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Via E-mail: Rule-Comments@sec.gov

Ms. Vanessa A. Countryman
Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

RE: Procedural Requirements and Resubmission Thresholds Under Exchange Act Rule 14a-8

Dear Ms. Countryman:

On behalf of the International Brotherhood of Teamsters ("IBT", "Teamsters"), I submit the below comments on the SEC's Proposed Rules regarding the "Procedural Requirements and Resubmission Thresholds" for filing 14a-8 shareholder proposals, dated Nov. 5, 2019. The Teamsters strongly oppose the proposals, as detailed further in my responses to the specific questions posed by the Commission.

The Teamsters, whose affiliated pension and benefit funds have a combined $100 billion in assets under management invested in the capital markets, believe the current system already provides institutional and retail investors with an orderly and cost-effective means to communicate important policy issues to shareholders, corporate boards of directors, and corporate executives. The Teamsters are at the forefront of investors filing Rule 14a-8 shareholders proposals to improve corporate governance and promote responsible corporate behavior to mitigate risk in our funds' equity portfolio companies, most recently around the opioid crisis.

As many investors and other commenters have noted, we believe the Commission's proposals represent a solution in search of a problem; worse, the reforms put at risk the market dynamics that have successfully pushed corporations, and regulators to implement what are now widely viewed as key tenets of good governance. Shareholder proposals, for instance, paved the way

for many of the legal and regulatory standards around say-on-pay votes and director independence requirements, to name but a few. Proposals, similarly, have been integral to establishing market practices around poison pills, proxy access, annual director elections, majority voting standards and many key executive pay structures. Shareholder resolutions are successfully pushing companies to enhance their practices, disclosures and accountability around such critical issues as climate change, human capital management and the opioid crisis. In short, we strongly believe that corporate governance practices among U.S. companies would not have changed for the better without the current shareholder proposal process. It is both striking and profoundly concerning, then, that the Commission's reasoning and analysis give short-shrift – barely two pages out of 179 – to the investor-benefits yielded by the current shareholder proposal process.

Equally troubling, however, is the Commission's accounting of the other-side of the ledger: the purported costs and burdens of the current system and the economic benefits of its proposals. Notwithstanding more than 70 references to the "burden" of the current system, the Commission's economic analysis fails to support such confident assertions. Not only does the analysis turn on just a handful of disparate estimates of issuer costs from receiving a shareholder proposal, but the annual economic benefits from the reforms are, in the scheme of things, trivial: between 0.0001% and 0.006% of aggregate Russell 3000 companies' profits.

In summary, and as detailed in the subsequent responses, we believe the Commission proceeds on unproven assumptions that the current system is failing to ensure that it is not "excessively or inappropriately used," and evaluates its proposed reforms on a cost-benefit basis that lacks any quantification of the "costs" of the reforms and vastly incomplete data on the "benefits." Without a more thorough and conclusive economic analysis, we believe the Commission should abandon its proposed rule changes.

Questions 1-16: Amendments regarding eligibility requirements

In proposing changes to the ownership requirements, the Commission asserts that the $2,000/one-year threshold no longer strikes an appropriate balance. Yet, the only substantive evidence it offers in support of this assertion is the observation that the two-decade-old $2,000 holding requirement has been outstripped by inflation and stock market gains. The Commission notes that adjusting for inflation since the $2,000 threshold was established in 1998, would result in a $3,152 threshold, while adjusting for changes in the Russell 3000 value would result in a threshold of $8,379.

However, neither of these calculations account for the adjustments the Commission is actually proposing. Neither general price inflation nor index growth explain why holders of $2,000 shares would have to now own $25,000 in stock (which implies an inflation rate north of 13%), or have held them for three years to file a resolution.

In addition, we believe the proposed amendments will close off an important avenue of communication for shareholders, including long-term shareholders, to address critical governance concerns. In our experience, many companies are unwilling to engage over important governance reforms without having a shareholder proposal to focus their attention. Proposals, we find, can also provide a valuable signaling and communication mechanism across the investor base regarding whether or not there is shared concern for a given reform. With the clear goal of trying to restrict the number of resolutions being filed in a given year, the Commission's proposals could make it more difficult for both companies and investors to gauge the level of shared concern for a particular issue.

It is important to note as well that shareholder proposals are the only effective, low-cost way by which a company can learn what its shareholders collectively may think about a given topic. We view the costs as modest given that they provide such important investor feedback for boards of directors.

