SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34-89964; File No. S7-23-19]

RIN 3235-AM49

Procedural Requirements and Resubmission Thresholds under Exchange Act Rule 14a-8

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: We are adopting amendments to certain procedural requirements and the provision relating to resubmitted proposals under the shareholder-proposal rule in order to modernize and enhance the efficiency and integrity of the shareholder-proposal process for the benefit of all shareholders. The amendments to the procedural rules: amend the current ownership requirements to incorporate a tiered approach that provides three options for demonstrating a sufficient ownership stake in a company—through a combination of amount of securities owned and length of time held—to be eligible to submit a proposal; require certain documentation to be provided when a proposal is submitted on behalf of a shareholder-proponent; require shareholder-proponents to identify specific dates and times they can meet with the company in person or via teleconference to engage with the company with respect to the proposal; and provide that a person may submit no more than one proposal, directly or indirectly, for the same shareholders' meeting. The amendments to the resubmission thresholds revise the levels of shareholder support a proposal must receive to be eligible for resubmission at the same company's future shareholders' meetings from 3, 6, and 10 percent to 5, 15, and 25 percent, respectively.

EFFECTIVE DATE: The final rules are effective [INSERT DATE 60 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER], except for amendatory instruction 2.b, which is effective [INSERT DATE 60 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER] through January 1, 2023. See Section III for further information on transitioning to the final rules.

FOR FURTHER INFORMATION CONTACT: Matt McNair, Senior Special Counsel in the Office of Chief Counsel, at (202) 551-3500, Division of Corporation Finance, U.S. Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

SUPPLEMENTARY INFORMATION: We are adopting amendments to 17 CFR 240.14a-8 ("Rule 14a-8") under the Securities Exchange Act of 1934 [15 U.S.C. 78a *et seq*.] ("Exchange Act").

TABLE OF CONTENTS

I. INTRODUCTION

A. Background

Rule 14a-8 requires companies that are subject to the federal proxy rules to include shareholder proposals in companies' proxy statements to shareholders, subject to certain procedural and substantive requirements.[1] By giving any shareholder-proponent the ability to have a proposal included in the company's proxy statement to all shareholders, Rule 14a-8 enables eligible shareholder-proponents to easily present their proposals to all other shareholders, and to have proxies solicited for their proposals, at little or no expense to themselves.

This form of engagement among shareholder-proponents, other shareholders, and companies has benefits for shareholder-proponents as well as companies and their shareholders. However, the costs of processing, analyzing, and voting on the proponent's proposal largely are borne by the company and its shareholders. Accordingly, the mechanism for shareholder-proponents to require inclusion of their proposals in companies' proxy materials is not without limits. Rule 14a-8 permits a company to exclude a shareholder proposal from its proxy statement if the proposal fails to meet any of several specified procedural or substantive requirements, or if the shareholder-proponent does not satisfy certain eligibility or procedural requirements. All of these requirements are generally designed to ensure that the ability under Rule 14a-8 for a shareholder to have a proposal included alongside management's in the company's proxy materials—and thus to draw on resources and to command the time and attention of the company and other shareholders—is not inappropriately used. Over the years, the Commission has amended the shareholder-proposal rule as necessary to protect against such

[1] Unless otherwise noted, references to "shareholder proposal," "shareholder proposals," "proposal," or "proposals" refer to submissions made in reliance on Rule 14a-8.

use and protect the integrity of the process.[2] The most recent significant amendments were adopted over 35 years ago in 1983.

On November 5, 2019, we proposed amendments to the procedural requirements and resubmission thresholds under Rule 14a-8 as part of our ongoing focus on modernizing and improving the proxy voting process.[3] We noted at that time concerns with certain aspects of the shareholder-proposal rule, which had not been reviewed by the Commission in more than 20 years.[4] We also noted that shareholders' ability to communicate with issuers and other shareholders through various channels has evolved significantly in response to technological advancements and developing market practices. As a result of these developments, shareholders now have more tools at their disposal to engage with a company's board and management in a manner that may be more efficient and less costly for all parties than the Rule 14a-8 process.

---

[2] The Commission has expressed concern over the years that Rule 14a-8 is susceptible to misuse. In 1948, the Commission adopted three new bases for exclusion to "relieve the management of harassment in cases where [shareholder] proposals are submitted for the purpose of achieving personal ends rather than for the common good of the issuer and its security holders." See Notice of Proposal to Amend Proxy Rules, Release No. 34-4114 (July 6, 1948) [13 FR 3973 (July 14, 1948)], at 3974. In 1953, the Commission amended the shareholder-proposal rule to allow companies to omit the name and address of the shareholder-proponent to "discourage the use of this rule by persons who are motivated by a desire for publicity rather than the interests of the company and its security holders." See Notice of Proposed Amendments to Proxy Rules, Release No. 34-4950 (Oct. 9, 1953) [18 FR 6646 (Oct. 20, 1953)], at 6647. In amending the resubmission basis for exclusion in 1983, the Commission noted that commenters "felt that it was an appropriate response to counter the abuse of the security holder proposal process by certain proponents who make minor changes in proposals each year so that they can keep raising the same issue despite the fact that other shareholders have indicated by their votes that they are not interested in that issue." See Amendments to Rule 14a-8 Under the Securities Exchange Act of 1934 Relating to Proposals by Security Holders, Release No. 34-20091 (Aug. 16, 1983) [48 FR 38218 (Aug. 23, 1983)], at 38221 ("1983 Adopting Release"). In addressing the personal-grievance basis for exclusion in 1982, the Commission noted that "[t]here has been an increase in the number of proposals used to harass issuers into giving the proponent some particular benefit or to accomplish objectives particular to the proponent." See Proposed Amendments to Rule 14a-8, Release No. 34-19135 (Oct. 14, 1982) [47 FR 47420 (Oct. 26, 1982)], at 47427 ("1982 Proposing Release").

