February 3, 2020

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

Re: Procedural Requirements and Resubmission Thresholds under Exchange Act Rule 14a-8
Release No. 34-87458; File Number S7-23-19

Dear Ms. Countryman:

This letter is submitted on behalf of Business Roundtable, an association of chief executive officers who collectively lead companies with more than 15 million employees and $7 trillion in revenues. Business Roundtable members invest nearly $147 billion in research and development. In addition, our companies annually pay $296 billion in dividends to shareholders and generate $488 billion in revenues for small and medium-sized businesses.

We appreciate the opportunity to comment on the proposed rules issued by the Securities and Exchange Commission (the "Commission" or "SEC") on November 5, 2019, entitled Procedural Requirements and Resubmission Thresholds under Exchange Act Rule 14a-8 (the "Proposing Release").[1] Business Roundtable agrees that it is imperative to reform the shareholder-proposal process so that it is transparent, productive and oriented toward long-term value creation. Indeed, a more effective and efficient shareholder-proposal process will facilitate the ability of corporate boards and management to drive long-term value, which serves all corporate stakeholders including investors, employees, communities, suppliers and customers. We believe that the changes included in the Proposing Release support this goal, and this letter provides our comments on the proposed amendments. We have also included feedback from our member companies on the need for Rule 14a-8 reform and on the Proposing Release, which was obtained through surveys we distributed to our member companies in 2019 and anonymized for purposes of this public submission.

EXECUTIVE SUMMARY

Overall, Business Roundtable is highly supportive of the changes to the shareholder-proposal process outlined in the Proposing Release, and we commend the Commission for its extensive efforts in pursuing thoughtful and comprehensive reform on this topic. A summary of our key comments follows:

[1] Where relevant, this letter references comments previously made in letters dated November 9, 2018 and June 3, 2019 that we submitted to the Commission in connection with our participation in the Commission's November 2018 Roundtable on the Proxy Process (the "SEC Roundtable"). For ease of reference, we have attached those letters.

- **Rule 14a-8(b) Eligibility Requirements:** We support the changes to the eligibility standards, i.e., the three-tiered eligibility threshold and the proscription against aggregation of shareholders' holdings. While we feel that the proposed standards are an improvement over the current approach, we continue to believe that the long-standing $2,000 threshold for proposal submissions has become outdated and is far too low to ensure that shareholder-proponents have meaningful, long-term interests in the companies in which they invest. We recommend, therefore, that the Commission adjust the threshold amount for inflation. We also recommend that each of the three proposed thresholds be adjusted for inflation once every three years on a going-forward basis. Lastly, we recommend that the Commission require shareholders who co-file a proposal to designate a lead filer who is authorized to act on the proposal.

- **Proposals Submitted on Behalf of Shareholders:** We support the Commission's proposal to amend Rule 14a-8's eligibility requirements to require the additional information specified in the Proposing Release. Further, we urge the SEC to require both the shareholder and their representative to provide information regarding their motivations, goals, economic interests in the company, their relationship with each other and a description of their past advocacy on the topic at issue.

- **The Role of the Shareholder-Proposal Process in Shareholder Engagement:** We support the Commission's proposal to require a shareholder-proponent to provide a written statement that the shareholder is able to meet with the issuer in person or by telephone within a specified timeframe after submitting a proposal.

- **One-Proposal Limit:** We support the proposal to amend Rule 14a-8(c) to explicitly state that each person may submit no more than one proposal, directly or indirectly as a representative, to a company for a particular shareholder meeting.

- **Rule 14a-8(i)(12) – Resubmissions:** We support increasing the current thresholds for resubmission of proposals. We believe, however, that there is sufficient support to set the new thresholds at 6%/15%/30% rather than the 5%/15%/25% levels proposed by the Commission. In addition, we support the Commission's proposed "momentum requirement."