Moreover, with the Commission making a concerted effort to be sensitive to individual retail investors' needs, it is perplexing that the Commission is proposing changes that would require a diversified investor – that is, one with exposure across the Russell 3000 – to maintain a portfolio worth potentially as much as $75 million to file resolutions. As proposed, the new eligibility requirements would deny huge swaths of the investor base the ability to file resolutions.

We also fear that the proposed rule changes would unduly undermine the ability of investors to hold new public companies accountable. Companies coming to the public market are increasingly adopting onerous governance arrangements – such as dual class voting structures and are, accordingly, prime candidates for the type of reforms shareholder proposals frequently push.

The rules could, similarly, curtail the ability of small investors to hold the boards of newly merged companies accountable – specifically in instances where they are receiving stock in a new company. Mergers and acquisitions are high-risk events for shareholders – as considerable academic research catalogs – and it is vital that the ability to file resolutions is not delayed by the proposed new eligibility changes.

As to the Commission's concern with demonstrating a "sufficient economic stake or investment interest," we believe it is extremely difficult for an external entity to second-guess the significance of a holding to an individual, given the individual's savings, level of diversification and overall economic well-being. Given these complexities – and to avoid having the Commission substitute its judgment for those of individual investors - we believe it would be prudent to retain the existing eligibility requirements.

Similarly, we disagree with retaining only the one percent ownership test, which would silence important investor feedback and reserve investor input, even on an advisory basis, to activist hedge funds and a handful of Wall Street investment managers. There is a long history of long-term investors like us submitting an advisory governance resolution that secures the support of shareholders representing a majority of outstanding shares. Just because we do not own one percent of the company, does not mean our concerns do not resonate with more than one percent of shareholders.

We also object to the proposal to prohibit the aggregation of holdings to meet eligibility thresholds. Combined with the higher ownership requirements, preventing shareholders from aggregating their holdings, would severely curtail the range of investors able to file a resolution. Moreover, it cuts against the grain of the typical proxy access provision, which allows a limited number of shareholders to aggregate their holdings to meet the ownership requirement. What makes sense for proxy access as a general principle – that investors can pool their ownership – ought to apply to shareholder resolutions. What matters is the substance of the proposal, not whether it is being proposed by one shareholder or three who are aggregating their holdings.

In response to the Commission's question about what other avenues exist to communicate with companies outside of the Rule 14a-8 process, we submit that there is none as efficient and productive as the current process. While some companies have improved their investor outreach programs, in our experience, this is largely in response to the shareholder proposal process. In proposing new eligibility rules designed to limit the number of resolutions, the Commission risks undermining the incentives for companies to proactively engage with their investors. Moreover, the fact that individual shareholders may communicate their individual views is not comparable to the value offered by shareholder proposals in terms of letting shareholders communicate collectively with each other and the company.

Questions 17-21: Amendments regarding shareholder representatives filing proposals

The Commission, in our view, has not identified any serious problem with the current system that would warrant the proposed amendments to regulate the ability of shareholder representatives to file shareholder resolutions. For institutional investors especially, the proposed rulemaking is problematic. Institutional investors rely on agents to conduct all business, including the submission of shareholder proposals.

The no-action process, for example, can be difficult to navigate, and shareholders and companies alike benefit if the investor has a representative who is familiar and informed about the process.

In addition, there are many types of principal-agent relationships that have developed over the years in this area, consistent with state law. There is no reason for the Commission to intrude into this area.

Questions 22-28: Amendments regarding adding a shareholder engagement requirement

Our cover letters for shareholder proposals already include contact information and an invitation to discuss the proposal. While companies may not always take us up on this offer, we stand ready to engage with companies. We believe this approach is common among investors filing shareholder resolutions. The Commission, however, seeks to micro-manage this process and does so asymmetrically – requiring no similar commitment from issuers. Moreover, the Commission fails to explain what would happen if the proponent was subsequently unable to meet with the company for unforeseeable reasons (such as other companies, with similar filing deadlines, also requesting meetings).

Moreover, if engagement is a goal to be encouraged, we believe it should be a two-way street; companies seeking no-action relief, for example, should be required to certify that they did seek to engage with the proponent or representative.

Also missing from the Commission's proposal is a requirement that the board of directors has duly reviewed the proposal, directed management to engage, and empowered them to make decisions regarding a withdrawal. Failure to require this would not only risk unduly burdening proponents with multiple meetings, but short-circuit what should be the board's critical role in reviewing shareholder proposals.

