Ceres
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February 3, 2020

Via Electronic Submission

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

Re: Procedural Requirements and Resubmission Thresholds under Exchange Act Rule 14a-8 (File No. S7-23-19, RIN 3235-AM49)

Dear Ms. Countryman,

We, the undersigned investors and Ceres, write to express our concerns with Release No. 34-87458, "Procedural Requirements and Resubmission Thresholds under Exchange Act Rule 14a-8" ("Proposed Rule"). Ceres is a sustainability nonprofit organization working with the most influential investors and companies to build leadership and drive solutions throughout the economy. Through powerful networks and advocacy, we tackle the world's biggest sustainability challenges, including climate change, water scarcity and pollution, and inequitable workplaces. We are also a founding partner organization of Climate Action 100+. The five-year investor initiative aims to ensure the world's largest corporate greenhouse gas emitters take necessary action on climate change. Signatories to this letter include members and allies of the Ceres Investor Network on Climate Risk and Sustainability ("INCRS"), which is comprised of 170 members collectively managing $29 trillion in assets.[1]

We urge the Securities and Exchange Commission ("SEC") to withdraw the Proposed Rule because it would disempower retail and institutional investors by undermining the system of shareholder democracy that has protected investors and fortified the United States' public capital markets for decades. Rather than remedy a demonstrable and material problem that harms investors, the Proposed Rule shields corporate managers from shareholder accountability. The fact that representatives of corporate managers, rather than shareholders, are the predominant proponents of the Proposed Rule, and the unbecoming way corporate trade associations have advocated for it,[2] demonstrate who stands to gain and who stands to lose.

[1] The Proposed Rule is of such import that many INCRS members will submit their own comment letters urging the SEC to withdraw or, at a minimum, significantly revise the Proposed Rule.
[2] For example, NAM's hosting of the Main Street Investors Coalition website (now defunct).

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In addition to its adverse consequences for shareholders, the Proposed Rule is inconsistent with the Administrative Procedure Act and other legal requirements with which the SEC must comply to implement a new rule. For instance, the cost-benefit analysis is incomplete, and the estimated effects on shareholder proposals is based on faulty assumptions. Neither the process nor the substance of the Proposed Rule supports the core element of the SEC's mission—investor protection—so we ask the SEC to withdraw it.

Rule 14a-8 (the "Rule"), as currently written, is an important and effective building block of our capital markets. We urge the SEC to preserve the Rule as is, so shareholder democracy can continue to promote and protect investors' well-being and capital formation. If the SEC is determined to revise the Rule in any way, we recommend that the staff and Commissioners draft a new proposal, one based on the necessary analyses and procedures.

I. The Proposed Rule Will Undermine the Functioning System of Shareholder Democracy in the United States

The Proposed Rule would undermine our system of shareholder democracy, a finely tuned system that is uniquely suited to benefit investors, companies, and the U.S. and global economies. For instance, the current shareholder proposal system is one of the only effective ways for investors of *all sizes* to engage with companies.[3] In our experience, corporate managers are much more likely to respond to requests for substantive dialogue if the investor making the request is among the largest asset managers or asset owners. These same corporate managers usually refuse to respond to smaller investors' requests for information or to engage in meaningful dialogue with them. When small investors aggregate their voices through the proxy voting process, however, they can more frequently engage in effective dialogue with companies.[4]

Rule 14a-8 is critically important because it gives small investors a tool to gain the attention of corporate managers. This tool is critical because there are few, if any, other adequate methods and opportunities for a vast majority of investors to engage with companies. Other avenues, for instance, include drafting individual letters or group sign-on letters to raise important issues.

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[3] Effectiveness could be evaluated based on (1) the percentage of attempts to engage that lead to substantive dialogues; and (2) the percentage of engagements that result in corporate commitments and actions. Ceres' tracking of climate-related shareholder proposals over the last ten years reveals that investors withdraw over 39% of their proposals in return for a commitment from companies on the issue raised in the proposal. Seventy-three (73) percent of companies' commitments during sample years 2013 and 2014 led to tangible actions (Shareholders Spur Action On Climate Change). Recent years produced a similar rate.