I. RULE 14a-8(b) — ELIGIBILITY REQUIREMENTS

A. THE NEED FOR REFORM OF RULE 14A-8(B)'S ELIGIBILITY REQUIREMENTS

Business Roundtable believes that the shareholder-proposal process must be improved so that it promotes long-term value, which serves all corporate stakeholders including investors,

employees, communities, suppliers and customers. Some of the most significant problems with the current shareholder-proposal system relate to the low eligibility requirements for filing a proposal. Currently, a shareholder needs to own only $2,000 in market value of a company's stock for one year in order to be eligible to submit a proposal. The $2,000 ownership requirement falls well short of any reasonable material ownership standard for public companies (for some Business Roundtable member companies, it is less than 1 millionth of 1 percent of their outstanding shares). In addition, shareholders who own less than that amount are permitted to aggregate their holdings with other shareholders in order to meet the eligibility requirement.

The current nominal monetary threshold for filing proposals risks obscuring matters of true economic significance to the long-term health of companies and occupying valuable corporate time and resources addressing multiple, immaterial shareholder proposals. Moreover, the low submission threshold:

(i) has led to the domination of the shareholder-proposal process by a small group of individual shareholders who may lack significant, long-term ownership stakes as often exemplified by the proposals they submit;

(ii) has resulted in a high volume of shareholder proposals that impose significant costs on companies and other shareholders and divert management resources from long-term growth; and

(iii) ignores the availability of many other avenues of communication that shareholders may use to engage with companies and other shareholders.

Each of these issues is briefly discussed below.

Domination by a Small Group of Shareholders. The shareholder-proposal process has become dominated by a limited number of individuals who own nominal stakes in the companies they target. In fact, from 2016 to 2018, the same three individuals and their families submitted or co-filed over 24 percent of all shareholder proposals submitted to Russell 3000 companies.

Proposals with No Rational Relationship to Creating Long-Term Value. The low proposal submission threshold permits certain shareholders and special interest groups to make a nominal investment in a company so that they may present proposals that do not relate to, or in some cases could even undermine the long-term success of the company if implemented.[2]

[2] *See* Letter from Maria Ghazal, Senior Vice President & Counsel, Bus. Roundtable, to Vanessa Countryman, Acting Sec'y, Sec. & Exch. Comm'n (June 3, 2019), *available at* https://www.businessroundtable.org/business-roundtable-supplemental-public-comments-to-sec-on-the-proxy-process (noting, as an example, one instance in which People for the Ethical Treatment of Animals (PETA) made the minimum investment necessary to file a shareholder proposal with Levi Strauss & Co. asking the company to switch its cow-skin leather patches to "vegan leather") (explaining that instead of seeking meaningful engagement, such proponents may be aiming to leverage the Rule

In fact, companies have had to contend with an increasing influx of shareholder proposals that have little relevance to a company's business, performance or long-term value, a trend that has been spurred by court-driven changes in SEC policy in the late 1970s. For example, one Business Roundtable member company reported receiving a proposal requesting that the company implement and report on a reverse supply chain to dispose of expired products. The company spent hours explaining to the shareholder-proponent that the company was already addressing the request and that the matter was not of importance to the vast majority of company shareholders, but the shareholder-proponent refused to withdraw the proposal. The company then spent significant resources pursuing (and obtaining) "no-action" relief from the SEC.

Significant Costs of Proposals. Abuse of the shareholder-proposal process imposes significant costs on companies and shareholders, including by diverting management and board attention away from running the business, whether or not the proposals are excluded under the SEC's "no-action" process. Member companies report that various internal groups, including legal, investor relations, executive officers and the board of directors and its committees spend considerable amounts of time evaluating and addressing shareholder proposals. In many cases, companies also engage outside advisors, including legal advisors and proxy solicitors, to assess and assist with proposals.[3]

Other Avenues for Communication with Companies. *Nominal* proposal submission thresholds are, in fact, not necessary for many shareholders to engage meaningfully with companies and other shareholders. Shareholders initiate contact with companies and their boards through say-on-pay votes, letter writing campaigns and "vote no" campaigns, as well as less formal means like email, social media and other web-based communications. Further, in recent years, many companies have expanded their communications with shareholders through investor conferences, webcasts, videos, one-on-one "sunny day" meetings and voluntary publications that go well beyond any SEC reporting requirement. Corporate investor relations teams and other corporate governance professionals engage in more frequent meetings with shareholders of all types and hold corporate governance "roadshows" that convey the company's positions on key issues, and solicit investor feedback on the company's direction, governance practices and shareholder concerns.

