Via Electronic Mail: Rule-Comments@sec.gov

January 27, 2020

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

Re: **Proposed Limitations on Representation of Shareholders**
File Number S7-23-19: Procedural Requirements and Resubmission Thresholds under Exchange Act Rule 14a-8

Dear Ms. Countryman:

The undersigned write as investors and advisors who will be adversely affected by the Securities and Exchange Commission's proposed rule change (the "Proposal"), which would severely limit our ability to use skilled representatives to file shareholder proposals as permitted under Rule 14a-8, as well as to serve as representatives for and to collaborate with other investors who wish to file such proposals.[1]

The Proposal would be immensely detrimental to long-standing, legitimate, widespread – and in some cases statutory – investment models and practices.

We also write to seek clarification as to certain vaguely described aspects of the Proposal, to be in a position to provide the Commission meaningful comment on the potentially detrimental effects of those aspects.

Specifically, this letter will focus on the following aspects of the Proposal:

1. Proposed amendment to Rule 14a-8(c), which would state as follows:

   "Each person may submit no more than one proposal, directly or indirectly, to a company for a particular shareholders' meeting. A person may not rely on the securities holdings of another person for the purpose of meeting the eligibility requirements and submitting multiple proposals for a particular shareholders' meeting."

2. Proposed amendment to the eligibility requirements of Rule 14a-8:

   "to require shareholders that use a representative to submit a proposal for inclusion in a company's proxy statement to provide documentation attesting that the shareholder supports the proposal and authorizes the representative to submit the proposal on the shareholder's behalf."

3. Proposed requirement in Rule 14a-8(b) that proponents must "provide the company with a written statement that you are able to meet with the company in person or via teleconference no less than 10 calendar days, nor more than 30 calendar days, after

[1] U.S. Securities and Exchange Commission, *Procedural Requirements and Resubmission Thresholds under Exchange Act Rule 14a-8*, 84 Fed. Reg. 66458 (Dec. 4, 2019), available at https://www.federalregister.gov/documents/2019/12/04/2019- 24476/procedural-requirements-and-resubmission-thresholds-under-exchange-act-rule-14a-8 (the "Proposing Release").

submission of the shareholder proposal," and "include contact information as well as business days and specific times that you are available to discuss the proposal with the company."

(A)
The Proposal's Restrictions on Representation are Arbitrary and Would be Costly and Disruptive

The proposed amendment to Rule 14a-8(c) would uproot the long-standing "one proposal" rule that allows "each shareholder" to submit one proposal per proxy. While it may appear to be a simple matter "to apply the one-proposal rule to 'each person' rather than [to] 'each shareholder' who submits a proposal," such a change is arbitrary, without rational basis, and would in fact disrupt investors of all sorts in a myriad of complex and unintended ways.

The Proposing Release acknowledges, at page 29, "that shareholders may wish to use a representative for a number of reasons, including to obtain assistance from someone who has more experience with the shareholder-proposal process or as a matter of administrative convenience." Despite this acknowledgement, the Proposal recites no prior effort to gather and evaluate information about the ways in which investors use representatives.[2] It also states, "[t]he amendment is not intended to prevent shareholders from seeking assistance and advice from lawyers, investment advisers, or others to help them draft shareholder proposals and navigate the shareholder-proposal process." However, the outcome of the proposed change would be to arbitrarily limit an investor's ability to use a representative of her choice, conditioned on whether the representative had already assisted another investor in filing a resolution for a vote at the same meeting. The Proposal correctly acknowledges that there may be "unintended consequences on the practice of shareholders using representatives to submit shareholder proposals." The fact of the matter is that those consequences would be adverse and severe.

There are numerous relationships and modes of representation that deserve careful attention and analysis. It is the Commission's burden to study these <u>before</u> proposing to prohibit them. Examples of relationships that the Commission should have taken into consideration before developing the Proposal include:

a. **An elected official** who by law invests money on behalf of state and local units of government, or who is the custodian of multiple state or local trust funds and the assets of state or local pension funds and has been delegated by the boards of trustees of such funds to serve as their investment advisor, to oversee the investment portfolio of each fund and, among other things, file shareholder proposals on the funds' behalf and cast their proxy votes.

   The undersigned **Illinois State Treasurer** and **New York City Comptroller** are but two examples.

b. **Faith-based groups and institutions** that have been designated by funds of other faith-based groups and institutions that desire to use representatives with expertise in the engagement and resolution process due to resource limitations or lack of knowledge about the process.