In regard to the Commission's question on the ways that companies engage with shareholders outside of the shareholder-proposal process, we would note that shareholder meetings remain a critical venue, although all too often companies seek to unduly constrain this forum with unreasonable time-limits on questions and the overall length of the meeting. Moreover, the board is often not made available to engage with investors or to answer their questions. The move to virtual-only meetings is worrying, in this regard.

The IBT frequently writes to companies and their boards to raise governance and performance concerns with companies. Unfortunately, some companies choose to ignore the correspondence or provide perfunctory responses. Recently, we waited eight months to receive a one-page, vague, response to a very serious question about the company's supply chains, human rights and the attending financial exposure for the company. In such cases, shareholder proposals help foster a timely, informative dialogue.

Finally, we disagree with the Commission when it refers to social media as a recent development in communication that may justify a rethinking of the proposal process (p. 18). We do not believe meaningful discussions ought to take place over social media.

Questions 29-36: Amendments regarding limiting the number of proposals an individual may submit

In general, we see no reason to limit eligibility in this manner.

As to whether, as an alternative, the Commission should require the shareholder-proponent to disclose how many proposals it has submitted in the past to that company, we believe there would be no value in this information. Moreover, the only relevant information to other shareholders is the issue that is stated in the current proxy statement. In a given year, investors of any particular company change positions, buy into and sell out of a stock and may have different opinions on a particular issue from one year to the next.

With regards to whether the Commission should adopt a total limit on the number of proposals allowed to be submitted for a given shareholder meeting, we strongly disagree. We believe this would unduly restrict the rights of all investors.

We also objective to the alternative of limiting the number of proposals a shareholder could submit in the aggregate in any given year. This would unduly limit the right of an investor to engage with portfolio companies and would particularly impact the most diversified investors. It is worth noting that some of the most meaningful reforms in corporate governance – such as proxy access

– have come about from a market-wide effort of just a few investors that nevertheless gained significant traction with other shareholders and issuers. In addition, this proposal would undermine any effort to seek industry-wide reforms proposed in response to a crisis—such as the financial crisis or the opioid epidemic—after investors become aware of acute failures of board oversight and leadership. This proposal instead would force investors to single out individual companies for reforms that should be considered industry-wide.

Questions 37-44: Amendments regarding increasing resubmission thresholds

We do not believe changes are necessary. We view the current resubmission thresholds as sufficient to ensure that the system is "not excessively or inappropriately used." As previously noted the Commission has failed to demonstrate that the existing system is failing shareholders or putting an undue burden on companies.

More specifically, the proposed resubmission thresholds ignore how long it can take for funds to modify their proxy voting guidelines to account for new shareholder proposals and thus the period it takes for a proposal to gain "traction." It would be helpful if, before finalizing any rules, the Commission solicits information from funds regarding how often proxy voting guidelines are updated. Considering what the Commission's own calculations show to be the nominal costs to companies from shareholder proposals, we believe the risk that a meaningful proposal – one that takes several years to gain traction – is omitted under the new thresholds outweighs the purported burden such proposals place on companies.

Moreover, we believe that the resubmission thresholds are based on a false premise, namely, that the thresholds should be used to eliminate proposals that do not seem to be on a path to gaining majority support. This is not and has not been the relevant criteria. Many shareholder proposals can produce significant changes in corporate governance even if they rarely (if ever) achieve majority support. If a sizeable percentage of a company's shareholder base believes that something needs to be done on a given topic, a well-run company should respond in some manner.

We believe the Commission should also consider that a 25 percent vote against a management proposal, for instance, on 'say-on-pay' is considered by many investors to represent a substantial level of opposition, demanding some sort of response – and not something to be dismissed as a low level of concern. Accordingly, we disagree that a proposal receiving 24.9% support in its third-year represents a niche level of concern about the company's governance.