In sum, today's companies receive more input from shareholders than ever before through voluntary, and often informal, interactions with shareholders. Shareholder proposals are a necessary and important part of this process and help facilitate engagement between shareholders and the companies they own. However, the current eligibility standards of Rule 14a-

14a-8 process to advance parochial publicity interests that are unrelated to the company's business and without regard for the long-term interests of the company or the vast majority of its shareholders).

[3] Although many member companies reported that it was difficult to quantify the costs of shareholder proposals, several reported costs ranging from $50,000 to $100,000 or more per proposal. In addition, a number of companies noted that their costs for first-time proposals are generally higher than those incurred for resubmitted proposals.

8(b) have enabled certain shareholders without a meaningful investment interest in a company to present proposals that often hinder the ability of the board and management to drive long-term value, which serves all corporate stakeholders including investors, employees, communities, suppliers and customers. As the Commission has recognized, Rule 14a-8(b)'s ownership threshold and holding period are intended to strike an appropriate balance so that only shareholders with a meaningful economic stake or investment interest in a company may submit proposals for inclusion in the company's proxy materials at the expense of the company and other shareholders. This balancing of costs and benefits supports an efficient shareholder-proposal process that creates long-term value for corporations and their stakeholders.

Moreover, the Commission has recognized that because the shareholder-proposal process shifts burdens from shareholder-proponents to companies, it is subject to overuse and misuse. The reforms supported by Business Roundtable, including the amendments contemplated by the Proposing Release, are directed toward the small subset of investors who have misused or circumvented the process; they are not designed to inhibit the use of the shareholder-proposal process by the many shareholders who use it every year to advance long-term, value enhancing initiatives.

B. PROPOSED AMENDMENTS TO RULE 14A-8(B) ELIGIBILITY THRESHOLDS

Under the current rules, to be eligible to submit a proposal, a shareholder-proponent must have continuously held for at least one year by the date the proposal is submitted at least $2,000 in market value or 1 percent of the company's securities entitled to be voted on the proposal at the meeting. The Commission last substantively reviewed this $2,000 ownership threshold in 1998.

Proposed Three-Tiered Approach to Eligibility. Under the proposed rules, a shareholder would be eligible to submit a Rule 14a-8 proposal if the shareholder satisfies one of three ownership requirements. This new tiered approach would provide multiple options for demonstrating eligibility through a combination of the amount of securities owned and length of time held. Specifically, a shareholder would be eligible to submit a Rule 14a-8 proposal if the shareholder has continuously held at least:

- $2,000 of the company's securities entitled to vote on the proposal for at least three years;
- $15,000 of the company's securities entitled to vote on the proposal for at least two years; or
- $25,000 of the company's securities entitled to vote on proposal for at least one year.

We believe that the Commission's proposed three-tiered approach will more appropriately balance the interests of shareholders submitting shareholder proposals with the interests of other shareholders who bear the costs associated with the inclusion of such proposals in

companies' proxy statements. Further, the three-tiered approach will provide shareholders with a number of approaches to become eligible to submit a proposal and will continue to allow holders with a modest investment in a company to submit proposals.

Business Roundtable also supports the increased holding requirements included in the Commission's proposed rule. The current one-year holding period encourages an undue focus on short-term goals and is out of step with the three-year holding period that has come to govern proxy access proposals. Longer holding periods will better align the interests of shareholders making the proposals with the long-term success of the company, and we believe those longer periods are appropriate in circumstances when a shareholder holds less than a $25,000 stake in a company's securities.