[2] Nor does it provide a meaningful baseline analysis, as discussed below.

The undersigned **Mercy Investment Services** is one of many such faith-based investors[3] that provide representative services to a variety of religious institutions, including religious congregations, nonprofit health systems and other religious organizations, such as Bon Secours Mercy Health and the Committee on Corporate Social Responsibility of the Episcopal Church. Mercy Investment Services is the asset management program for the collective investment and professional management of endowment, operating and other funds of the Sisters of Mercy and their sponsored ministries that participate, all of which are tax-exempt organizations engaged in religious and charitable activities.

Mercy Investment Services, like many other groups that serve this role for partners, also provides shareholder advocacy service to other faith-based institutions, making available to them expertise and assistance in developing company engagement plans, filing eligible shareholder proposals, and engaging in dialogue with companies held in the institution's portfolio. Given the breadth of institutions that Mercy Investment Services represents, it has from time to time been involved in filing more than one proposal at a given company, each on behalf of different institutions that are independently eligible to file and are focused on different subject matters.[4]

c. Investment managers that have been designated by specific clients (including endowments, foundations, mission-driven organizations, religious groups, and family offices) to coordinate filing a resolution, and to participate in co-filing a resolution in the clients' own names and to represent them in engagement with companies and negotiating agreements.

The undersigned **Boston Trust Walden**, as well as **Boston Common Asset Management, Newground Social Investment, NorthStar Asset Management, Inc.**, and **Trillium Asset Management**, are several of a multitude of examples.

d. Institutions that serve foundations, pension plans, trusts and endowments, non-governmental organizations and individual investors, by acting on their behalf in engaging companies and filing shareholder proposals. Such institutions routinely assist several clients in coordinating with each other to file the same proposal with one company. They also routinely assist different shareholder clients in submitting separate, unrelated proposals to a company, such that one company may receive two or more permissible proposals from the institution, on behalf of separate, eligible clients.

The undersigned **As You Sow**, **Investor Voice**, and **SHARE** are several of many such institutions.

e. An attorney retained by the trust committee of a bank who has been authorized to act on behalf of the bank in filing proposals, engaging with companies and negotiating resolutions. The attorney files a single proposal for the bank at a given company, but may also be asked to submit a separate proposal on a separate topic by another client

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[3] Another is Investor Advocates for Social Justice, which represents the American Baptist Home Mission Society, Sisters of the Good Shepherd—NY Province, Sisters of St. Joseph of Brentwood and several other Catholic institutional investors.

[4] Mercy Investment Services has never had a company voice objections to its being a representative of multiple resolutions on behalf of multiple organizations that it represents. Indeed, such representations have made engaging with companies more efficient and streamlined.

that is a shareholder of the same company and that has holdings sufficient to make it independently eligible to file a proposal.

f. **Investment consulting firms** and **plan administrators** that serve as fiduciaries for pension plans for the submission of shareholder resolutions.

Pension plans of the undersigned **AFL-CIO** and its member unions frequently rely on these fiduciaries for shareholder engagement services.

In each of these cases, the Commission's Proposal could restrict or impede important relationships – including fiduciary relationships – between an investor and her representative, and among investors.[5] Indeed, the Proposing Release recognizes that in some cases the relationships are features of state law, such as the law of agency, that would be preempted in ways the Proposing Release has failed to analyze or explain.[6] Specific existing relationships would be prohibited if a representative had submitted a resolution for a given meeting, which could easily prevent representatives from fulfilling their fiduciary duty in an even and consistent manner to all of their principals or clients.

For example, if two or more clients own shares in the same company and wish to co-file the same resolution, or file proposals on separate topics, the limitation contained in the Proposing Release would require the agent to choose which principal's wishes would prevail.[7] Thus, many existing representative relationships would be affected, requiring examination, restructuring, or termination – at the expense and to the detriment of investors.