[4] For additional benefits of the system, see *The Business Case for the Current SEC Shareholder Proposal Process* and *An Investor Response to the U.S. Chamber's Proposal to Revise SEC Rule 14a-8* which lay out in significant detail the numerous meaningful benefits shareholder democracy provides to investors and capital markets. See pages 5-7 and 3-4 respectively.

Companies, however, frequently fail to respond to such letters. A recent example is instructive. In 2019, 202 investors with more than $6.5 trillion in assets under management, collectively, sent a letter requesting dialogue about the *Investor Expectations on Corporate Lobbying on Climate Change* to 47 large public companies. Twenty of the recipients, or forty-three (43) percent, did not even respond to the request to acknowledge receipt of the letter. Based on Ceres' conversations with its members, the response rate to letters sent by retail investors and individual institutional investor organizations is far smaller.

The SEC justifies the Proposed Rule, in part, by contending that other mechanisms provide investors a "level of ease"[5] in communicating with companies. For instance, the Proposed Rule suggests that a social media-driven consumer boycott or the submission of questions to CEOs from customers of a new fintech platform are effective alternative communications tools. These tools, however, are inferior to shareholder proposals because they lack the structured, democratic, and transparent process embodied in shareholder proposals. Moreover, the Proposed Rule does not compare the efficacy of such alternatives with the shareholder proposal system. Perhaps even more troubling is that the Proposed Rule does not attempt to estimate the magnitude of the positive economic impact of shareholder proposals. Without such an analysis, the SEC cannot be certain that its modifications are helpful.

We believe the SEC needs additional evidence about corporate responsiveness to investors. We recommend that the Staff conduct a survey of investors who engage in active ownership focusing on the frequency and nature of company responses to investor requests for dialogue that are not accompanied by a shareholder proposal. Ceres is available to help conduct such a survey. In our experience, we have found that shareholder proposals are essentially the only reliable way for investors to raise their concerns with corporate boards, managers, and other investors.

II. The Proposed Rule is a Set of Solutions in Search of a Problem

In the Proposed Rule's section regarding the "Need for Proposed Amendments" for filing thresholds, the SEC raised its concerns about shareholder proposals' "susceptibility to overuse."[6] Similarly, according to the resubmission section, a foundational goal for the proposed resubmission thresholds is to "relieve the management of the necessity of including proposals that have been previously submitted to security holders without evoking any substantial security holder interest therein."[7] The SEC need not implement the Proposed Rule, however, to address these concerns.

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[5] Procedural Requirements and Resubmission Thresholds under Exchange Act Rule 14a-8, at p. 18.
[6] Ibid, at p. 18.
[7] Ibid, at p. 48.

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First, shareholders proposals, as currently regulated, are not susceptible to overuse. In fact, most companies receive very few or zero proposals. On average, only thirteen (13) percent of Russell 3000 companies received a shareholder proposal in any one year between 2004 and 2017. In other words, the average Russell 3000 company can expect to receive a proposal once every 7.7 years.[8] The Proposed Rule itself shows that the total number of shareholder proposals is declining.[9]

Second, there are very few "zombie proposals," meaning frequently resubmitted proposals that gain little support. Since 2010, shareholders resubmitted environmental and social issue proposals only thirty-five (35) times after those proposals gained less than twenty (20) percent support for two or more years. Those thirty-five (35) proposals affected only twenty-six (26) companies."[10]

In particular, the SEC appears to be concerned that the most active individual filers of shareholder proposals are resubmitting proposals despite the lack of other shareholders' support. But as the SEC notes in the Proposed Rule (referencing a comment letter), these investors' proposals are supported by, on average, forty (40) percent of shareholders.[11] Rather than burden shareholders and managers with frivolous or zombie proposals, these investors help improve corporate governance practices.[12] There does not, therefore, appear to be an issue of overuse nor are managers and shareholders forced to consider countless proposals that lack "substantial security holder interest."