A longer holding period is particularly important if the dollar value of the ownership interest is minimal, and the proposed three-year holding requirement associated with the lowest threshold level will help to establish that the shareholder has a sufficient, long-term investment interest in the company to justify the use of the Rule 14a-8 process. However, Business Roundtable continues to believe that the $2,000 ownership requirement established in 1998 falls well short of any reasonable material ownership standard for public companies (for some member companies, it is less than 1 millionth of 1 percent of their outstanding shares) and that it should be increased. If the Commission determines to preserve that minimum threshold, it should adjust it for inflation to $3,152; after 21 years, this basic adjustment is long overdue. In addition, going forward, we recommend that each of the SEC's proposed monetary thresholds be adjusted for inflation every three years to preserve the value of those thresholds so that they do not quickly become "stale."

Prohibition on Aggregation to Meet Thresholds. The Commission's proposed rules prohibit shareholders from aggregating their securities in order to meet the applicable minimum ownership thresholds to submit a Rule 14a-8 proposal. We agree with the Commission's approach; every shareholder-proponent should have a sufficient economic stake or investment interest in a company to justify use of the Rule 14a-8 process and the imposition of its attendant costs on companies and shareholders. Permitting aggregation of holdings is contrary to this principle.

Designation of a Lead Filer for Co-Sponsored Proposals. While the aggregation of holdings would be prohibited by the proposed rules, shareholders that individually meet the eligibility requirements may jointly submit a shareholder proposal to a company in order to demonstrate wider interest in and support for the proposal. The Commission has asked whether co-filing or co-sponsoring shareholders should be required to designate a lead filer for the proposal, and whether a lead filer must be authorized to negotiate the withdrawal of the proposal on behalf of the other proponents. We believe that those requirements are appropriate. When there are multiple shareholder-proponents, designating one shareholder as the lead filer would improve the company's ability to discuss the proposal with the proponent group and reduce the burden

on the company to determine which filers have been authorized on behalf of the group to discuss the proposal and negotiate for its amendment or withdrawal.

The Rule 14a-8 No-Action Letter Process. The Commission has also solicited comments on whether the Rule 14a-8 process works well and whether the Commission staff (or the Commission) should continue to review proposals that companies wish to exclude from their proxy materials. A 2019 Business Roundtable survey indicated that the vast majority of our members do not believe the Commission's "no-action" letter process is administered in a consistent and transparent manner. At the same time, public companies have long relied on "no-action" letters when evaluating whether to exclude shareholder proposals from the proxy. Rather than declining to review proposals that companies wish to exclude, we urge the SEC to revise the "no-action" letter process.[4]

II. PROPOSALS SUBMITTED ON BEHALF OF SHAREHOLDERS

A. THE NEED FOR REFORM

The Proposing Release addresses shareholder-proponents' use of representatives in the Rule 14a-8 process. When a shareholder appoints a representative, that representative typically submits the proposal on an eligible shareholder's behalf, together with the documentation establishing the shareholder's eligibility and the representative's authority to submit the proposal on the shareholder's behalf. After the initial proposal is submitted, communications between the shareholder and the company are generally handled by the representative, and the representative typically attends the company's annual meeting to present the proposal on behalf of the eligible shareholder.

Interests of Named Shareholder and Representative. An eligible shareholder's designation of a "representative" to act on the shareholder's behalf often presents uncertainties and complications in the Rule 14a-8 process. Companies find it difficult to ascertain the economic interests of the shareholder and the representative in the company, the nature and extent of

[4] The SEC staff's current decentralized, issue-by-issue "no action" review process may lead to inconsistent and/or arbitrary guidance and interpretation of the rules, with little transparency and public accountability, especially over the course of time. As we discussed in our November 9, 2018 comment letter relating to the SEC Roundtable, we believe that the SEC should study ways in which the guidance process can be made more consistent. This may include considering whether the "no-action" letter process should be converted into an SEC advisory opinion process, whereby the SEC would issue opinions on major policy issues rather than issuing "no-action" letters. Alternatively, the "no-action" letter process should be adjusted to allow for enhanced review and oversight mechanisms to achieve greater consistency.