[3] See Procedural Requirements and Resubmission Thresholds under Exchange Act Rule 14a-8, Release No. 34-87458 (Nov. 5, 2019) [84 FR 66458 (Dec. 4, 2019)] ("Proposing Release").

[4] See Amendments To Rules On Shareholder Proposals, Release No. 34-40018 (May 21, 1998) [63 FR 29106 (May 28, 1998)] ("1998 Adopting Release").

In light of the above, we proposed amendments to the shareholder-proposal rule to: (1) amend the criteria that a shareholder must satisfy to be eligible to have a proposal included in a company's proxy statement; (2) modify the rule limiting the number of proposals that may be submitted for a particular company's shareholders' meeting (the "one-proposal rule") to establish that a single person may not submit multiple proposals at the same shareholders' meeting, whether the person submits a proposal as a shareholder or as a representative of a shareholder; and (3) revise the levels of shareholder support a proposal must receive to be eligible for resubmission at the same company's future shareholders' meetings.[5]

We received many comment letters in response to the Proposing Release.[6] After taking into consideration these public comments, as well as the feedback received as part of the Commission's 2018 Roundtable on the Proxy Process (the "Proxy Process Roundtable"),[7] we are adopting the amendments substantially as proposed with the exception of the Momentum Requirement (defined below), which we are not adopting. The amendments are intended to modernize and enhance the efficiency and integrity of the shareholder-proposal process for the benefit of all shareholders, including to help ensure that a shareholder-proponent has demonstrated a meaningful "economic stake or investment interest" in a company before the shareholder may draw on company resources to require the inclusion of a proposal in the

---

[5] See Proposing Release, supra note 3.

[6] See generally letters submitted in connection with the Proposing Release, available at https://www.sec.gov/comments/s7-23-19/s72319.htm. Unless otherwise specified, all references in this release to comment letters are to those relating to the Proposing Release.

[7] On November 15, 2018, Commission staff held a roundtable on the proxy process, which included a panel discussion on Rule 14a-8 and the shareholder-proposal process. The shareholder-proposal panelists expressed their views on the application of Rule 14a-8 and shared their experiences with shareholder proposals and the related benefits and costs involved for companies and shareholders. In connection with the Proxy Process Roundtable, the staff invited members of the public to provide their views on the proxy process via written comments, which are available at https://www.sec.gov/comments/4-725/4-725.htm.

company's proxy statement, and before the shareholder may use the company's proxy statement to command the attention of other shareholders to consider and vote on the proposal.[8]

II. FINAL AMENDMENTS

A. Ownership Requirements

1. Proposed Rule Amendments

i. Ownership Thresholds

Rule 14a-8(b) requires a shareholder that wishes to have a proposal included in a company's proxy materials to have continuously held at least $2,000 in market value, or 1 percent, of a company's securities entitled to vote on the proposal for at least one year as of the date the shareholder submits the proposal.

In the Proposing Release, we proposed to modify the current one-year minimum holding period associated with the $2,000 ownership threshold to require continuous ownership for at least three years and to add two alternative ownership thresholds. As proposed, a shareholder would be eligible to submit a proposal if the shareholder had 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 the proposal for at least one year.

Under the proposed amendment, a shareholder could satisfy any one of these thresholds to be eligible to submit a proposal.

[8] See 1983 Adopting Release, supra note 2.

ii. Percentage Test

We also proposed to eliminate the one-percent test in the rule because this test has not historically been utilized. In addition, we understand that the vast majority of shareholders who use Rule 14a-8 do not hold one percent or more of a company's shares.[9]

iii. Aggregation

We also proposed to amend the rule to prohibit shareholders from aggregating their securities with other shareholders for the purpose of meeting the applicable minimum ownership thresholds to submit a Rule 14a-8 proposal. Under the proposal, shareholders would continue to be permitted to co-file or co-sponsor shareholder proposals as a group if each shareholder-proponent in the group met one of the proposed eligibility requirements.

iv. Lead-Filer Designation

The Proposing Release also addressed whether co-filers, or co-sponsors, should be required to identify a lead filer and specify whether such lead filer is authorized to negotiate with the company and withdraw the proposal on behalf of the other co-filers. Although we did not propose to require this practice in our rules, we requested comment on whether we should revise the rules to require co-filers to identify a lead filer and authorize the lead filer to negotiate the withdrawal of the proposal on behalf of the other co-filers.

2. Comments on the Proposed Rule Amendments

i. Ownership Thresholds

The proposal generated a wide range of responses among commenters. Commenters that supported the revised ownership thresholds generally indicated that a tiered approach would

[9] See Proposing Release at 66464 n.58.

help address concerns related to the shareholder-proposal process while maintaining an avenue of communication for shareholders of various investment sizes.[10] Several commenters also indicated that satisfaction of the proposed thresholds would help demonstrate that a shareholder-proponent has a meaningful ownership interest in the company that will receive the proposal.[11]

Many commenters questioned the need and/or rationale for the proposed amendment to the ownership requirements.[12] For example, several commenters disagreed with the discussion in the Proposing Release[13] positing that an investor's holding period is a meaningful indicator of a shareholder's interest in a company, or that a longer holding period may make it more likely that a proposal will reflect a greater interest in the company and its shareholders rather than promote a personal interest or publicize a general cause.[14] Other commenters questioned whether the proposed thresholds were commensurate with the rate of inflation or appreciation in the capital markets.[15]

---

[10] See, e.g., letters from Center for Capital Markets Competitiveness dated January 31, 2020; Senator Kevin Cramer dated July 28, 2020; Energy Infrastructure Council dated February 3, 2020; Exxon Mobil Corporation dated February 3, 2020; International Bancshares Corporation dated January 23, 2020; Investment Company Institute dated February 3, 2020; National Association of Manufacturers dated February 3, 2020.