Third, the current rules, coupled with the SEC's "no-action" process, allow companies to exclude proposals that lack relevance, micromanage companies, or violate several other SEC rules. These mechanisms help to prevent overuse and relieve management from including shareholder proposals on proxies that fail to meet the SEC's strict criteria.

Fourth, the Proposed Rules would not provide much administrative or financial relief because the shareholder proposal process is inexpensive. According to Adam Kanzer, writing as Managing Director at Domini Impact Investments, LLC, the cost to companies to address

[8] Frequently Asked Questions about Shareholder Proposals
[9] Procedural Requirements and Resubmission Thresholds under Exchange Act Rule 14a-8, at p. 75
[10] Frequently Asked Questions about Shareholder Proposals, at p. 2
[11] Procedural Requirements and Resubmission Thresholds under Exchange Act Rule 14a-8, at p. 12
[12] "For example, Dra common proposals from 2003 until 2005, when new U.S. GAAP rules changed to require the expensing options effective June 2005. Similarly, requests to adopt say-on-pay votes appeared in the highest volumes compared to any other shareholder proposal from 2007 to 2010, leading to a significant number of voluntary adoptions before the Dodd-Frank legislation made say on pay the law of the land in 2011. Proposals regarding requests to have majority-independent boards also fall in this category." See The Long View: The Role of Shareholder Proposals in Shaping US Corporate Governance (2000-2018).

shareholder proposals is mostly discretionary and tends to be low in both an absolute sense and relative to the benefits.[13]

Before moving forward with any changes, the SEC should also seriously consider three additional points. First, among the companies most likely to be the recipient of a proposal, the S&P 500, the average number of proposals a company received dropped from 1.85 in 2004 to 1.24 in 2018.[14] Those that face a number of proposals each year tend to be a handful of the largest corporations, which have the resources to respond appropriately. Second, shareholder support for shareholder proposals is growing as indicated by rising average votes.[15] Average votes for environmental, social and sustainable governance ("ESG") proposals are also rising.[16] Thus, shareholders themselves are addressing the SEC's concern with respect to shareholder interest in the proposals set before them. Third, ESG issues are important to shareholder value. According to Bank of America, "traditional financial metrics, such as earnings quality, leverage and profitability don't come close to ESG as a signal of future earnings volatility or bottom-line risk."[17] Moreover, "15 out of 17 (90%) of bankruptcies in the S&P 500 between 2005 and 2015 were of companies with poor Environmental and Social scores five years prior to the bankruptcies."[18] Numerous studies and meta studies, such as those documented by Pax World, demonstrate the connection between ESG policies and financial performance.[19] The Proposed Rule would eliminate many ESG proposals, which could result in lower shareholder value.

We understand the SEC's interest in protecting shareholder democracy from abuse and minimizing the expense of considering weakly supported shareholder proposals. The shareholder proposal process as is adequately addresses both concerns, whereas the Proposed Rule would not provide additional necessary benefits. On the contrary, the Proposed Rule could lead to lower long-term shareholder value by precluding too many shareholder proposals, including ESG proposals, from shareholders' consideration, despite growing shareholder support for proposals generally and ESG proposals specifically.

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[13] The Dangerous "Promise of Market Reform": No Shareholder Proposals.
[14] Procedural Requirements and Resubmission Thresholds under Exchange Act Rule, at p. 74
[15] Kosmas Papadopoulous, ISS Analytics, "The Long View: US Proxy Voting Trends on E&S Issues from 2008 to 2018," Harvard Law School Forum on Corporate Governance, January 31, 2019.
[16] https://siinstitute.org/reports.html See FACT SHEET: Shareholder Proposal Trends, Oct 17, 2019. In addition, Data from ISS Analytics show that the median support for all shareholder proposals rose from 23.3% in 2003 to 33.4% in 2018 according to: Kosmas Papadopoulous, ISS Analytics, "The Long View: US Proxy Voting Trends on E&S Issues from 2008 to 2018," Harvard Law School Forum on Corporate Governance, January 31, 2019.
[17] ESG Matters - US, Bank of America Merrill Lynch, September 23 2019
[18] Ibid.
[19] ESG Research Archives, Pax World Funds

