

February 3, 2020

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

RE: Proposed Rule on Procedural Requirements and Resubmission Thresholds under Exchange Act Rule 14a-8; File Number S7-23-19

Dear Ms. Countryman:

On behalf of the Union of Concerned Scientists (UCS), I am writing to strongly oppose the “Proposed Rule on Procedural Requirements and Resubmission Thresholds under Exchange Act rule 14a-8” proposed by the Securities and Exchange Commission (SEC) on November 5th, 2019. Going forward with this change would severely limit shareholder rights, curtail corporate action on environmental, social, and governance (ESG) issues, and move corporate engagement with shareholders backwards.

With the support of more than half a million scientists and members, UCS is the leading science-based nonprofit working for a healthy planet and a safer world. We are also an institutional investor. As an active member of several networks of sustainable and responsible investors, UCS provides scientific advice and analysis to shareholder advocates to promote climate action and corporate transparency.

The current shareholder proposal process provides a well-organized, reasonable, and cost-effective way for investors to engage in valuable and constructive dialogues with companies on issues of corporate policies, governance, and business strategy. Investors engage with companies on ESG risks because they are concerned about the long-term health of the companies in which they are invested. Investors – including the “main street individual investor” that the SEC has said is a priority – have a multi-decade history of raising critical issues at American companies.

The filing of shareholder proposals by investors big and small is a critical part of the engagement process, and these proposals help companies look at concerns before they become crises that erode shareholder value, increase reputational risk, and harm communities. Shareholder engagement on climate change and the corporate disclosure of political activities are integral to widespread recognition of climate science and the urgent need to prepare our economy for the risks and opportunities of a carbon-constrained future. As climate change becomes increasingly important to consumers and increasingly costly for some private sector actors, shareholder engagement can meaningfully help companies respond and prepare by employing science-based metrics, setting expectations, and identifying potential business opportunities.

Issues that stand at the forefront of today’s market considerations, such as climate change and corporate transparency on lobbying and political spending, began as shareholder proposals with only modest support. Recent years have seen the historic passage of shareholder proposals calling for greater transparency on sustainability, political spending, and climate change at a variety of companies. As some resolutions received the support of more than 50 percent of shareholders—including large, mainstream asset managers—the issues highlighted cannot be dismissed as immaterial or unrelated to company business.

A fossil fuel company's response to climate change, given the Paris Agreement, litigation threats, and regulatory risks, has a huge impact on its strategy and business model, and thus, is of the utmost relevance to shareholders. The long-standing submission and resubmission thresholds allow for issues such as these to be discussed within the general shareholder community and provide opportunities for regular engagement between companies and their investors.

Shareholder proposals also fill the gaps left by a lack of regulation. On the issue of political and lobbying disclosure, for example, the SEC has received over one million comments in support of regulating corporate spending on so-called "dark money" groups, such as the Business Roundtable, National Association of Manufacturers, and the U.S. Chamber of Commerce. Trade and business associations like these have an outsized political influence on policy decisions but have little oversight or accountability, and their positions are rarely tied back to the companies that fund the associations. In the absence of regulatory action, shareholder advocates have increasingly requested, via shareholder proposals, that companies disclose their corporate funding and affiliations. That this was a frequently filed shareholder proposal for the last two years speaks to its importance, yet the proposed changes, which would drastically reduce shareholder rights, have been requested by the very trade associations about which shareholders are seeking greater accountability and transparency.

Shareholder proposals are one of the few ways for investors to bring corporate conduct to light and have created an environment of stronger accountability, which benefits shareholders, companies, and the private sector as a whole. These requests, for example, have forced corporations to disclose their stances on climate science, their long-term acceptance or denial of climate impacts, and their third party affiliations on climate issues. An active and engaged shareholder base benefits not just corporate governance but also the overall economy, including full consideration of climate-related risks and opportunities by the private sector.

Rule 14a-8 is working well for investors and allows a diverse set of shareholder concerns to be heard. The revisions put forward are unacceptable. The SEC should protect investors' ability to hold publicly traded companies accountable rather than creating obstacles for American businesses and the American public. For the above reasons, we strongly urge the SEC to reconsider the proposed rule changes.

Sincerely,

Nicole Pinko
Corporate Analyst and Engagement Specialist
Climate & Energy Program