The Proposal would also require shareholders who use a representative to file their proposals to provide "documentation attesting that the shareholder supports the proposal and authorizes the representative to submit the proposal on the shareholder's behalf" including the shareholder's "statement supporting the proposal." This requirement would, without justification, uproot the Commission's existing, reasoned, and well-honed approach to implementing the existing Rule. In particular, it would ignore the precedent clearly established in ***Baker Hughes Incorporated*** (Feb. 22, 2016) which directly addressed proof of representation issues – demonstrating, in the case of Registered Investment Advisors, that proof of authorization is, *a*

[5] *See also* Letter dated January 16, 2020, from the undersigned Michael W. Frerichs, Illinois State Treasurer, to Chairman Clayton, *available at* https://www.sec.gov/comments/s7-22-19/s72219-6660940-203862.pdf ("[W]e do not welcome any regulations on the allocations of duties between our staff and external consultants. We find the attestations requirements in the proposed rules onerous and redundant. We find it unnecessary for the SEC to intervene in our dealings with any representative. Any representative who acted on a client's behalf without their consent would have a very short life in the profession.").

[6] The SEC must consider and discuss the adequacy of "the existing state law regime," and the differences between it and the federal regime in terms of efficiency and capital formation, before supplanting state law with federal rules—failure to do so is "arbitrary and capricious." Am. Equity Inv. Life Ins. Co. v. SEC, 613 F.3d 166 (2010).

[7] In the same vein, we are perplexed that the proposal would bar aggregation of holdings to establish eligibility of a proposal that could garner significant support of all shareholders. This bar would significantly penalize the smallest shareholders, who are the people the Commission profess to care about the most. Moreover, given the prevalence and benefits of passive, indexed investment strategies, even pension and other investment funds may hold small amounts of some companies that, as discussed above, it cannot divest and walk away from without damage to the diversification of its portfolio. This is why so many funds have invested in corporate governance staff to monitor and engage with portfolio companies to motivate enhancements to long-term value while maintaining a diversified portfolio.

priori, demonstrated by the existence of a Verification of Shares Letter issued by the custodian of the shares in question.[8]

These requirements would also arbitrarily penalize shareholders that make use of professional representation, and thus would unfairly discourage all shareholders from employing experts to help craft their proposals and supporting statements. In part, this is because of the added logistical burden of being required to finalize a proposal merely for purposes of attaching to said attestation. In addition, these impositions would effectively constrain, if not outright prevent, shareholders who use representatives from adjusting their proposals in response to changing circumstances that often evolve right up to the filing deadline.

The proposed requirement that shareholders make themselves available to meet with a company during a short window after filing would impose unwarranted burdens and costs on shareholders, and make it even more important that busy shareholders are afforded the ability to retain representatives and to share administrative burdens with other shareholders. This provision is also problematic because it is unnecessarily prescriptive. The Proposal does not allow for the variables that routinely occur in these proceedings. For example, shareholder-proponents may file their proposals a month or more <u>before</u> the filing deadline, but in our experience companies will typically wait until <u>after</u> the filing deadline to start a dialogue with the proponent (in case proposals of co-filers or competing proposals are received). Why did the Commission propose that only shareholder-proponents (and not also the company) block their calendars for a specific 20-day window after filing? And, while we believe this requirement is unnecessary, the Commission should have set forth a rationale behind the particular window that it proposes to mandate. We ask the Commission to make public its discussions, if any, with shareholder proponents and those it had with company management representatives on the basis for and specifics of this aspect of the Proposal.

While placing stringent requirements on shareholders, the Proposal would impose no obligation whatsoever on company management to meet with proponents during this window. In our experience, company managers often will not make themselves available for engagement even months after the filing deadline has passed, and sometimes not until after the Commission's Staff has made a determination on their no-action request. No investor is served by mechanistic requirements that shareholders hold their schedules open at immutable times, which imposes both real and opportunity costs on investors who are prevented from scheduling other meetings or events during those times. The Proposing Release recognizes, at page 143, that its requirements related to being available to meet with management would impose added costs on shareholders, as well as force them to block out multiple calendar times to be available to meet with management. However, it failed to acknowledge the additional significant and wasteful costs to shareholder-proponents of having to be prepared for meetings soon after filing a proposal, including the cost of representatives' time, and to take part in meetings that may or may not even occur – all at the company's sole discretion. Related, the Proposal fails to recognize the potential for gamesmanship it invariably introduces when rules apply asymmetrically to different parties. The unburdened party could imply they wish to meet, thereby forcing on shareholders the burden

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[8] In ***Baker Hughes Incorporated*** (Feb. 22, 2016), the Commission Staff denied a request for no-action relief by Baker Hughes Inc. to exclude a shareholder proposal submitted by the undersigned Newground Social Investment on behalf of the Equality Network Foundation. Baker Hughes had sought to exclude the proposal, among other reasons, on the ground that Newground had not provided proof that it was authorized to submit the proposal on the shareholder's behalf. *See* No-Action Letter dated Feb. 22, 2016, *available at* https://www.sec.gov/divisions/corpfin/cf-noaction/14a-8/2016/equalitynetwork0222216-148a.pdf.

of blocking time and engaging representatives, only to change their mind and thus waste shareholder time and resources.