[11] See letters from Center for Capital Markets Competitiveness dated January 31, 2020; Fidelity Management & Research LLC dated February 3, 2020; International Bancshares Corporation dated January 23, 2020.

[12] See, e.g., letters from CalSTRS dated February 3, 2020; Council of Institutional Investors dated January 30, 2020; First Affirmative Financial Network, LLC dated January 24, 2020; RK Invest Law, PBC dated February 3, 2020; UAW Retiree Medical Benefits Trust dated January 30, 2020.

[13] See Proposing Release at 66463.

[14] See, e.g., letters from Council of Institutional Investors dated January 30, 2020; First Affirmative Financial Network, LLC dated January 24, 2020; RK Invest Law, PBC dated February 3, 2020.

[15] See, e.g., letters from CalPERS dated February 3, 2020; UAW Retiree Medical Benefits Trust dated January 30, 2020.

Many commenters that opposed the proposed ownership thresholds expressed concern about their potential effect on the ability of shareholders with smaller investments to submit proposals.[16] Several commenters also expressed the view that shareholders with smaller investments play an important role in the shareholder-proposal process and may submit proposals that other shareholders support.[17] In addition, some expressed concern about these investors' ability to satisfy the proposed ownership thresholds without compromising portfolio diversification.[18]

Some commenters expressed the view that, while shareholders that are unable to submit proposals are able to pursue alternative avenues of engagement with management and other shareholders, these alternatives are not as effective as shareholder proposals.[19] For example, these commenters suggested that there are inherent weaknesses with using social media as a

[16] See, e.g., letters from Benedictine Sisters of Chicago dated January 23, 2020; Senator Sherrod Brown dated August 21, 2020; John Chevedden dated January 31, 2020; Christian Brothers Investment Services, Inc. dated January 21, 2020; Connecticut State Treasurer dated January 31, 2020; Council of Institutional Investors et al. dated July 29, 2020; Senator Tammy Duckworth dated January 30, 2020; James McRitchie dated November 5, 2019; James McRitchie dated July 21, 2020; Shareholder Rights Group dated June 10, 2020.

[17] See, e.g., letters from John Chevedden dated July 13, 2020; John Chevedden dated July 20, 2020; Christian Brothers Investment Services, Inc. dated January 21, 2020; Council of Institutional Investors et al. dated July 29, 2020; Senator Tammy Duckworth dated January 30, 2020; Form Letter Type A; Illinois State Treasurer dated January 16, 2020; James McRitchie dated July 21, 2020.

[18] See, e.g., Council of Institutional Investors dated January 30, 2020; NorthStar Asset Management, Inc. dated February 3, 2020; Shareholder Commons dated January 31, 2020; Shareholder Rights Group dated February 3, 2020; US SIF dated January 31, 2020. See also Recommendation of the SEC Investor Advisory Committee (IAC) Relating to SEC Guidance and Rule Proposals on Proxy Advisors and Shareholder Proposals dated January 24, 2020 ("Recommendation of the IAC").

[19] See, e.g., letters from Lucian A. Bebchuk dated February 3, 2020; Council of Institutional Investors dated January 30, 2020; Council of Institutional Investors et al. dated July 29, 2020; James McRitchie dated February 2, 2020; New York State Comptroller dated February 3, 2020; NorthStar Asset Management, Inc. dated February 3, 2020.

method of engagement,[20] or that alternative engagement methods do not allow shareholders to solicit the views of the entire shareholder base.[21]

A number of commenters suggested adjustments or alternative approaches to the proposed ownership requirements. Some commenters that were supportive of the proposed tiered approach recommended raising the initial $2,000 threshold for inflation and/or periodically adjusting each of the proposed ownership thresholds for inflation going forward.[22] Several commenters that opposed the proposed ownership requirements indicated that they would not object to adjusting the existing $2,000 threshold for inflation.[23] Other commenters expressed support for a single threshold at an amount higher than $2,000.[24] One commenter suggested adopting thresholds of $5,000, $10,000, and $15,000, depending on the holding period.[25] Another commenter suggested tying eligibility to the size of an investor's total investment portfolio by applying the existing thresholds to investors with a total investment portfolio of less than $1 million and the proposed thresholds to those with a total investment portfolio in excess of $1 million.[26] Another commenter found merit to a tiered approach, but suggested an

---

[20] See, e.g., letters from Council of Institutional Investors dated January 30, 2020; James McRitchie dated February 2, 2020; New York State Comptroller dated February 3, 2020.

[21] See, e.g., letters from Council of Institutional Investors dated January 30, 2020; James McRitchie dated February 2, 2020.

[22] See letters from Business Roundtable dated February 3, 2020; Exxon Mobil Corporation dated February 3, 2020; FedEx Corporation dated February 3, 2020; Nasdaq, Inc. dated February 3, 2020; Society for Corporate Governance dated February 3, 2020.

[23] See letters from CalPERS dated February 3, 2020; CFA Institute dated February 3, 2020; Council of Institutional Investors dated January 30, 2020; First Affirmative Financial Network, LLC dated January 24, 2020; James McRitchie dated February 2, 2020; Shareholder Rights Group dated February 3, 2020.

[24] See letters from CT Hagberg LLC dated February 3, 2020 (suggesting a single threshold of $5,000); Jing Zhao dated February 3, 2020 (suggesting a single threshold of $2,500).

[25] See letter from Van Brenner dated November 21, 2019.

