



February 3, 2020

Re: Proposed Rule

**File No. S7-23-19**

Release No. 34-87458

Procedural Requirements and Resubmission Thresholds under Exchange Act Rule 14a-8

Vanessa Countryman, Secretary  
Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549-0609

Dear Secretary Countryman,

Thank you for the opportunity to comment on File No. S7-23-19: Procedural Requirements and Resubmission Thresholds under Exchange Act Rule 14a-8. **The proposed rule changes outlined in File No. S7-23-19 should not be adopted.**

**Mission and Process**

The SEC has a mission to protect investors and promote transparency. In view of that mission, the proposed rule changes in File No. S7-23-19 are startling. Given its mission, the current SEC proposed rules changes should never have moved forward, albeit with the narrow 3-2 Commission vote. Perhaps if the SEC's own Investor Advisory Committee had been rigorously consulted in advance, we would not now be confronting these proposed rule changes. Now that the Investor Advisory Committee has had an opportunity to weigh-in, we know that the Committee has expressed extreme displeasure with the proposal, by a healthy 2 to 1 margin, (voting 10 to 5).

**Here's why the changes proposed should not move forward.**

First, let's look at the numbers.

The SEC's own arithmetic makes clear that we should all be concerned that the level of shareholder engagement with companies on the proxy is so *low*. (A review of the numbers in no way supports the impression that companies are suffering under the weight of huge numbers of proposals).

According to the SEC File No. S7-23-19, "Russell 3000 companies received on average 0.33 proposals each year during our sample period" or put another way, one shareholder proposal every three years.

At the same time, S&P 500 companies, well able to deal with proposal volumes, received a mere “on average 1.56 proposals each year” – and that number, the SEC’s File No. S7-23-19 says, is on the decline to “1.24 in 2018.”

If an S&P 500 company can’t deal with 1.2 proposals per year -- and a Russell 3000 company can’t handle just one proposal every *three years* -- shouldn’t the board be replacing management?

Absolutely, yes, they should.

*And that is the board’s job.*

It is not the job of the SEC to make it more difficult for shareholders to exercise their rights – nor is it the SEC’s mandate to make it more difficult for boards to learn shareholders’ views.

This is not why the SEC was established, nor why it is funded.

But that is what the new proposed 14(a)8 rules changes do.

A commentary published in *Barron’s* entitled “*The SEC’s New Rules Will Move Companies Backward,*” details why this 14(a)8 proposal should be rejected. Please read the entire article here: <https://www.barrons.com/articles/the-secs-new-proxy-rules-will-hurt-good-boards-51580295601>.

Here are some of the highlights:

- The SEC’s mission is to protect investors and promote transparency, not to attack crucial investor safeguards.
- “Investors generally seek dialogue with boards before taking action through proxy resolutions, and effective boards rightly prefer it that way. Sometimes these discussions can go on for years behind the scenes before the next step is taken.”
- “Effective boards welcome the opportunity to understand perspectives beyond the regular information provided by management. Many have conscientiously implemented the Business Roundtable’s 2005 Guidelines for Shareholder-Director Communications, which advocated that boards establish proactive and clearly defined communications with investors. And their actions have given meaning to the Roundtable’s 2019 words: ‘We are committed to transparency and effective engagement with shareholders.’”
- “But when patient efforts fail to yield remedial action, investors move to the proxy to take their private concerns public and allow other shareholders to weigh in.”
- Ineffective and disengaged boards and companies thus “find themselves with many more matters subject to shareholder vote than their peers.”
- The current process works well for everyone: “The current system allows shareholders to make small, directed nudges resulting in ongoing minor corrections to corporate behavior.”

- And as we have seen in the voting, “Matters that may initially seem of little concern can rapidly morph into top priorities. [Unfortunately] The proposal would restrict investors’ rights to annually voice changing beliefs, while at the same time, robbing companies of this valuable feedback.”
- If the proposal moves forward, everyone will suffer: “If corporate behavior operates without these checks, the chance of whole-system meltdowns increases, raising the risk of more-frequent economic downturns.”
- And “without a regular, low-risk way to engage, investors will be left with little choice but to take more drastic action.”
- The current process provides a valuable public good. Today, investors “provide a free service to other investors, to companies and to the public. In the process, they build trust in self-regulation. Their proxy requests are canaries in the coal mine, signaling other investors to concerns, and encouraging boards and companies to do what is in the best interests of the company, the markets, and the economy.”

Amplifying this comment letter, the article at <https://www.barrons.com/articles/the-secs-new-proxy-rules-will-hurt-good-boards-51580295601> provides additional insights into the negative consequences of implementing the proposed rule changes. These negative consequences are both real and meaningful.

As boards better communicate with shareholders, we’ve seen a decline in shareholder proposals on the proxy (as reflected in the numbers presented by File No. S7-23-19). At the same time, boards and companies that are less effective continue to receive more proposals than their peers.

The world today is changing rapidly. If anything, our capital markets system needs more frequent investor polling, not less. And we need to continue to encourage the dialogue, not tamp it down as these proposed rule changes would do.

**The current process benefits everyone and we should not change it.**

Please let me know if I can answer any questions.

Sincerely,



Eleanor Bloxham

CEO, The Value Alliance and Corporate Governance Alliance

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