This requirement could also lead to needless and costly involvement of SEC Staff, through the no-action process, adjudicating company allegations that a shareholder did not properly cite her availability, or missed a scheduled date. What if a company failed to appear at a scheduled meeting with shareholders? When there is no requirement for company participation, would there be a penalty on the shareholder if a meeting did not take place? This aspect of the Proposal may have been designed to promote engagement, but it is ill-conceived and unnecessary. It should be abandoned.

Finally, on this point, it is unclear whether the Commission intends to prohibit a shareholder from appearing at the required meeting through an experienced representative, or whether the shareholder would be required to be present with her representative. We seek clarity on this issue. The Proposing Release has provided no evidence to demonstrate that requiring a shareholder to attend such a meeting would facilitate the process or create better outcomes than is currently being achieved by representatives. In fact, shareholder representatives successfully negotiate a substantial percentage of yearly withdrawals of shareholder proposals.

We believe there is no basis for Commission intervention in a shareholder's decision as to who should represent her in meetings with companies. There are a range of compelling reasons why a shareholder might not wish or be able to participate in such a meeting. Some shareholders prefer that their agents represent them in company meetings due to lack of availability – they may be out of town or unavailable during the narrow timeframe prescribed by the Commission. Some may feel intimidated by meeting with companies, such that forcing their participation would be unhelpful to the process. Other shareholders always participate in meetings alongside their representatives. Clearly, this is a choice that should remain between the shareholder and her representative. Because the Proposal demonstrates no reasonable basis for interfering with the established agency relationship process, we believe it is arbitrary and capricious.

(B)
The Proposal's Restrictions on Representation are Not Economically Justified

The Proposing Release makes no attempt to evaluate, either quantitatively or qualitatively, the economic impact of disrupting investors' relationships with representatives and other investors, or the cost and impact of imposing bureaucratic requirements on shareholders making themselves available for meetings (which may never occur). Nor does the Proposal reflect on or consider <u>any</u> alternatives.

Other than a crude estimate that shareholders used representatives to file proposals approximately 18 percent of the time in 2018, the Proposing Release fails to assess whether that data is typical and fails to conduct analysis of any regulatory baseline for comparison. This runs counter to the requirements of the Commission's own guidance on economic analysis, makes impossible any effective analysis of the proposed changes and what effects they would impose on investors' use of representatives, and frustrates meaningful public comment.

For example, the Proposing Release includes no analysis of whether its 2018 estimate is reasonable or representative of any other year, nor how the Proposal would change the rate of

the use of representatives in the future.[9] Moreover, the Proposing Release acknowledges that it has "potentially underestimate[d] the percentage of proposals submitted by a representative because companies <u>might</u> provide information on the identity of the proponent but <u>might not</u> mention that the proposal was submitted via a representative in the proxy statement"; however, it does not address any of the potential myriad of ramifications that would devolve from this underestimation.[10] Indeed, the Proposing Release does not provide any genuine analysis of the supposed baseline, or the change that would result from the Proposal. This comment letter seeks to identify some of the analysis that would be necessary and appropriate under the Commission's own mandates, and to highlight what – at a minimum – the Commission would need to produce in order for the public to be in a position to understand the Proposal's implications and to provide meaningful comment on the proposed amendments.

It is important to recognize that Rule 14a-8 was created to promote the rights of individual investors – <u>not</u> to create a corporate right of access to proponents – and to ensure the ability of all investors, regardless of their size, to engage in oversight and deliberation on important issues of corporate risk and governance. An important policy justification underlying Rule 14a-8 as it stands (and has stood for decades) is that it helps to overcome the "collective action problem" which could discourage dispersed investors from participating in value-enhancing oversight activities such as filing proposals and voting on them. Over time, a body of procedures and protocols has purposefully evolved to provide a balanced means by which investors of nearly any size can appropriately engage in the governance process. So too, shareholders' demand for expert assistance in exercising their rights to participate has developed into the modes of representation and services described here.