[26] See letter from John Taylor dated November 14, 2019.

alternative in which shareholders meeting a three-year holding period would be permitted to submit a proposal regardless of investment amount.[27]

Several commenters offered views that were specific to the proposed holding periods. One commenter urged us to "consider changing the duration of the ownership requirement so as to better reflect the significant changes to holding periods during the years since the one-year requirement was established."[28] Another commenter expressed the view that the current one-year holding period is appropriate in light of the average holding periods of individual and institutional investors.[29] Another commenter recommended adopting a three-year holding period for all shareholder-proponents because, in the commenter's view, such a holding period "would demonstrate a serious commitment to a company's long-term success and should discourage proposals focused on short-term changes."[30] Other commenters suggested that the holding period should be aligned with the Internal Revenue Code, which treats an asset as a long-term capital asset if held for more than one year and is thus taxed at capital gain rather than ordinary tax rates.[31] Other commenters expressed the view that a shareholder's holding period may not

---

[27] See letter from Josh Feldblyum dated November 30, 2019.

[28] See letter from CalPERS dated February 3, 2020 (stating that "the average stock holding period spanned several years" when the Commission first adopted an ownership requirement, whereas today "the average stock holding period in the U.S. is under nine months") (citing TED MALONEY & ROBERT ALMEIDA, JR., LENGTHENING THE INVESTMENT TIME HORIZON (MFS Investment Management 2019), available at https://www.mfs.com/content/dam/mfs-enterprise/mfscom/insights/2019/November/mfse_time_wp/mfse_time_wp.pdf).

[29] See letter from AFL-CIO dated February 3, 2020.

[30] See letter from The Vanguard Group, Inc. dated February 3, 2020.

[31] See letters from Jantz Management LLC dated January 21, 2020; James McRitchie dated December 28, 2019; James McRitchie dated December 29, 2019; James McRitchie dated January 21, 2020; James McRitchie dated July 21, 2020; Tom Shaffner dated December 17, 2019.

accurately capture the nature of an investor's investment stake as the length of time held may not necessarily be indicative of the shareholder's future investment intent.[32] One of these commenters suggested that the Commission instead explore a requirement that a shareholder-proponent "attest that the holder will maintain ownership of at least $2,000 of shares . . . for at least one year after the annual meeting," or a requirement that companies disclose a shareholder-proponent's name and holdings "so that shareholders could make their own determinations if they believe a stake is too small."[33] Another commenter supported the proposed three-year holding requirement at the $2,000 threshold, but stated that further study was necessary to understand the implications of the $25,000 ownership requirement.[34]

One commenter sought clarification as to whether share lending would be deemed to interrupt the period of continuous ownership.[35]

ii. Percentage Test

Several commenters supported[36] and two opposed[37] eliminating the one-percent ownership test. In addition, one commenter opposed the adoption of an ownership requirement

[32] See letters from Council of Institutional Investors dated January 30, 2020; Pension Investment Association of Canada dated January 23, 2020.

[33] See letter from Council of Institutional Investors dated January 30, 2020.

[34] See letter from Washington State Investment Board dated January 22, 2020.

[35] See letter from Baillie Gifford & Co. dated February 3, 2020.

[36] See letters from CFA Institute dated February 3, 2020; Council of Institutional Investors dated January 30, 2020; Manhattan Institute for Policy Research dated February 3, 2020; James McRitchie dated February 2, 2020; National Association of Manufacturers dated February 3, 2020; John Taylor dated November 14, 2019.

[37] See letters from Local Authority Pension Fund Forum dated February 3, 2020; Jena Martin dated February 3, 2020.

based solely on a percentage of shares owned,[38] while another supported such a requirement.[39]

iii. Aggregation

Several commenters supported the proposed amendment related to shareholders' ability to aggregate their holdings,[40] while others opposed it.[41] One commenter stated that the proposed amendment would be premature without first studying the effects of any newly adopted ownership thresholds.[42] This commenter also suggested that a prohibition on aggregation would be inconsistent with the Commission's beneficial ownership rules as well as certain other state law provisions.[43] The commenters that supported the proposed amendment stated that allowing aggregation would undermine the principle underlying the ownership requirements.[44] Many

---

[38] See letter from John Taylor dated November 14, 2019.

[39] See letter from Don E. Sprague dated November 15, 2019.

[40] See letters from Business Roundtable dated February 3, 2020; Center for Capital Markets Competitiveness dated January 31, 2020; Exxon Mobil Corporation dated February 3, 2020; International Bancshares Corporation dated January 23, 2020; Manhattan Institute for Policy Research dated February 3, 2020; National Association of Manufacturers dated February 3, 2020.

[41] See, e.g., letters from Amazon Employees for Climate Justice dated February 3, 2020; American Baptist Home Mission Societies dated January 31, 2020; Baillie Gifford & Co. dated February 3, 2020; Boston Trust Walden et al. dated January 27, 2020; Christian Brothers Investment Services, Inc. dated January 21, 2020; Church Investor Group dated January 29, 2020; CT Hagberg LLC dated February 3, 2020; First Affirmative Financial Network, LLC dated January 24, 2020; Franciscan Sisters of Allegany, NY dated January 29, 2020; International Corporate Governance Network dated December 4, 2019; North American Securities Administrators Association, Inc. dated February 3, 2020; Oneida Trust Enrollment Committee dated February 3, 2020; Tom Shaffner dated December 17, 2019; Singing Field Foundation dated January 31, 2020; Sisters of St. Ursula dated January 23, 2020; Sisters of the Order of St. Dominic dated January 24, 2020; State Board of Administration of Florida dated February 3, 2020.

[42] See letter from Professor James D. Cox et al. dated February 2, 2020.

[43] Id. Another commenter also expressed the view that the proposed rule would be inconsistent with "other SEC rules that allow (and sometimes require) aggregation of shares held by different shareholders" in the context of different regulatory objectives such as when shareholders collectively owning more than five percent of a class of equity securities of a registrant act as a "group" for purposes of the disclosure requirements of Section 13(d) of the Exchange Act. See letter from Council of Institutional Investors et al. dated July 29, 2020.