Further, as we discussed in our November 9, 2018 comment letter relating to the SEC Roundtable, we believe that there are a number of ways that the standards surrounding "no-action" relief for excluded proposals should be modified. *See also* Letter from Maria Ghazal, Senior Vice President & Counsel, Bus. Roundtable, to Vanessa Countryman, Sec'y, Sec. & Exch. Comm'n, at 13 (Feb. 3, 2020) (discussing the "no-action" process and responses taken by proxy advisory firms).

their relationship, and the history of their advocacy on the topic in question. Further, companies may not be able to ascertain whether the named shareholder actually supports the proposal that has been submitted on its behalf. One company noted that the shareholder's documentation typically delegates authority to the representative to support the proposal but never includes statements of the shareholder's support of the proposal. In addition, when a representative speaks and acts for a shareholder, companies may rightfully question whether the shareholder has a genuine and meaningful interest in the proposal, or whether the shareholder has only an acquiescent interest in a proposal that is of primary importance to the representative.

Representative's Attendance at Meeting. A representative's presentation of a proposal at an annual meeting may also present difficulties for companies. The Commission has stated that requiring a shareholder-proponent or its representative attend an annual meeting in person to present a shareholder proposal is intended to provide some degree of assurance that the proposal will be presented for action at the meeting by someone who can knowledgeably discuss the proposal and answer any questions that may arise.[5] Accordingly, the requirement facilitates shareholder education, creating an opportunity for question and debate that can better inform shareholders about the merits of a proposal.

In the experience of our members, however, representatives are often not prepared to present and explain the proposal at the annual meeting, to answer questions about the proposal, or to facilitate meaningful dialogue about the proposal with other shareholders and with management. For example, an actor and ventriloquist attended one Business Roundtable member company's 2018 annual shareholder meeting on behalf of a frequent submitter to present a proposal concerning shareholders' ability to call a special meeting. The individual had no knowledge of the company or the issue. Similarly, an SEC Roundtable panelist described the frustration of spending time and resources addressing a shareholder proposal only to find that the representative sent to present a cumulative voting proposal at the annual meeting could not even pronounce the key terms of the proposal.[6] These examples may appear extraordinary, but Business Roundtable member companies regularly report that representatives often appear

[5] Adoption of Amendments Relating to Proposals by Security Holders, Exchange Act Release No. 12999, 41 Fed. Reg. 52994 (Dec. 3, 1976) ("[T]he amended rule retains the requirement . . . that the proponent must provide written notice to the management of his intention to appear personally at the meeting to present his proposal for action. Some commentators criticized the requirement of personal attendance at the meeting on the ground that, in reality, the proposal is "presented" to most security holders for their action when it is included in the proxy statement. While the Commission does not disagree with the significance these commentators have assigned to the proxy statement, it nevertheless believes that the notice requirement serves a useful purpose. **That is, it provides some degree of assurance that the proposal not only will be presented for action at the meeting (the management has no responsibility to do so), but also that someone will be present to knowledgeably discuss the matter proposed for action and answer any questions which may arise from the shareholders attending the meeting.**") (emphasis added) *available at* https://s3.amazonaws.com/archives.federalregister.gov/issue_slice/1976/12/3/52980-53001.pdf#page=15.

[6] Transcript of SEC Roundtable on the Proxy Process at 149 (Nov. 15, 2018) *available at* https://www.sec.gov/files/proxy-round-table-transcript-111518.pdf.

unprepared and largely unfamiliar with the substance of the issues they are putatively addressing.

B. PROPOSED AMENDMENTS

The Commission has proposed to amend Rule 14a-8 to require the shareholder to provide to the company additional documentation when using a representative to act on its behalf in the shareholder-proposal process. Among other things, this documentation must identify the company, the shareholder and the representative, authorize the representative to submit the proposal and act on the shareholder's behalf, identify the proposal to be submitted, and include the shareholder's statement supporting the proposal. Business Roundtable agrees that this additional documentation requirement will improve the shareholder-proposal process in cases where a representative is involved. These new informational requirements will help to formalize the relationship between the shareholder-proponent and the representative and to clarify the role of the representative in the shareholder-proposal process. Further, we agree that the shareholder should include a statement supporting the proposal, as that will help to ensure that the shareholder has a genuine interest in the proposal being submitted. Many member companies reported that shareholder-proponents already provide much of the information that would be required by the Proposing Release, and that providing this additional documentation should not impose more than a minimal burden on shareholder-proponents.