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III. The Role of Corporations in Motivating the Proposed Rule

As professors Adolf Berle and Gardiner Means revealed in the 1930s, corporate managers and investors often have different priorities.[20] Corporate managers tend to dislike shareholder proposals and almost always oppose them because they promote priorities and plans of action that differ from corporate managers' priorities. Maintaining well-regulated public capital markets requires the difficult task of addressing these long-standing diverging interests in a manner that protects investors while facilitating efficient capital formation. Investor protection, however, is first and foremost of the SEC's goals.

It is widely known that trade groups such as the National Association of Manufacturers ("NAM") are key players advocating for the Proposed Rule.[21] NAM hosted the website (now defunct) of the leading interest group advocating for the new rules, the Main Street Investors Coalition ("MSIC").[22] Many investors, on the other hand, including the Council of Institutional Investors, vigorously oppose the Proposed Rule. The SEC's Investor Advisory Committee is also critical of the Proposed Rule.[23]

SEC Chair Clayton mistakenly cited fake letters from so-called Main Street Investors during an SEC event in Washington DC.[24] The SEC's unfortunate reliance on fake letters to demonstrate support from Main Street Investors is one indication of the lack of enthusiasm from investors for the new rules.

To promote transparency, we suggest that the SEC tabulate comments by investors that are generally for and against the Proposed Rule and publish the results. Doing so will help the SEC and the public better understand who is advocating for which changes (if any) to the Rule, and the way they seek to shape our shareholder democracy.

IV. The Proposed Rule Does Not Support the SEC's Mission

The SEC's mission is to "protect investors, maintain fair, orderly, and efficient markets, and facilitate capital formation."[25] The fact that investors, by and large, oppose the Proposed Rule indicates that the Proposed Rule does not protect investors. Also, the Proposed Rule does not promote the other elements of the SEC's mission. Regarding maintenance of fair markets, we

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[20] The Modern Corporation and Private Property. By Adolf A. Berle, Jr. and Gardiner C. Means. New York: The Macmillan Company, 1932.
[21] What's Behind a Pitch for the Little-Guy Investor? Big Money Interests
[22] What's Behind a Pitch for the Little-Guy Investor? Big Money Interests, New York Times, July 24, 2018
[23] Recommendation of the Investor-as-Owner Subcommittee of the SEC Investor Advisory Committee
[24] SEC Chairman Cites Fishy Letters in Support of Policy Change, Bloomberg.com
[25] https://www.sec.gov/Article/whatwedo.html

believe that the Proposed Rule is unfair to small and medium-sized investors for reasons described below.

With respect to promoting orderly and efficient markets, the existing shareholder proposal process is extraordinarily valuable (and cost efficient) due to its use of private ordering and voting to address systemic and company-specific risks. The Proposed Rule threatens to eliminate at least more than one-third of shareholder proposals. By doing so, the Proposed Rule would inhibit private ordering, undercutting the value it provides in the process.

Finally, with respect to capital formation, undermining shareholder democracy will not facilitate capital formation. Ceres submitted a letter to the SEC, as part of the SEC Proxy Roundtable, debunking the myth that the decline in the number of initial public offerings and publicly traded corporations in the U.S. has been caused in any meaningful way by shareholder proposals.[26]

V. Fatal Flaws in the Proposed Rule

In addition to these concerns, we believe that the Proposed Rule is fatally flawed for at least four reasons. Any one of these flaws demonstrates the Proposed Rule's serious legal vulnerabilities. Collectively, they support withdrawing the Proposed Rule, or at a minimum, extensively rewriting it.