[44] See letters from Business Roundtable dated February 3, 2020; Center for Capital Markets Competitiveness dated January 31, 2020; Exxon Mobil Corporation dated February 3, 2020; International Bancshares Corporation dated January 23, 2020; Manhattan Institute for Policy Research dated February 3, 2020; National Association of Manufacturers dated February 3, 2020.

commenters that opposed the proposed amendment stated that such a limitation would have a more pronounced effect on shareholders with smaller investments.[45] One of these commenters stated that aggregation among shareholders is an indication of their long-term investment interest.[46] Another of these commenters suggested that a group of shareholders that collectively satisfies an ownership requirement is not functionally different than a single shareholder that satisfies the requirement.[47] This commenter also stated the view that a proposal submitted by a group of shareholders aggregating their holdings may be "more worthy of consideration" than a proposal submitted by a single shareholder because it "involves coordination of support [among] multiple shareholders."[48] Another commenter said that up to five shareholders should be allowed to aggregate their holdings.[49]

iv. Lead-Filer Designation

Several commenters supported a rule requiring the designation of a lead filer where co-filers submit a proposal.[50] Of these commenters, several supported a requirement that co-filers

[45] See, e.g., letters from Amazon Employees for Climate Justice dated February 3, 2020; American Baptist Home Mission Societies dated January 31, 2020; Baillie Gifford & Co. dated February 3, 2020; Boston Trust Walden et al. dated January 27, 2020; Christian Brothers Investment Services, Inc. dated January 21, 2020; Church Investor Group dated January 29, 2020; CT Hagberg LLC dated February 3, 2020; First Affirmative Financial Network, LLC dated January 24, 2020; Franciscan Sisters of Allegany, NY dated January 29, 2020; International Corporate Governance Network dated December 4, 2019; North American Securities Administrators Association, Inc. dated February 3, 2020; Oneida Trust Enrollment Committee dated February 3, 2020; Tom Shaffner dated December 17, 2019; Singing Field Foundation dated January 31, 2020; Sisters of St. Ursula dated January 23, 2020; Sisters of the Order of St. Dominic dated January 24, 2020.

[46] See letter from First Affirmative Financial Network, LLC dated January 24, 2020.

[47] See letter from Tom Shaffner dated December 17, 2019.

[48] Id.

[49] See letter from State Board of Administration of Florida dated February 3, 2020.

[50] See letters from Business Roundtable dated February 3, 2020; Center for Capital Markets Competitiveness dated January 31, 2020; Council of Institutional Investors dated January 30, 2020; Exxon Mobil Corporation dated February 3, 2020; General Motors Company dated February 25, 2020; James McRitchie dated February 2, 2020;

delegate to the lead filer the ability to negotiate with respect to, and withdraw, the proposal to reduce administrative burdens on companies.[51]

Other commenters opposed the idea of requiring the designation of a lead filer.[52] Two of these commenters explained that such a requirement is unnecessary as co-filers already tend to designate a lead filer.[53] One of the commenters indicated that such a requirement could lead to more shareholder proposal submissions and suggested that, if such a requirement were adopted, companies should be required to disclose the lead filer and all co-filers in their proxy statements to foster engagement and provide investors with additional information related to their vote.[54]

3. Final Rule Amendments

i. Ownership Thresholds

After considering the comments received, we are adopting the amendments as proposed. Under new Rule 14a-8(b), a shareholder will be eligible to submit a Rule 14a-8 proposal if the shareholder demonstrates continuous ownership of at least:

- $2,000 of the company's securities entitled to vote on the proposal for at least three years;

National Association of Manufacturers dated February 3, 2020; Society for Corporate Governance dated February 3, 2020; State Board of Administration of Florida dated February 3, 2020.

[51] See letters from Business Roundtable dated February 3, 2020; Center for Capital Markets Competitiveness dated January 31, 2020; Exxon Mobil Corporation dated February 3, 2020; National Association of Manufacturers dated February 3, 2020; Society for Corporate Governance dated February 3, 2020.

[52] See letters from Local Authority Pension Fund Forum dated February 3, 2020; New York State Comptroller dated February 3, 2020; John Taylor dated November 14, 2019.

[53] See letters from Local Authority Pension Fund Forum dated February 3, 2020; New York State Comptroller dated February 3, 2020.

[54] See letter from New York State Comptroller dated February 3, 2020.

- $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 the proposal for at least one year.[55]

The Commission has previously indicated that the required dollar amount and holding period should be calibrated such that a shareholder has some meaningful "economic stake or investment interest" in a company—and therefore is more likely to put forth proposals reflecting an interest in the company and its shareholders than to use the proxy process to promote a personal interest or general cause—before the shareholder may draw on company and shareholder resources to require the inclusion of a proposal in the company's proxy statement, and before the shareholder may use the company's proxy statement to command the time and attention of other shareholders to consider and vote on the proposal.[56] We believe this longstanding statement of the Commission's perspective continues to appropriately capture the various interests that should be considered when calibrating the eligibility of shareholder-proponents to access the proxy statement at little or no cost to themselves.

As we explained in the Proposing Release, we believe that holding $2,000 worth of a company's stock for a single year, a threshold that was last substantively reviewed and updated

[55] Due to market fluctuations, the value of a shareholder's investment in a company may vary throughout the applicable holding period before the shareholder submits the proposal. In order to determine whether the shareholder satisfies the relevant ownership threshold, the shareholder should look at whether, on any date within the 60 calendar days before the date the shareholder submits the proposal, the shareholder's investment is valued at the relevant threshold or greater. See 1983 Adopting Release, supra note 2. For these purposes, companies and shareholders should determine the market value by multiplying the number of securities the shareholder continuously held for the relevant period by the highest selling price during the 60 calendar days before the shareholder submitted the proposal. For purposes of this calculation, it is important to note that a security's highest selling price is not necessarily the same as its highest closing price.