Under the proposed rules, the shareholder would be required to sign and date the proposed new documentation. Some of our members believe that requiring that this documentation be notarized will help to ensure that the documentation is signed correctly, that the shareholder-proponent supports the proposal and that the shareholder-proponent has knowingly and willingly authorized the representative to act on his or her behalf.

In addition, we understand that some additional information from shareholder-proponents may be useful including, for example, information on their motivations, goals, economic ownership in the company (including the period of time of their investments), their relationship with each other and a description of their advocacy on the issue in question, including any similar proposals they have submitted to other companies and the results of those proposals. This information may allow shareholders to make a better-informed decision about the proposal and to better evaluate the materiality and merit of the proposal to the company.

III. THE ROLE OF THE SHAREHOLDER PROCESS IN SHAREHOLDER ENGAGEMENT

A. THE NEED FOR REFORM

The shareholder-proposal process established by Rule 14a-8 is designed to facilitate engagement between shareholders and the companies they own. Unfortunately, several of our member companies report that certain perennial shareholders are generally not willing or available to

discuss their proposals with the companies to which they submit them.[7] Other member companies have expressed concern that some shareholder-proponents may not make a good faith effort to engage with companies about the proposals they submit.[8]

B. THE PROPOSED AMENDMENTS

The Commission is proposing that, in an effort to facilitate engagement between issuers and their shareholders, a shareholder-proponent be required to provide a written statement that he or she is able to meet with the company in-person or by telephone no less than 10 or more than 30 days after submitting the proposal. The proponent would also be required to include contact information as well as business days and specific times that the shareholder-proponent would be available for discussion.

We support the addition of this shareholder engagement component to the eligibility criteria contained in Rule 14a-8(b). We believe that this proposed amendment will help facilitate useful dialogue between shareholder-proponents and companies by enabling the company to reach out directly to a shareholder-proponent to understand the proposal and the concerns that led the shareholder to submit it. In fact, this type of direct engagement may, in some cases, satisfy the shareholder-proponent that the company has already addressed or is addressing the proponent's concerns — in which case the proponent may choose to amend the proposal or withdraw it entirely.

A number of member companies commented that they viewed the proposed 10- to 30-day timeframe as reasonable and appropriate, and a few indicated that a longer period (*e.g.*, 45 or 60 days) could be appropriate as well. Alternatively, the Commission could consider whether the timeframe for dialogue should begin on the 14th calendar day after submission of the proposal, which would correspond to the date on which the company would need to provide to the shareholder written notice of any procedural defects in the proposal under Rule 14a-8(f).

IV. ONE PROPOSAL LIMIT

A. THE NEED FOR REFORM

Since 1976, Rule 14a-8(c) has provided that each shareholder may submit no more than one proposal to a company for a particular shareholders' meeting. We agree with the Commission that this one-proposal limit is appropriate. As the SEC is aware, however, some shareholder-

[7] Moreover, some shareholders submit their proposals either very close in time to or at the "no-action" request submission deadline. Consequently, companies are left with little time to engage with the shareholder if the company intends to request "no-action" relief.

[8] Importantly, some of our members also have raised questions regarding whether the requirements in the proposed amendments include sufficient guidance to ensure that shareholder-proponents actually engage in good faith efforts to communicate with management and noted that the Commission has not proposed a remedy in the event they do not.

proponents circumvent the one-proposal limit by having other individuals submit proposals on their behalf. This phenomenon of submitting proposals "by proxy" appears to have become particularly prevalent in recent years.

B. THE PROPOSED AMENDMENT

The Commission has proposed to amend Rule 14a-8(c) to apply the one-proposal rule to each person (rather than each shareholder) who submits a proposal. The proposed amendments effectively would prohibit a shareholder from submitting a proposal to a company and also serving as a representative on another proposal submitted to the same company on behalf of another shareholder.

This proposed amendment is designed to deter abuse of the one-proposal limit, and we support its adoption. Our members reported instances in which an individual had submitted multiple proposals to a company through the use of a representative, and this clarification of the proxy rules will eliminate this type of circumvention of the one-proposal limit.