A. Fatal Flaw 1: The Cost-benefit Analysis is Incomplete

As mentioned previously, the SEC did not adequately estimate the benefits shareholder proposals provide and the lost benefits of proposals excluded by the Proposed Rule according to its own guidelines and precedents. The SEC has stated, "[i]t is widely recognized that the basic elements of a good regulatory economic analysis [includes, among other things] an evaluation of the benefits and costs—both quantitative and qualitative—of the proposed action and the main alternatives identified by the analysis. As a general matter, every economic analysis in SEC rulemakings should include these elements."[27]

The Proposed Rule does not accord with the SEC's stated position. The Proposed Rule describes some studies, starting on page 113, regarding the short-term impact of shareholder proposals on stock prices, but it is difficult to discern any conclusions about the positive or negative impact of shareholder proposals on firm valuation. Other approaches for assessing lost benefits of excluded proposal are not explored in the Proposed Rule. Thus, the Proposed Rule does not meet the SEC's guidelines and precedents regarding cost-benefit analysis.

[26] https://www.sec.gov/comments/4-725/4725-4642436-176457.pdf
[27] Shareholder Rights Group comment letter dated January 6, 2020

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The cost-benefit analysis's incompleteness is a critical problem because we believe the lost benefits of shareholder proposals exceed the SEC's estimated costs savings of the Proposed Rule by orders of magnitude.[28] Consider the following: in 2013, the New York City Comptroller submitted a proposal to Wells Fargo's shareholders that would strengthen the firm's clawback policies. The proposal was withdrawn after the firm agreed to adopt a new policy. This later allowed for the clawback of funds paid to the executives responsible for the false accounts scandal that harmed millions of customers, employees, and shareholders.[29] The proposal enabled recovery of $180 million in cost savings for the firm; savings that benefited shareholders.[30] These benefits are well over twice as large as the SEC's estimate ($70.6 million) of the annual cost savings from the new rules.[31] The $180 million does not include any benefit of the future deterrent effect of the strong clawback policy on executives at Wells Fargo. This shareholder proposal could, in theory, have been threatened by the new rules.[32]

We must keep the broader picture in mind too. Shareholder proposals, like this one, generate significant savings by helping companies avoid ESG-related controversies that result in substantial losses. According to Bank of America, "[m]ajor ESG-related controversies during the past six years were accompanied by peak to-trough market capitalization losses of $534 billion for large US companies. Loss avoidance is key for portfolio returns over time."[33] Two such ESG issues are climate change and predatory lending. Climate change was a leading contributor to PG&E's recent bankruptcy due to wildfires in California,[34] and predatory lending helped cause

[28] Data compiled by Ceres, and available at www.ceres.org/resolutions, reveals that over one-third of climate-related shareholder proposals are withdrawn by the filer in return for a commitment by the company. In addition, well over seventy (70) percent of commitments result in actions by companies. (Shareholders Spur Action On Climate Change, Ceres, 2014, p. 4) We believe these actions are beneficial to the companies for a variety of reasons, each related to the type of proposal and the type of company.

[29] Key Issues From the 2013 Proxy Season, HLS Forum on Corporate Governance and Financial Regulation, Friday, August 30, 2013

[30] "With the new clawbacks, Wells Fargo's board says, the bank has now recovered more than $180 million in executive compensation over the scandal." Wells Fargo Claws Back $75 Million More From 2 Executives Over Fake Accounts

[31] Procedural Requirements and Resubmission Thresholds under Exchange Act Rule, at p. 137-138

[32] Shareholders at other major companies voted on similar provisions that year. At Walmart, the resolution received a 14.8% vote and at McKesson it received majority support. (Key Issues From the 2013 Proxy Season). Clawback proposals similar to the one filed at Walmart (and presumably, Wells Fargo, had it gone to a vote) could have been impacted by the refiling thresholds. However, it is not possible to accurately predict the impact of the Proposed Rule's filing thresholds due to the SEC's proposed rules impacting proxy advisory firms -- rule changes likely to depress votes as explained elsewhere in this letter. The Walmart resolution would have been excluded under the Proposed Rule if it had been filed for a third time.