Moreover, the new thresholds, and subsequent cooling off period, could unfairly rob new investors of the ability to vote on issues of importance to them. This risk is particularly relevant for companies that are admitted to (or removed from) a stock index, for such events can trigger significant turnover in the investor base. One gauge of this turnover is the excess market return a company receives on admission to the S&P500. According to a recent study, the average excess return for additions from the announcement to effective day of inclusion in the index was 5.6% between 1981 and 2015.[1]

Additionally, some resolutions may be submitted because an investor or group of investors views the proposed reform as a governance best practice. That proposal may garner some but not high levels of support in one year, but then in a subsequent year garner high levels of support due to changing conditions. Take for example a proposal urging board refreshment at a company. Some investors may support the idea generally; others may not consider it a priority in the absence of specific concerns about the performance of individual directors. However, in the following year news breaks that the board failed to protect the company and its shareholders from costly legal and reputational risks when it is discovered that long serving directors shielded a senior executive from credible accusations of sexual misconduct. In such a case, a high percentage of investors who previously saw no urgency for the reform may now agree it is critical. Preventing the resolution from being introduced due to the turnout on a previous vote robs investors of the ability to weigh in on important governance matters arbitrarily.

Moreover, our experience shows that a proposal that never gains considerable support over subsequent years will die a natural death on its own without the need for new resubmission standards.

As to the question of the costs associated with receiving resubmitted proposals, it is troubling that the Commission is proposing changes that are purportedly based on the burden placed on companies from resubmissions, when it has yet to accurately determine those costs; rather, it is actively soliciting such information.

Further, we believe certain discretionary costs incurred by companies in connection with shareholder proposals reflect choices, and sometimes poor choices, by management and should not be factored into the bottom-line costs of filing a resolution. Sums spent on the no-action process, for example, particularly when unsuccessful, are not strictly speaking to the costs of the proposal process, but reflect subsequent choices made by the company. Any attempt by the Commission to pinpoint the economic cost of a shareholder proposal should be based on empirical company-specific data, not surveys or

[1] http://repository.upenn.edu/cgi/viewcontent.cgi?article=1020&context=joseph_wharton_scholars

"average" figures, and should be limited to the additional printing costs, time taken in drafting the response, and engaging the proponent. All too often, we fear that corporate resources are wasted on frivolous, no-action efforts by overly zealous legal departments and high priced outside law firms.

As to whether the vote-counting methodology under Rule 14a-8(i) (12) should be revised, we do believe there is merit to changing the current approach. Superficially, we believe insiders as well as holders of super-voting shares (particularly when held by management or insiders) should be excluded from the calculation, as presumably they are already well-served by the status-quo that the shareholder proposal seeks to reform. For instance, it is profoundly perverse that a proposal to eliminate dual class stock could be omitted because it failed to receive sufficient support given the opposition of insiders and/or holders of the dual class stock. Consider that in 2019, at Coca-Cola Consolidated, 91 percent of outside shares cast (that is, excluding the dual class holdings of CEO Harrison and the common stock held by strategic partner, Coca-Cola Co.), voted in favor of our proposal to eliminate the dual class stock structure. However, if the dual class structure and insider holdings are not backed out, under the proposed resubmission thresholds, we would not be able to refile this resolution after the second-year given that Harrison controls 86 percent of the voting power (despite holding just 24 percent of the equity).

Questions 45-51: Proposed Momentum Rule

We do not believe the momentum requirement is well thought out or required. First, it ignores the general volatility we see from year to year for a given proposal – even management proposals, such as 'say-on-pay.' Second, as the Commission appears to recognize, the requirement could hinder the ability of shareholders to respond to changed circumstances at a given company – such as a performance downturn, corporate scandal, costly compliance failure or increased pay levels. Proposals to separate CEO and chair, for instance, are sensitive to performance, general governance and corporate integrity and compliance; any one of these factors can change quite suddenly and unpredictably. Third, it is conceivable that shifts in insider holdings, by virtue of equity awards (rather than open market purchases), could account for such a small change in vote support over the relevant lookback period. According to a New York Times analysis the average dilution among S&P 500 companies from executive pay was 2.5 percent of a company's shares outstanding.[2] Moreover, efforts to offset that dilution (on an EPS basis) through a share buyback would, assuming that insiders do not sell into the repurchase, have the impact of further concentrating the holdings of insiders.

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[2] https://www.nytimes.com/2016/07/10/business/investors-get-stung-twice-by-executives-lavish-pay-packages.html

It is also concerning that the Commission has proceeded with the most 'aggressive' proposal, rather than require a more significant decline in support to warrant exclusion, such as 30 percent. A substantial decline in support for a proposed reform and the consideration of resources dedicated to resubmission seem to us more a concern for the proponent than the issuer. If there is declining support for the reform, the company would not need to expend any additional resources other than the nominal costs associated with printing the resolution and opposition statement in the proxy.

