

Wright-Ingraham Institute

February 3, 2020

Via email to rule-comments@sec.gov

Hon. Jay Clayton, Chairman
Hon. Robert J. Jackson Jr., Commissioner
Hon. Allison Herren Lee, Commissioner
Hon. Hester M. Peirce, Commissioner
Hon. Elad L. Reisman, Commissioner
Vanessa A. Countryman, Secretary
U.S. Securities and Exchange Commission
100 F Street N.E.
Washington, DC 20549-1090

RE: Proposed Rule on Procedural Requirements and Resubmission Thresholds under Exchange Act Rule 14a-8; File Number S7-23-19 [84 FR 66458, December 4, 2019]

Dear Ms. Countryman:

As an individual shareholder with fiduciary responsibilities for a non-profit educational organization, we are making several comments on the “Proposed Rule on Procedural Requirements and Resubmission Thresholds under Exchange Act Rule 14a-8” (File Number S7-23-19).

The shareholder proposal process is one of the most visible and verifiable ways in which investors can participate in a “shareholder democracy”, foster market transparency and practice responsible shareholder ownership. This proposed rule, by changing submission and resubmission thresholds, among other revisions, will make it significantly more difficult for individual investors to get critically-needed Environmental Social and Governance (ESG) issues on the meeting agendas of publicly-traded companies. Other proposed rule changes, particularly the “momentum rule” and the prohibition of share aggregation, also weaken this process.

Investors—including “main street individual investors” like those of us who serve on the Boards and Trusts of non-profit educational organizations, are concerned that the Securities Exchange Commission (SEC) has declared a new priority – to exclude small investors’ voices from the marketplace—following a multi-decade history of raising critical governance issues at American companies. Such issues have included board diversity, executive compensation, adapting to climate change by reducing greenhouse gas emissions, safety and health of our planet and its inhabitants, and the implementation of nondiscrimination policies throughout society. These issues encourage companies to address challenges that can erode shareholder value, increase reputational risk and harm both shareholders and their communities.

Investors have not sought these changes. By amending Rule 14a-8, the Commission is taking the power away from investors to participate in the corporate affairs of the companies in which they invest. We firmly believe this will ultimately lead to an erosion of faith in the financial markets as the proposed rule changes essentially send the message to individual investors that “we want your money but not your input on ESG and other governance issues unless you are a larger volume investor.”

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BOARD OF DIRECTORS KEVIN BONE PRESIDENT | CATHERINE INGRAHAM SECRETARY-TREASURER | BRENDAN DOYLE | ANNA GRADY | FRANK MILLER

Specifically, with respect to the proposed rule that would raise ownership thresholds for submission of shareholder proposals, the Security Exchange Commission proposes to institute a tiered system where shareholders would only be permitted to submit proposals if they satisfy one of the following conditions: (a) the shareholder owns at least \$25,000 of company shares for at least one year; (b) the shareholder owns at least \$15,000 of company shares for at least two years; or (c) the shareholder owns at least \$2,000 of company shares for at least three years. By raising the ownership thresholds in this manner, shareholders are put in an untenable position of choosing between diversifying their investment portfolios or owning a more concentrated position in a handful of companies to enable them to participate meaningfully in company policies. For most investors, there would no longer be the opportunity to accomplish both portfolio diversification and shareholder engagement unless positions are held for at least three years, which is often not suitable or desirable for many institutional investors.

With respect to resubmission of shareholder proposals, the Commission proposes to raise the thresholds for resubmission of shareholder proposals to 5% support for initial resubmission, 15% for resubmission for a second time, and 25% for resubmission for a third time. Proposals that fail to meet such resubmission thresholds would not be eligible for consideration for the next three years. This reduces the flexibility of investors like us to stay “nimble” in the marketplace.

In addition, the Commission proposes to institute a momentum threshold whereby a proposal would be prohibited from being resubmitted for the next three years if it does not achieve 50% approval after the third resubmission and subsequently loses at least 10% support after the third resubmission. This would lead to an anomalous result whereby a proposal that receives 49% support after the third resubmission would be prohibited from being resubmitted again if it subsequently loses support and has only 44% approval. A proposal that receives 25% support would still be permitted to be resubmitted if it only garners an additional three percent of support to 28%. Raising such resubmission thresholds in this fashion will invariably lead to exclusion of many valuable proposals that benefit both shareholders and their corporate sponsors.

The Commission has put forward the argument that raising the proposed thresholds would result in an immaterial change in the number of excluded proposals. However, as other commenters have pointed out, certain important proposals took a longer time to approve; these would not have been considered because of the proposed higher resubmission thresholds. It is clear that public sentiment towards corporate responsibility has changed over time, and it is expected to continue gathering momentum in the future. Yet, the proposal would prohibit resubmission for three years which ultimately negatively impacts the value of company shares held by individual investors. Per your request for comments, these losses help quantify the impact of the proposed amendments.

Rule 14a-8 is working for investors. The proposed revisions are harmful and unacceptable. The SEC should protect investors' ability to hold publicly-traded companies accountable rather than create higher investment thresholds and add more complex rules and burdens. Individual, small volume investors deserve equal and fair access and voice in the marketplace.

Thank you for your consideration of these comments.

Sincerely,

A handwritten signature in black ink, written in a cursive style, that reads "Brendan G. Doyle & Catherine T. Ingraham". The signature is written over a large, faint, light-colored circular mark.

Brendan G. Doyle and Catherine T. Ingraham

Trustees, Thomas L. Parker Trust

Members, Board of Directors, Wright-Ingraham Institute

cc: Alison Pyott, VERIS Wealth Partners

Catherine Ingraham

Anna Grady