[33] ESG Matters - US, Bank of America Merrill Lynch, September 23, 2019

[34] Inside a California utility: Mandatory blackouts amid wildfire threats and bankruptcy, Washington Post, December 21, 2019

the Great Recession. As the Shareholder Rights Group comment letter dated January 6, 2020 explains on pages 21-22, several shareholder proposals related to predatory lending filed prior to 2008, and as early as 2000, were challenged and the SEC allowed their omission, considering them "ordinary business."

Even Lehman Brothers, whose bankruptcy was a key spark igniting the Great Recession, rejected one such proposal in 2007, the year before the company collapsed. In a few cases, such proposals did make it on to company proxy ballots. These were withdrawn in return for agreements by the companies to improve their policies, which they did.

To remedy the deficient analysis, which is rendered all the starker considering the examples above, we recommend that the SEC collect examples of corporate commitments and actions resulting from shareholder proposals that produced cost savings from shareholders. While precise estimates may be difficult, even rough estimates will reveal that corporate actions resulting from shareholder proposals produce savings greater than $70.6 million per year.

Making this estimate will not be overly burdensome on the Staff because the magnitude of the lost benefits (relative to the costs) can be established through relatively few examples. For example, many shareholder proposals ask companies to address climate change in various ways or reduce their greenhouse gas emissions. A study by the Carbon Disclosure Project ("CDP") found that seventy-nine (79) percent of U.S. companies in the S&P 500, "earn a higher return on their carbon reduction investments than on their overall corporate capital investments."[35]

We implore the SEC to consider the ramifications of the Proposed Rule in the light of these examples. More than one-third of shareholder proposals, some of which address systemic risks such as climate change,[36] could be eliminated under the Proposed Rule. Annual projected savings of $70.6 million would not, we believe, come close to the savings generated by some of the proposals that would not be put before shareholders and management.

B. Fatal Flaw 2: The Proposed Rule is Arbitrary Because the SEC's Estimates of the Number of Excluded Proposals is Based on Faulty Assumptions

We are also concerned that the SEC's analysis is fundamentally flawed because it did not consider the impact of its proposed rule addressing proxy voting advice[37] on shareholder voter participation. As Commissioners Allison Lee and Robert Jackson have suggested, the proposed rule changes for proxy advisors are likely to depress votes by making it more challenging for the

35 Examining Carbon Reduction ROI And Competitive Positioning
36 The green swan: central banking and financial stability in the age of climate change, January 2020
37 Proposed Rule: Amendments to Exemptions from the Proxy Rules for Proxy Voting Advice

proxy advisors to issue recommendations or to recommend votes against management positions.[38] Resolutions with lower votes could then be excluded by the higher proposed refiling thresholds. As a result, the SEC should revise all relevant estimates of the number of shareholder proposals likely to be excluded by the Proposed Rule if both proposed rules are enacted. Without these revised estimates, the SEC will be flying blind regarding the impact of the rule changes proposed here.

If the SEC does not revise the estimate, the Proposed Rule would be an arbitrary rule, meaning it would be unlikely to withstand legal challenge. One definition of arbitrary is "based on chance rather than being planned or based on reason." The interactions between SEC's multiple, simultaneous proposed rule changes (and procedural changes) are so complex, and the estimated impact so uncertain, that the anticipated impact of the Proposed Rule is essentially left to chance.

In addition, the SEC should estimate the impact of its recent announcement that it may not issue no-action recommendations.[39] This policy change could have a chilling effect on shareholder proposals by requiring investors to take legal action to exercise their proposal rights. Because companies can now challenge a proposal and exclude it without receiving input from the SEC, in certain cases, investors will need to sue the company to keep the proposal on the ballot. Small investors have few resources to initiate legal action, so they would be disproportionately harmed. Moreover, companies may take advantage of this new policy by challenging more proposals in the hopes that the SEC will not issue a no-action recommendation. For the same reason, such a strategy would disproportionately hurt small investors.