V. RULE 14a-8(i)(12) — RESUBMISSIONS

A. THE NEED FOR REFORM

General. Under the current proxy rules, companies are largely prevented from excluding repeat submissions of proposals (or those dealing with substantially the same subject matter), even when those proposals have been unsuccessful in prior shareholder votes. Under current resubmission rules, proposals that receive the support of a mere 3 percent of the votes cast qualify for resubmission at least once, and as long as a proposal obtains 10 percent of the votes cast, it may be resubmitted indefinitely. This structure allows a small subset of shareholders to override indefinitely the expressed will of a substantial majority of shareholders. Business Roundtable member companies have reported facing the same shareholder proposal for five or more years in a row (and sometimes for more than a decade), even as shareholders voting in favor of the proposals represent significantly less than a majority year after year.

We believe resubmission thresholds should be high enough to demonstrate that a resubmitted proposal is realistically on the path to majority approval. Accordingly, it is our position that the resubmission thresholds the SEC itself proposed in 1997 — 6 percent on the first submission, 15 percent on the second and 30 percent on the third — would be more appropriate than today's thresholds.[9]

Impact of Technology. Our recommendation to increase resubmission levels for shareholder proposals is not intended to negatively affect meaningful shareholder engagement and action.

[9] Amendments to Rules on Shareholder Proposals, Exchange Act Release No. 39093, 62 Fed. Reg. 50682, 50689 (Sept. 26, 1997) (proposing release), *available at* https://www.govinfo.gov/content/pkg/FR-1997-09-26/pdf/97-25448.pdf.

The vast improvements in technology over the past several decades permit investors to communicate directly with companies with ease and to coordinate with other shareholders on proposals instantly on electronic media. For example, technology now enables individual filers to run sophisticated environmental, social and governance-focused ("ESG") campaigns with other like-minded shareholders.

Those campaigns are assisted by entities such as the UN Principles of Responsible Investing ("PRI"), which hosts an online Collaboration Program that helps shareholders select companies to target, form groups, select group leaders, identify issues, and help shareholders solicit votes on shareholder proposals. The PRI website purports to contain member posts that include: "Invitations to sign joint letters to companies; Proposals for in-depth research and investor guidance; Opportunities to join investor-company engagements on particular ESG themes; Calls to foster dialogue with policy makers; and Requests for support on upcoming shareholder resolutions."[10] In addition, As You Sow and other organizations have platforms that support shareholders in the Rule 14a-8 process, allowing them to identify issues, target companies, form groups and solicit votes on proposals.

CII Research on Resubmissions. Recent empirical data also supports the proposition that increased resubmission thresholds will not impair the shareholder-proposal process. In November 2018, the Council of Institutional Investors ("CII") published a research report on shareholder proposal resubmission thresholds based on its analysis of shareholder proposals that went to a vote at Russell 3000 companies between 2011 and 2018.[11] CII reported that on average, the shareholder proposals submitted to a vote during that period won 33.6 percent on the first submission, 29.2 percent on the second and 31.8 percent on the third — all of which exceed the 6%/15%/30% thresholds recommended by Business Roundtable.[12] This recent empirical evidence suggests that the resubmission thresholds we recommend will not eliminate shareholders' ability to advocate for change across multiple years — even on matters that do not initially receive even moderate levels of shareholder support. Instead, this data indicates that increased resubmission thresholds would effectively restrict only repetitive proposals that have been decisively rejected by a company's shareholders one or more times.

B. THE PROPOSED AMENDMENTS

Resubmission Thresholds. The SEC is proposing to allow a company to exclude a shareholder proposal that was included in a company's proxy materials in the preceding five years if the most

[10] Elroy Dimson, Oğuzhan Karakaş & Xi Li, Coordinated Engagements (Oct. 29, 2019), *available at* https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3209072.