Responses to Requests for Comments in Section III and IV

Questions 1-8: Economic Analysis

With regard to costs and benefits of the proposed rule amendments, we are deeply concerned that the Commission's "economic analysis does not speak to whether any particular shareholder proposal or type of proposals are value enhancing, whether the proposed amendments would exclude value-enhancing proposals, or whether the proposed amendments would have a disproportionate effect on proposals that are more or less value enhancing."

It would seem impossible to undertake a meaningful analysis of the economic impact of the proposals without incorporating such an assessment.

Further, there is no recognition of the value of letting shareholders communicate with each other collectively and advise the company of what shareholders, as a whole, believe.

In this regard, the shareholder proposal process is a cost-effective alternative to a far more expensive form of collective action, namely, a full-blown proxy contest.

More generally, by impeding the ability of investors to privately-order optimal governance structures, we believe the proposed rule amendments could undermine the efficiency of capital markets and the returns to shareholders.

Company directors and management teams, on the other hand, would be well-served by the amendments in having investor scrutiny of their performance reduced.

We are additionally concerned that the Commission is soliciting feedback about specific dollar figures related to the costs for companies to review and respond to shareholder proposals, given the cost/burden rationale at the core of the amendments.

Unless the Commission obtains company-specific data on the various elements outlined here, we believe that the Commission would have no valid basis to assay an estimate of costs.

Moreover, we believe that the figures referenced from the Commission's1997-98 rulemaking are not reliable, as they are not company-specific. In addition, the "cost" of addressing a shareholder can vary widely depending on whether the company seeks to engage, whether it seeks no-action relief and similar variables. Indeed, the range of "costs" is so great that any attempt to use an "average" or "median" figure will be inevitably flawed.

This is most pronounced when one considers the "cost" of resubmitted proposals. Suppose, for example, that a company sought no-action relief as to a first-time proposal, but was unsuccessful. The cost of handling an identical resubmitted proposal will inevitably be less than the cost of addressing that same proposal the first time it was submitted. Considering that the Commission is proposing thresholds for two different categories – initial submissions and resubmissions – separate data are needed.

Further, because the decision to pursue a no-action request is a choice of the company and is often pursued without even trying to engage with the proponent, these expenses are incurred by management and are not intrinsic to the costs of a shareholder proposal.

With regard to proposals submitted outside the Rule 14a-8 process and pursuant to Rule 14a-4, we note these can be considerably more expensive, as they entail printing a full proxy statement and card, obtaining review by the Commission staff and soliciting a majority of outstanding shares if the proponent wishes to avoid the company exercising its discretionary power to oppose any such proposals.

Questions 9-18: Impact on Market Practices

The shareholder resolution process has become an efficient way to communicate, in an advisory manner, shareholder concerns and support for proposed reforms. Eliminating the shareholder resolution process would likely have the unintended consequence of silencing all but the largest investment managers and activist hedge fund investors. Management generally only engages with smaller investors today for fear that the reforms proposed will resonate with other investors. By eliminating or drastically diminishing the ability of smaller shareholders to have a voice through the proposal process as proposed, management will have no reason to engage with the entirety of the company's investors on a given topic. If the Commission is concerned that there are too many proposals from too many small shareholders, it would seem desirable for the Commission to examine reasons why larger shareholders are not using Rule 14a-8 to express their concerns.

With regard to questions related to dollar estimates per proposal and other questions about why proposals are filed and when, we are troubled that the Commission has not first ascertained the answers to these questions before proposing amendments as the answers seem critical to any economic analysis.

A small investor may believe that a company that is new to market has great potential, but is troubled by a governance issue, for example, a dual-class stock structure. That shareholder may wish to submit a proposal even if he or she owns less than $25,000, a proposed new threshold. Despite the investor's ownership level, the concern may resonate with a majority of outside shareholders. The proposal process allows all investors an opportunity to weigh in without the company having to hear from every individual shareholder. Because the proposal is only advisory, it provides feedback for the company it could not as efficiently received through other channels.

We thank you for your consideration of our concerns regarding this matter. If you have any questions or concerns, please contact Louis Malizia, Assistant Director, Teamsters Capital Strategies Department at: [redacted] or by telephone at: [redacted].

Sincerely,

Ken Hall
General Secretary-Treasurer

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