Finally, the SEC's estimate of the number of past shareholder proposals omitted by the proposed refiling thresholds, seven (7) percent,[40] may be inaccurate in light of an analysis by the Sustainable Investments Institute estimating that thirty (30) percent would have been excluded.[41]

We recommend that the SEC explore the reasons for the large discrepancy in the estimates above, using all relevant data sets, among other tools.

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[38] Lee Nov 5, 2019: Statement on Shareholder Rights; Jackson Nov 5, 2019: Statement on Proposals to Restrict Shareholder Voting

[39] Announcement Regarding Rule 14a-8 No-Action Requests

[40] Procedural Requirements and Resubmission Thresholds under Exchange Act Rule 14a-8, at p. 75

[41] "While the rule has yet to be finalized, the Sustainable Investments Institute, or Si2, compiled a database of ESG resolutions voted on from the beginning of 2010 through Nov. 18, 2019. Si2 found that 614 ESG-related resolutions, or about 30%, of the 2,019 proposals voted on at company annual meetings over that period would not have been eligible for resubmission." SEC proposed rule would have blocked 614 ESG resolutions since 2010, data shows, S&P Global, January 6, 2020

C. Fatal Flaw 3: The Proposed Rule's Modifications are Capricious

The definition of capricious includes a sense of sudden or random timing. It is important to note that Proposed Rule will significantly reduce the number of shareholder proposals during a period characterized by the ascendency (or mainstreaming) of ESG investing as demonstrated by:

- Strong growth in ESG-related investing, which now makes up roughly a quarter of all assets under management in the U.S.[42]
- Average votes for ESG shareholder proposals rising, as mentioned earlier.
- The rapid growth of investor networks such as the Principles for Responsible Investment (over 2,250 members managing more than $80 trillion)[43] and the Ceres Investor Network on Climate Risk and Sustainability.
- Signals from important investors such as BlackRock's Larry Fink's letters to CEOs over the last three years.[44]
- The corporate community, as represented by 181 CEOs of America's largest companies signing the Business Roundtable's Statement on the Purpose of the Corporation in August 2019, committing to "deliver value to all stakeholders" (customers, employees, suppliers, communities and shareholders).[45]
- The rapid growth in passive investing is elevating the importance of active ownership and proxy voting. By definition, passive investors cannot manage risk by selling securities, so they need to rely on active ownership (at the individual fund level) to help manage risk, and asset class diversification (across funds).
- Skyrocketing pay for senior managers of corporations and rapidly growing income inequality are now major challenges facing the business community and society.

Meanwhile, despite all this, the overall number of shareholder proposals is shrinking, and most corporations receive few, if any, shareholder proposals, as described earlier.

D. Fatal Flaw 4: The Proposed Rule Harms Investors

Perhaps most problematic, the Proposed Rule would harm investors in a variety of ways. First, as previously discussed, it would reduce long-term shareholder value by excluding proposals that result in greater returns or significant cost savings. Shareholder proposals, particularly ones

[42] US SIF Foundation Releases 2018 Biennial Report On US Sustainable, Responsible And Impact Investing Trends
[43] About the PRI | Other
[44] Larry Fink's Letter to CEOs 2020, Larry Fink's 2019 Letter to CEOs; Larry Fink's Letter to CEOs 2018
[45] Business Roundtable Redefines the Purpose of a Corporation to Promote 'An Economy That Serves All Americans'

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that address ESG issues, help corporations manage risk, especially long-term and systemic risk. Such proposals are also critical to combat instances in which corporate managers rely on inaccurate information.

Second, the proposed ownership thresholds are unfair to small/individual investors and will encourage them to engage in risky portfolio concentration. The median retirement portfolio in the United States was $60,000 in 2016 according to the Federal Reserve.[46] Under the Proposed Rule, the typical retirement saver would need to invest forty-two (42) percent of their retirement portfolio in a single stock if they want to file a proposal after one (1) year of ownership. What assumption is the SEC making about the median portfolio size in the U.S.? How will the Proposed Rule impact investors with portfolios of various sizes?