[56] See 1983 Adopting Release, supra note 2.

by the Commission in 1998,[57] does not appropriately ensure that the shareholder has a sufficiently meaningful stake in a company today. As the table below demonstrates, the $2,000 threshold, adjusted for inflation, is equivalent to $3,183 in 2020 dollars.[58] Moreover, using the cumulative growth of the Russell 3000 Index as a proxy for the average increase in companies' market values, a $2,000 investment in that index in 1998 would be worth approximately $9,489 today.[59] Furthermore, we estimate that the market capitalization of the largest 100 issuers in the S&P 500 index (the companies that on a per-issuer basis receive a disproportionate number of shareholder proposals[60]) has grown by 164 percent since 1998, and a $2,000 stake would be worth approximately $5,280 today.[61] We believe that the increases in inflation and market value have contributed, in part, to the need to revisit the $2,000/one-year ownership threshold and to recalibrate the relationship between the amount of stock owned and the requisite holding period to reflect a more appropriate economic stake or investment interest.

---

[57] See 1998 Adopting Release.

[58] $3,183 = $2,000 x 1.5915 (cumulative rate of inflation between May 1998 and July 2020, using the CPI inflation calculator, available at https://data.bls.gov/cgi-bin/cpicalc.pl?cost1=11%2C600.00&year1=201011&year2=201906).

[59] $9,489 = $2,000 x 4.744 (cumulative rate of growth of the Russell 3000 index between May 1998 and July 2020, which is the most recent date with available data, assuming dividends are reinvested). Data is retrieved from Compustat Daily Updates – Index Prices.

[60] In 2019, out of a total of 371 shareholder proposals voted on, see Sullivan & Cromwell, 2019 Proxy Season Review, Part I (July 13, 2019), available at https://www.sullcrom.com/files/upload/SC-Publication-2019-Proxy-Season-Review-Part-1-Rule-14a-8-Shareholder-Proposals.pdf ("Sullivan & Cromwell Report"), 187 were voted on at S&P 100 companies, see David Bell, *Silicon Valley and S&P 100: A Comparison of 2019 Proxy Season Results*, Dec. 27, 2019, available at https://corpgov.law.harvard.edu/2019/12/07/silicon-valley-and-sp-100-a-comparison-of-2019-proxy-season-results/.

[61] $5,280 = $2,000 x (1+1.64) (cumulative rate of growth in the market capitalization of the largest 100 issuers in the S&P 500 index between May 1998 and May 2019, which is the most recent date with available data). Data is retrieved from Compustat Annual Updates - Security Monthly.

Ownership Threshold Comparison			
Threshold Established in 1998	1998 Threshold Adjusted for Inflation	Change in Russell 3000 Index	Change in Largest 100 Issuers in S&P 500 Index
$2,000	$3,183	$9,489	$5,280

In making this assessment and recalibration, we recognize that the amount of stock owned is not the only way to demonstrate an interest in a company, particularly for smaller investors. In many cases, the length of time owning the company's securities may be a more meaningful indicator that a shareholder has a sufficient interest that warrants use of the company's proxy statement. A shareholder's demonstrated long-term investment interest in a company may make it more likely that the shareholder's proposal will reflect a greater interest in the company and its shareholders, rather than an intention to use the company and the proxy process to promote a personal interest or publicize a general cause. We believe having a longer holding period is particularly important if the dollar value of the ownership interest is minimal, including in terms of a company's market capitalization, and may help address concerns related to misuse of the shareholder-proposal process, while ensuring that smaller investors have access to the proxy statements of companies in which they have a demonstrated continuing interest.

We also recognize that shareholders' ability to communicate with issuers and other shareholders has evolved in response to technological advancements and developing market practices since our rules were last amended. As a result, shareholders now have more tools at their disposal to engage with a company's board and/or management, as well as their fellow shareholders, in a manner that may be more efficient and less costly for all parties than the Rule 14a-8 process. Thus, shareholders that do not meet the relevant one-, two-, or three-year

holding period (and related $25,000, $15,000, or $2,000 continuous ownership threshold), and for some limited period of time would not be eligible to require a company to include a proposal in its proxy statement, can nevertheless raise important issues with companies and other shareholders through alternative avenues with greater ease than in the past.

In establishing the amended thresholds, we also have considered the costs to the company and its shareholders associated with management's consideration of a proposal and/or its inclusion in the company's proxy statement, as well as the direct costs to other shareholders. In the Proposing Release, we cited several cost estimates for companies provided by market participants ranging from $50,000 to $150,000 per proposal associated with this process and estimated that the proposed amendments to the ownership thresholds could result in aggregate annual cost savings of up to $69.8 million per year for all Russell 3000 companies.[62] In response to the Proposing Release, several commenters provided us with estimates of the costs associated with a company's receipt of a shareholder proposal ranging from approximately $20,000 to $150,000.[63] The costs to non-proponent shareholders of considering shareholder

[62] See Proposing Release at 66502.

[63] See letters from Business Roundtable dated February 3, 2020 (noting that "[a]lthough 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"); CalPERS dated February 3, 2020 ("Fortunately, the most substantial shareholder proposal work product is included in the no-action correspondence on the SEC's website and does not reflect a value anywhere near $150,000 per submission. During no-action fights, many proposals are disposed of fairly quickly and easily by referencing the appropriate exclusion. Companies actually pay less than $20,000 in marginal costs for the work product displayed on the SEC website."); Center for Capital Markets Competitiveness dated January 31, 2020 (noting that "[t]he Commission cited commenters who estimated that the average cost of responding to a proposal for inclusion in the company's proxy statement can cost anywhere from $87,000 to $150,000 per proposal. Our members report that this is a fair estimate for a typical proposal, though some outliers (such as ones involving multiple rounds of correspondence with a proponent and the Commission) may exceed the high end of the range."); John Coates and Barbara Roper dated January 30, 2020 (noting that the Commission's paperwork burden analysis uses "a much lower figure, based on direct company information: 'A July 2009 survey of Business Roundtable companies, in which 67 companies responded … indicated that the average burden for a company associated with printing and mailing a single shareholder proposal is 20 hours with associated costs of $18,982.' While this much lower estimate may not comprehensively reflect all costs, it is a relevant datum for estimating cost savings, and is at least in tension with the SEC's assertion that

proposals are difficult to quantify but in aggregate are estimated to be significant, including in comparison to the costs borne by shareholder-proponents.[64] Because Rule 14a-8 enables individual shareholders to shift to the company and other shareholders the significant cost of processing, analyzing, and voting their proposals, we believe the Commission's longstanding perspective that ownership thresholds should be calibrated so that a shareholder-proponent's economic stake or investment interest in the company is more likely to demonstrate an alignment of interest with the company's other shareholders continues to be appropriate.