The long-standing "one proposal per shareholder" rule, as well as other substantive bases for exclusion, have helped to ensure that companies and shareholders are not overwhelmed with proposals. As the Proposing Release admits, the number of proposals filed annually has been on the decline for many years, in part because successful engagement conducted by professional representatives on behalf of shareholders, and through substantive shareholder collaboration, has resulted in a growing number of withdrawals. As well, the use of professional representative has actually reduced the need to file proposals at some companies or have them carry through to a vote, because they articulate cogent ideas which corporate management teams voluntarily enact.[11] We believe there has not been any consultation by the Commission or its Staff with investors who use such arrangements, or with the agents themselves, which would be entirely necessary, reasonable, and expected in order to ascertain the full impact of the Proposal.

Ostensibly, the Proposing Release's reason for proposing changes to Rule 14a-8(c) is to make it easier for companies to assess the eligibility of a shareholder to file a proposal and to contact the shareholder proponent. However, based on the decades of experience collectively represented by the undersigned, it is not difficult to ascertain a shareholder's eligibility, regardless of whether the shareholder uses a representative or collaborates with one or more other shareholders. With rare exceptions – which clearly do not constitute sound basis for or justify such a broad change to the Rule – the undersigned, our clients, and our partners have

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[9] See Proposing Release, at 73.

[10] *Id.* at note 149 (emphasis added).

[11] See NPR-KUOW, "[Getting McDonalds to the Table](https://youtu.be/_qclD1B7jm4)," *available at* https://youtu.be/_qclD1B7jm4 (an NPR-KUOW feature on a highly successful shareholder engagement, which led to enhanced profitability for the company, and a global reduction in toxic pesticide use).

every incentive to establish eligibility, so as to avoid exclusion.[12] On the other hand, we believe ascertaining eligibility of "a person" to file a proposal would be significantly more difficult and uncertain for everyone involved – whether companies, investors, investor representatives, the Commission, its Staff, or any other adjudicators. In any event, there is no substantive justification for asserting that the barring of persons from serving as representatives in filing more than one resolution a year with a given company would do anything whatsoever to make it easier for companies to ascertain a shareholder's eligibility.

As for contacting shareholder proponents, there is nothing difficult about that today under the current Rule. In fact, proponents want to be contacted – investors do not file proposals in order to avoid engagement, but to foster dialogue and to achieve meaningful, and profitable, improvements in the companies they own.

The Proposing Release attempts, at page 30, to justify the Proposal because a "representative may or may not have an economic stake in the relevant company." This reasoning appears to be rooted in a paternalistic concern, expressed by corporate interests, that "it may be difficult in some cases to ascertain whether the shareholder in fact supports the proposal that has been submitted on their behalf." Whether or not she chooses to be represented by an expert advisor, the client/shareholder involved in the process has an economic stake. Some companies might prefer for investors to not have access to skilled and professional advocates. Though the Proposal disclaims an intent to deprive shareholders of access to skilled lawyers and advisors, the practical effect and impact of the Proposal would be to do just that.

It is our understanding that each of the Commissioners is an attorney, and each has deep professional experience. We find it hard to believe that the Commissioners would not support a shareholder's right to engage and speak through a skilled counselor or advisor. Typical, if not expected, is that a counselor or advisor would not herself have an economic stake in the company that is the subject of the shareholder proposal.

The Proposing Release also asserts, at page 30, that uncertainty about whether a shareholder agrees with her representative "may also raise questions about whether the eligibility requirements of Rule 14a-8(b) have been satisfied." Existing rules already provide companies with mechanisms to challenge a shareholder's eligibility to file a proposal, giving shareholders every incentive to establish eligibility clearly, in order to avoid exclusion and motivate meaningful engagement by the company. To this end, shareholders commonly provide – or are compelled to do so through the well-established Deficiency Notice process – their proof of eligibility.

