical insight of Modern Portfolio Theory. *Id.* Thus, diversification is a superior investment strategy for most Americans. Once a portfolio is diversified, the most important factor determining an investor's return will not be how the companies in her portfolio perform relative to other companies ("alpha"), but rather how the market performs as a whole ("beta"):

> *According to widely accepted research, alpha is about one-tenth as important as beta. Beta drives some 91 percent of the average portfolio's return.*

Steven Davis, Jon Lukmonik and David Pitt-Watson, *What They Do with Your Money* (2016).

The wisdom of a diversified investment strategy can be summarized through the philosophy of the late John Bogle, founder of Vanguard, one of the largest mutual funds companies in the world, "Don't look for the needle in the haystack; instead, buy the haystack." John C. Bogle, The Little Book of Common Sense Investing: The Only Way to Guarantee your Fair Share of the Stock Market, 86 (2007).

B. Beta and ESG

Given their reliance on overall market return, Main Street investors require protection from issuers that focus on their own performance in ways that damage overall market return. The PRI, an investor initiative with members having $89 trillion in assets under management, recently explained how the pursuit of profit by an individual company can damage beta and thus negatively affect the return for universal owners:

- *A company strengthening its position by externalising costs onto others. The net result for the [diversified] investor can be negative when the costs across the rest of the portfolio (or market/economy) outweigh the gains to the company;*

- *A company or sector securing regulation that favours its interests over others. This can impair broader economic returns when such regulation hinders the development of other, more economic companies or sectors;*

- *A company or sector successfully exploiting common environmental, social or institutional assets. Notwithstanding greater harm to societies, economies, and markets on which investment returns depend, the benefits to the company or sector can be large enough to incentivise and enable them to overpower any defence of common assets by others.*

PRI, *Active Ownership 2.0: The Evolution Stewardship Urgently Needs,* available at https://www.unpri.org/download?ac=9721. One commentator succinctly expressed the need for investors to focus on systems:

> *Investment decisions that intentionally manage systems as well as portfolios can create a rising tide of investment opportunities- and help avoid burning down the house.*

Steven Lydenberg, It's Time for Investors to start Reporting on Both Portfolio and Systems-level Performance, Responsible Investor (Jan. 8. 2016), https://www.responsible - investor.com/home/article/iip_lypd/.

C. *What Matters to Main Street Investors*

It can thus be seen that in order to protect their financial interests, Main Street investors need the ability to (1) remain diversified and (2) engage with issuers on conduct that threatens the social and economic systems that companies rely on over the long term. It is also the case that those investors have additional interests in preserving those systems, as they must live in a society that depends on the health of the planet and communities in order to thrive.

II. The Proposed Regulations Reduce Protections for Main Street Investors

When an issuer engages in activities that threaten the health of the entire market, Main Street investors with diversified portfolios have a legitimate interest in proposing to other shareholders (most of whom are likely equally diversified) that the company curtail such conduct. They should be able to make such proposals without being required to unduly diverge from sound investing practices.

A. The Amended Rule Would Force Main Street Investors to Unduly Concentrate Their Investments

Requiring that a shareholder own $25,000 of stock would require the average investor to severely over weight shares in a single issuer, risking the assets they are saving for retirement or other needs, contrary to the dictates of respected experts like John Bogle. For example, taking an average 401(k) account, an investor would need to invest nearly one quarter of their investment account in a single stock to meet the minimum $25,000 threshold to make proposals after one year of ownership. Yet the duration of ownership in the issuer is not in any way relevant to the legitimate interest of investors in systemic issues raised by issuer conduct, as evidenced by the illustrative examples given by PRI above.

The forced concentrated ownership contemplated by the proposed Rule is nothing less than an economic punishment of a shareholder for giving voice to a concern that otherwise is a proper matter for shareholders to vote upon. The SEC would be promulgating a Rule that required Main Street investors to engage in a concentrated investing style that would be a breach of duty if a fiduciary were to engage in it. *See* Uniform Prudent Investor Act, Section 3 ("[a] trustee shall diversify the investments of the trust unless the trustee reasonably determines that, because of special circumstances, the purposes of the trust are better served without diversifying.") Moreover, the requirement is particularly burdensome for women, whose average 410(k) balance is 21% less than that of the average male participant, so that a woman must suffer even greater concentration in order to participate in corporate democracy. *See* Fidelity Report, *supra.*

B. The Increased Thresholds for Resubmission Limit the Ability of Universal Owners to Bring Legitimate Issues to Shareholder Meetings

Similarly, the increased threshold requirements for resubmitted proposals limit the ability of universal owners—of any size—to bring legitimate issues before other shareholders that relate to systemic concerns. Many issues of social and environmental significance are complex, and it may take a number of years for the market to fully understand the relation between the issue and beta, and thus the importance of universal owners supporting the proposal in question. Taking these issues off the ballot because of the failure to quickly gain support again hurts the Main Street investor, who is dependent on the health of social and environmental systems that shareholder proposals can serve to preserve.

Conclusion

It is imperative that shareholders be able to engage with companies who are pursuing profits in a manner that hurts the average diversified shareholder. Such activity is necessary to protect 90% of the value of their portfolios. The proposed regulations would punish average shareholders who wished to participate in corporate democracy and also establish unnecessary roadblocks in this important, value-enhancing process. We urge the Commission to reconsider these proposed regulations and adopt more reforms that support the interests of Main Street investors and other universal owners.

Sincerely,

Frederick Alexander