The proposed prohibition on aggregating shares will exacerbate this issue because investors will only be able to rely on their own shares. These modifications will present Main Street investors with two harmful choices: concentrate savings and risk in one or two companies to have the opportunity to be part of a conversation about their own financial well-being or be a disenfranchised shareholder for years.

Third, the one proposal limit per person (including representatives of other investors)[47] intrudes on the relationship between investors and their fiduciaries or professionals they hire. This has the potential to harm both the investor and the fiduciary or professional they hire.

Fourth, the Proposed Rule would micromanage investors by stipulating details about how they should schedule dialogues with companies.[48] This heavy-handed approach is inappropriate, unfair to investors, and has the potential to waste shareholders' and company's time in those cases where either party simply wants the proposal to go to a vote and thereby receive feedback from other investors. There are a number of topics on which shareholders and management consistently disagree and votes are useful in helping to resolve the conflicts.

Finally, this proposal ignores a related problem described earlier: companies' frequent refusal to engage in dialogue with investors. If the SEC decides to make this rule change, we recommend a reciprocal rule requiring companies to inform the SEC whether they sought to engage with the filer of a shareholder proposal prior to filing a no-action request.

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46 https://www.federalreserve.gov/publications/files/scf17.pdf, at p.19
47 Procedural Requirements and Resubmission Thresholds under Exchange Act Rule, at p.38
48 Ibid, at p. 34

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VI. Conclusion

We appreciate that the SEC has a difficult role in managing divergent interests between investors and corporate managers. In managing those interests, the SEC's mission is to protect investors and promote capital formation through fair and efficient public markets. Our current system of shareholder democracy is critical to that mission. We urge the SEC to withdraw the Proposed Rule because it would tilt our shareholder democracy toward corporate managers to the detriment of investors, capital markets, and the economy. The resulting loss of economic benefits far outweighs the cost savings of the Proposed Rule.

Thank you for your consideration of this request.

Respectfully,

Mindy S. Lubber

Mindy S. Lubber
CEO and President, Ceres

Investor Signatories

1. Adrian Dominican Sisters, Portfolio Advisory Board
2. As You Sow
3. Baldwin Brothers
4. Bon Secours Mercy Health
5. Boston Common Asset Management
6. Christopher Reynolds Foundation
7. ClearBridge Investments
8. Committee on Mission Responsibility Through Investment of the Presbyterian Church U.S.A.
9. CommonSpirit Health
10. Congregation of St. Joseph
11. Connecticut Retirement Plans and Trust Funds
    Connecticut State Treasurer Shawn T. Wooden
12. Dana Investment Advisors
13. Daughters of Charity, Province of St. Louise
14. Domini Impact Investments LLC
15. Friends Fiduciary Corporation
16. Green America Endowment

17. Green Century Capital Management
18. Impax Asset Management
19. Inherent Group
20. Jesuit Committee on Investment Responsibility
21. Maryknoll Sisters
22. Maryland State Retirement and Pension System
23. Maryland State Treasurer
24. Mercy Investment Services, Inc.
25. Miller/Howard Investments, Inc.
26. Newground Social Investment
27. Northwest Coalition for Responsible Investment
28. Office of the Illinois State Treasurer
29. Office of the Vermont State Treasurer
30. Praxis Mutual Funds
31. Reynders, McVeigh Capital Management
32. Seattle City Employees' Retirement System
33. Seventh Generation Interfaith Coalition for Responsible Investment
34. The Episcopal Church – Domestic and Foreign Missionary Society
35. Trinity Health
36. Unitarian Universalist Association
37. United Church Funds
38. Vermont Pension Investment Committee
39. Zevin Asset Management

Headquarters: 99 Chauncy Street, 6th Floor · Boston, MA 02111 · **617-247-0700** **www.ceres.org**
San Francisco Office: 369 Pine Street, Suite 620 · San Francisco, CA 94104 · **617-247-0700**