When a shareholder is eligible to file a proposal, and the substance of the proposal is permissible under Rule 14a-8, what legitimate interest does a company have in seeking proof that the shareholder agrees with her representative? The Proposing Release asserts at page 139, without any reasonable explanation or substantiation, that both companies and other shareholders "could" benefit from knowing whether the proposing shareholder agrees with her representative. Most representatives' contractual and fiduciary relationships prohibit them from filing a proposal without the consent of a client. The Commission has not proposed to question a

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[12] The proposal would set forth seven specific documentation requirements to establish eligibility. This aspect of the proposal seems to be based on an unfounded assumption that there is an economically significant problem related to shareholder-proponents not providing proof of eligibility. In fact, as the proposal's economic analysis acknowledges, shareholder-proponents routinely provide information sufficient to establish eligibility. Given that, as the request for comment section on page 32 notes in point 4, a proof of ownership letter from a custodian is already required, we fail to see the benefit of additional documentation requirements, which investors would incur costs to produce.

company's choice of outside counsel or to require proof of that law firm's alignment with company philosophy. The Proposal offers no justification for restricting shareholder use of representatives but not that of a company's board.

We agree with the sentiment expressed in the Proposing Release that there are many benefits of shareholder engagement. As well, we concur with the observation that, increasingly, engagement has led to constructive agreements whereby proposals have been withdrawn.[13] However – and we can scarcely emphasize the importance of this enough – by curtailing use of skilled and professional representatives by shareholders, the Proposal threatens and potentially will eliminate these very benefits. Yet the Proposing Release fails to evaluate the impact of curtailing those benefits, an analysis that is made all the more difficult due to the arbitrary nature of the proposed "one person" limitation. Those benefits include value-enhancing measures that companies have undertaken in response to engagement with skilled representatives of shareholder-proponents, such as say-on-pay measures that hold managements accountable for enhancing long-term value.

Over the last decade, company boards and managers have, on the whole, demonstrated greater willingness to engage with investors to consider positive changes designed to improve long-term shareholder value – in many cases without the need to put our clients' proposals to a vote, and sometimes without even the need to formally file a proposal. Indeed, collectively we have been involved in hundreds of investor-management discussions on a wide range of issues that led to constructive and profitable outcomes long before a resolution would even have been filed. And increasingly, the proportion of proposals made have been withdrawn, due in part to greater willingness of boards and company management to engage, but even more so due to the high caliber of ideas and methods of presentation that skilled, experienced, and professional representation have introduced into the system. It would be naïve to think that company managers' willingness to engage is not motivated by the fact that shareholders can file a proposal, or that the trend of positive engagement would continue if shareholders were materially limited in the exercise of their right to file proposals. Clearly, as the trends amply demonstrate, the increased use of professional representation has materially improved the process and its outcomes; in contrast, forcing shareholders to file proposals and negotiate with companies *pro se* is a guaranteed recipe for lower quality and less effective engagement.

Indeed, it is not uncommon to encounter companies that will not engage until a proposal has been filed. The Proposing Release shows no attempt to assess the number of times that companies have ignored correspondence from shareholder proponents both before and after resolutions were filed, which the Commission should have done to develop a proposal aimed, as this one ostensibly is, at enhancing engagement. Many investors hold or manage widely diversified portfolios that pursue passive, index strategies in order to minimize portfolio risk and investment management fees.[14] The filing of proposals requires labor and expense by us, our

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[13] To the extent the Commission is concerned about the rare situation where an investor, perhaps out of inexperience, unwisely does not seem open to dialogue, it does not appear to have considered any, more focused solutions that would address such a problem. Indeed, reducing access to experienced representatives might trigger more such situations. For example, in meetings with the Society for Corporate Governance a year ago, investors and the Society began discussing developing a set of best practices for engagement to provide companies and investors alike the benefit of examples of how engagement worked well. The Commission's proposal reduces the corporate community's incentive to negotiate private-sector solutions to problems they perceive.

[14] We note that the Proposing Release acknowledges, at page 143, that "Any negative effects of the proposed amendments would be more pronounced for shareholders that follow passive index strategies because those

clients, and partners. We bear this cost because we understand that the long-term cost of inaction to our portfolios is greater than the cost of engagement. We believe we are best situated to make this cost-benefit judgment on a case-by-case basis for ourselves, or as fiduciaries for our clients. As the investor's advocate, the Commission should champion our right to do so.

(C)
The Commission Should Clarify Certain Vaguely Described Aspects of the Proposal to Provide for Meaningful Public Comment on the Effects of Those Aspects

Finally, certain aspects of the Proposal are too vaguely described for us or the public to comment on. We ask the Commission to clarify those aspects and to seek public comment on them before finalizing its thinking on whether or not to adopt the proposed amendments. In particular:

1. It is unclear how the provision to restrict "each person" to "no more than one proposal, directly or indirectly, to a company for a particular shareholders' meeting" would apply to firms and institutions that represent multiple shareholders.