Taking into account the above factors, the new thresholds will require a more appropriate demonstrated "economic stake or investment interest" in a company before the shareholder may draw on company and shareholder resources to require the inclusion of a proposal in the company's proxy statement, and before the shareholder-proponent may use the company's proxy statement to command the time and attention of other shareholders to analyze and vote on the proposal.[65] Each of these factors is described in greater detail below.

While the current $2,000 threshold will remain the same to preserve the ability of long-term shareholders owning a relatively small amount of shares to continue to utilize Rule 14a-8, these investors will be required to hold the securities for at least three years to be eligible to

---

$50,000 is a 'lower bound' on costs."); Exxon Mobil Corporation dated February 3, 2020 (estimating the direct cost of each shareholder proposal included in its proxy statement "to be at least $100,000"); General Motors Company dated February 25, 2020 (stating that a cost estimate of $87,000 to $150,000 is "directionally accurate"); Society for Corporate Governance dated February 3, 2020 (providing the results of a survey of its members in which one respondent reported a cost of $109,792 (including the cost of seeking no-action relief) with respect to a proposal received in 2018 that was ultimately withdrawn, and a cost of $133,587 with respect to a proposal in 2019 that was ultimately included in the company's proxy statement). For additional discussion of these cost estimates, see infra note 332 and accompanying text.

[64] See infra Section V.D.2.

[65] One commenter sought clarification regarding the effect of share lending. See letter from Baillie Gifford & Co. dated February 3, 2020. The rule will not prohibit share lending or otherwise require investors to maintain a net-long position. We note that the rule has not historically imposed such a requirement, and we are not aware of any concerns with respect to these practices by shareholder-proponents at this time.

submit a proposal. In light of the smaller investment amount required under this ownership tier, we believe that a longer holding period is warranted to demonstrate a sufficient investment interest in a company before being able to draw on company and shareholder resources for the purpose of including a proposal in the company's proxy statement. Investors who currently are eligible to submit proposals under the current $2,000 threshold/one-year minimum holding period, but currently do not satisfy the new requirements, will continue to be eligible to submit proposals through the expiration of the transition period that extends for all annual or special meetings held prior to January 1, 2023, provided they continue to hold at least $2,000 of a company's securities.

To help put these thresholds in context, the following table shows them as a percentage of market value as of April 2020 for the S&P 500 Index constituents and May 2020 for the Russell 3000 Index constituents:[66]

Registrant	$2,000 Threshold as a Percentage of Market Value	$15,000 Threshold as a Percentage of Market Value	$25,000 Threshold as a Percentage of Market Value
Largest Registrant in the S&P 500 Index	0.0000002	0.0000012	0.0000020
Smallest Registrant in the S&P 500 Index	0.0001	0.0009	0.0015
Smallest Registrant in the Russell 3000 Index	0.0021	0.016	0.026

[66] Data for the S&P 500 constituents is retrieved from CRSP and data for the Russell 3000 constituents is retrieved from *Market Capitalization Ranges*, FTSE RUSSELL MARKET, https://www.ftserussell.com/research-insights/russell-reconstitution/market-capitalization-ranges (last visited Jun. 17, 2020). The largest registrant in the Russel 3000 index is the same as in the S&P 500 index.

Although the ownership thresholds are still very low as a percentage of market value, we believe that maintaining the $2,000 threshold and extending the holding period to three years, and adding new thresholds with one- and two-year holding periods, provides for a framework that is more effectively calibrated to the potentially varying interests of shareholder-proponents, companies, and other shareholders and, as a result, a shareholder-proponent that meets one of them will have demonstrated a sufficient "economic stake or investment interest" in a company before being able to draw on company and other shareholder resources for the purpose of including a proposal in the company's proxy statement. While we considered the alternative of simply raising the dollar amount of securities required to be held for one year, we were cognizant of the effect such an increase may have on investors with smaller investments, including those with a demonstrated long-term economic stake or investment interest in the company. We also considered adopting a single ownership threshold with a three-year holding period, but we believe that shorter holding periods are appropriate where a shareholder-proponent's demonstrated investment interest is greater in amount. Accordingly, we are retaining a $2,000 ownership threshold while adjusting the related holding period and adopting alternative thresholds for investors that have held their shares for shorter periods of time.

For the reasons discussed above and in the Proposing Release, such as the costs incurred by other shareholders and companies and the availability of alternative communication channels, we do not believe that a one-year holding period is indicative of a sufficient investment interest where the amount invested is less than $25,000. We also do not find commenters' analogy to the Internal Revenue Code's treatment of capital assets compelling in light of the

differing objectives of the Internal Revenue Code and the shareholder-proposal rule.[67] At the same time, we also do not find compelling the suggestion of a different commenter that a three-year holding period for all shareholder-proponents is necessary to demonstrate a "serious commitment to a company's long-term success."[68] We believe that holding periods of less than three years are sufficient where the economic stake is greater.