[11] BRANDON WHITEHILL, COUNCIL OF INST. INV'RS, CLEARING THE BAR: SHAREHOLDER PROPOSALS AND RESUBMISSION THRESHOLDS (2018), *available at* https://docs.wixstatic.com/ugd/72d47f_092014c240614a1b9454629039d1c649.pdf.

[12] *Id.* at 6. CII's research concluded that the median levels of support (30.3%/28.6%/30.4%) closely tracked the average levels of support, suggesting that the data was not skewed by proposals that received extremely high or extremely low support.

recent vote occurred within the preceding three years and the level of shareholder approval for that vote was: less than 5 percent of the votes cast if voted on once in the preceding five years, less than 15 percent of the votes cast if voted on twice in the preceding five years, or less than 25 percent of the votes cast if voted on three or more times in the preceding five years.

We believe that maintaining the current three-tiered approach to resubmission thresholds helps ensure that the costs associated with management's and shareholders' repeated consideration of shareholder proposals and their inclusion in the proxy statement are balanced against shareholders' ability to submit proposals on matters of interest to shareholders. However, we recommend that the Commission consider increasing the resubmission thresholds to 6 percent shareholder support on the first submission, 15 percent on the second and 30 percent on the third. We believe that these thresholds, which were proposed by the Commission in 1997, would better distinguish those proposals that are on a path to meaningful shareholder support from those that are not. The above-outlined CII data on resubmissions also supports the 6%/15%/30% model.[13]

These increased resubmission thresholds are of particular importance given the outsized influence that proxy advisory firms have in the shareholder voting process. For example, one study found that "an adverse recommendation on a proposal from a proxy advisory firm is associated with a reduction in the favorable vote count by 10 percent to 30 percent."[14] Under the SEC's proposed resubmission rules, proposals garnering up to 30 percent support due to the receipt of a favorable recommendation from a dominant proxy advisor may be resubmitted indefinitely. This may result in the continuous resubmission of shareholder proposals that, while supported by proxy advisory firms, do not actually advance the long-term interests of companies, shareholders and other corporate stakeholders. Business Roundtable supports the proposal to increase the current resubmission thresholds, but believes the suggested 6%/15%/30% thresholds would help ameliorate this issue, while not hindering the ability of shareholders to bring repeat proposals that have achieved a modicum of success.

Vote Counting Methodology. We do not believe that the vote-counting methodology under Rule 14a-8(i)(12) should be revised. Further, many member companies reported they believe the current voting standards for shareholder proposals are appropriate.

"Momentum" Requirement. The SEC is also proposing to adopt a "momentum requirement" that would permit companies to exclude proposals that have been submitted three or more times in the preceding five years if they received less than 50% of the vote and support declined by 10% or more compared to the immediately preceding shareholder vote on the matter.

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[13] *See also id*.

[14] James Copland, David F. Larcker & Brian Tayan, *The Big Thumb on the Scale: An Overview of the Proxy Advisory Industry* (Stan. U. Graduate Sch. Bus., Research Paper No. 18-27, 2018), *available at* https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3188174.

Business Roundtable members believe that this momentum requirement is an appropriate addition to the proposed increased resubmission threshold requirements and will provide an appropriate mechanism to exclude proposals that are demonstrably not on a path to gaining majority support.

CONCLUSION

The U.S. proxy system plays an essential role for public companies, as well as for America's workers, employees, and retirees. Business Roundtable commends the Commission's efforts to evaluate and improve the proxy process and appreciates the opportunity to continue to share our views and the views and experiences of our member companies as part of those efforts. Business Roundtable believes the changes included in the Proposing Release, together with the recommendations discussed above and in our November 9, 2018 and June 3, 2019 comment letters relating to the SEC Staff Roundtable on the Proxy Process held on November 15, 2018, have the potential to meaningfully improve the proxy process and improve communications and engagement between companies and their shareholders. We believe that these additional reforms and updates will help create a better proxy system that will benefit investors and other stakeholders over the long term.

Thank you for considering our comments and recommendations. We would be happy to discuss these comments or any other matters you believe would be helpful. Please contact Maria Ghazal, Senior Vice President & Counsel of Business Roundtable, at mghazal@brt.org or (202) 496-3268.