   The Proposal is unclear whether "person" means a natural person or encompasses discrete entities made up of or employing multiple natural persons. For instance, would two individuals in the same firm or institution be able to represent two different shareholders on different proposals at the same company?

2. It is unclear whether the Proposal would prohibit shareholders who co-file related proposals from using the same representative to file their proposals. As discussed above, many companies delay engagement till after the filing deadline. Impeding coordination among co-filers by prohibiting use of skilled representatives would have a significant impact on engagement. Nowhere does it appear that the Commission has attempted to assessed this impact. Please clarify the Commission's intent, and disclose any analysis conducted to support or corroborate these proposed changes, so as to enable the public to meaningfully comment.

3. It is unclear how the Proposal would interact with the Commission's Rule 14a-8(h), which explicitly permits shareholders to designate a representative to present shareholder proposals at shareholders' meetings. In some cases, shareholder proponents choose a person located in the city where a company holds its stockholders meeting to move the resolution on the shareholder's behalf. When there are multiple proposals, for convenience, to save expense, and because the vote has already been taken by proxy, several shareholder proponents sometimes use the same person to move their resolutions. The Proposing Release does not address this practice. If the Commission intends to change it, we question whether the Commission has the authority to regulate the conduct of the annual meeting, which is governed by state law, and the Commission should clearly express this intent and its rationale and seek public comment.

4. It is unclear whether the Proposal would prohibit a state or local elected official from representing multiple pension funds within her statutory or contractual fiduciary responsibility to the funds.

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shareholders are more limited in their ability to sell shares of an underperforming stock and thus might be more likely to rely on the proxy proposal process to encourage value-enhancing changes."

5. It is unclear what the effect of the Proposal would be if a shareholder, or her representative, could not meet on a date previously provided. Would such a condition retroactively affect the shareholder's eligibility? The public deserves an opportunity to comment on how the Commission intends to handle such situations if it would affect shareholders' rights.

In closing, the existing Rule, honed and polished through decades of use, is admirably serviceable. It functions so well that so far as we are aware from our collective knowledge or the record, no investor has called for changes such as the Proposal contemplates. Compounding the issues we have raised, the foreshortened public comment period – which largely fell during the year-end holiday season – risks a rush to judgment, creates unjustified disruption of the Commission's own established practices and precedent, and may ultimately further disenfranchise the very mainstream investor that it is the Commission's mission and mandate to protect.

For these reasons, the undersigned call on the Commission to delay this proceeding, to fill obvious gaps in the evidentiary record, to describe and assess less detrimental alternatives for solving purported issues with the existing Rule, and to allow adequate time for public comment.

Thank you for your consideration of these concerns. Should the Commission have any questions or desire clarification, please do not hesitate to contact us through Timothy Smith of Boston Trust Walden at TSmith@bostontrustwalden.com.

Respectfully submitted,

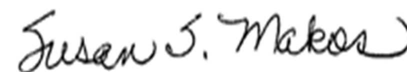
Timothy Smith
Director, ESG Shareowner Engagement
Boston Trust Walden

Michael W. Frerichs
Treasurer
State of Illinois

Scott M. Stringer
New York City Comptroller

Kevin Thomas
Chief Executive Officer
SHARE

Danielle Fugere
President
As You Sow



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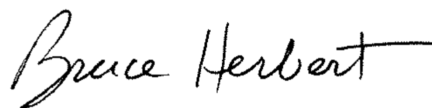

Brandon Rees
Deputy Director, Corporations and Capital Markets
AFL-CIO

Bruce T. Herbert, AIF
Chief Executive
Newground Social Investment

Representative list of additional concerned investors and investor representatives:

American Baptist Home Mission Society
Bon Secours Mercy Health
Boston Common Asset Management, LLC
The Episcopal Church, Committee on Corporate Social Responsibility
First Affirmative Financial Network
Harrington Investments, Inc.
Investor Advocates for Social Justice
Investor Voice, SPC
NorthStar Asset Management, Inc.
Trillium Asset Management, LLC
Wespath Benefits and Investments

cc: The Honorable **Jay Clayton,** Chairman
The Honorable **Robert J. Jackson, Jr.,** Commissioner
The Honorable **Hester M. Peirce,** Commissioner
The Honorable **Elad L. Roisman,** Commissioner
The Honorable **Allison Herren Lee,** Commissioner