Two commenters suggested that any adjustments to the one-year holding period should be informed by the holding periods of investors generally.[69] In the Proposing Release, we noted our review of academic studies and other data on share ownership duration generally.[70] In establishing the amended holding periods, and in response to these commenters, we further reviewed holding period data.[71] We note, however, that academic studies and data regarding holding periods for smaller investors reflect a static assessment of general eligibility in the context of the current one-year minimum holding period and, therefore, do not account for changes in investment amounts and holding periods for the historically limited group of smaller investors that are interested in submitting proposals that may result from the amendments.[72] We believe that where the amount invested is relatively small, an investor's holding period provides

---

[67] See letters from Jantz Management LLC dated January 21, 2020; James McRitchie dated December 28, 2019; James McRitchie dated December 29, 2019; James McRitchie dated January 21, 2020; James McRitchie dated July 21, 2020; Tom Shaffner dated December 17, 2019.

[68] See letter from The Vanguard Group, Inc. dated February 3, 2020.

[69] See supra notes 28 and 29.

[70] See Proposing Release at 66490 n.195.

[71] See infra note 320 and accompanying text.

[72] The ratio of shareholder-proponents whose proposals appeared in proxy statements during 2018 (i.e., 170) to the number of direct and indirect investors in companies subject to the proxy rules (i.e., 65 million) is roughly equal to three shareholder-proponents per million investors.

a meaningful indicator of the shareholder-proponent's investment interest in the company. As such, where the amount invested is less than $25,000 but greater than $15,000, we believe that a holding period of two years is appropriate. Where the amount invested is less than $15,000 but greater than $2,000, we believe that the three-year holding period is appropriate.[73]

Although we agree with the view of certain commenters that the length of time a shareholder has held a company's securities may not necessarily determine future investment intent,[74] we believe that it provides a meaningful indication as to the nature of the investment. Thus, we believe that it is appropriate to place greater emphasis on the length of continuous stock ownership when the economic stake is less and vice versa. Moreover, in response to a commenter, we considered whether to adopt an eligibility requirement based on a shareholder-proponent's statement that it will maintain a minimum investment in the company's securities for some period of time after the shareholders' meeting for which a proposal is submitted.[75] However, we believe that a shareholder-proponent with a limited economic stake should first demonstrate a meaningful investment interest in a company before drawing on company and shareholder resources to require the inclusion of a proposal in the company's proxy statement, and before using the company's proxy statement to command the time and attention of other shareholders to consider and vote on the proposal. In our view, requiring a company to include a shareholder proposal in its proxy statement before a proponent has demonstrated a sufficient economic stake or investment interest would be inconsistent with the purpose of the ownership

---

[73] There may be a relation between duration of ownership and the propensity of a shareholder to submit a proposal.

[74] See letters from Council of Institutional Investors dated January 30, 2020; Pension Investment Association of Canada dated January 23, 2020.

[75] See letter from Council of Institutional Investors dated January 30, 2020 ("[T]he SEC should explore benefits and costs of a forward-looking regime, for example requiring the shareholder to attest that the holder will maintain ownership of at least $2,000 of shares (as valued at submission date) for at least one year after the annual meeting.").

requirement and could render the shareholder-proposal process subject to abuse. Accordingly, we do not believe that such an approach is appropriate.

In response to the same commenter, we also considered whether to eliminate the ownership threshold and adopt a requirement that companies disclose a shareholder-proponent's name and holdings "so that shareholders could make their own determinations if they believe a stake is too small."[76] Because a determination by shareholders regarding a proponent's investment stake would occur only after a proposal had been included in the company's proxy statement and voted upon, companies and their shareholders could bear the burdens associated with a proposal submitted by a proponent whose stake is ultimately determined to be too small by the company's shareholders. For this reason, we believe that such an approach would be inconsistent with the purpose of the ownership requirement and could render the shareholder-proposal process subject to abuse. Accordingly, we are not adopting such an approach.

In establishing the amended thresholds, we also gave careful consideration to the effects any new thresholds may have on the ability of shareholders with smaller investments to submit proposals. We acknowledge, as several commenters asserted, that smaller shareholders can raise issues that other shareholders support.[77] The amendments we are adopting today do not preclude smaller shareholders from participating in the shareholder-proposal process.[78] As discussed above, the rule will continue to be available to shareholders that own at least $2,000

---

[76] Id.

[77] See, e.g., letters from Christian Brothers Investment Services, Inc. dated January 21, 2020; Council of Institutional Investors et al. dated July 29, 2020; Senator Tammy Duckworth dated January 30, 2020; Form Letter Type A; Illinois State Treasurer dated January 16, 2020; James McRitchie dated July 21, 2020.

[78] Cf. letter from Fidelity Management & Research LLC dated February 3, 2020 (noting that the commenter "reviewed all shareholder proposals received by and voted on by Fidelity mutual funds for the past six years and found that the vast majority of these proposals would still have satisfied the eligibility criteria under the new tiered submission thresholds").

of a company's securities. We recognize, however, that the increased holding period will likely have some effect on the timing of submissions by those shareholders who could have relied on the current $2,000/one-year ownership threshold if they do not yet meet the three-year holding period (or the alternative eligibility thresholds). Specifically, shareholders that crossed the $2,000 ownership threshold for more than one year but less than three years (and do not satisfy the $15,000/two-year or $25,000/one-year thresholds) will need to postpone submitting a shareholder proposal until they have satisfied the requisite three-year holding requirement (or the alternative eligibility thresholds). We do not consider this increase in the holding period to be an undue burden on the ability to participate in the shareholder-proposal process, especially in light of the significant costs for other shareholders and the company involved in this method of shareholder engagement.[79]

We also note that, while these shareholder-proponents will be unable to require a company to include a proposal in its proxy statement until the shareholder has held the securities for the requisite three-year period, they will not be precluded from raising matters that are important to them through alternative avenues of engagement. Today's investors are able to engage with companies and other investors in a variety of ways, including via email, video conference calls, one-on-one "sunny day" meetings, shareholder surveys, and e-forums.[80] Although we recognize these alternative channels are different than a shareholder proposal, we

---

[79] See infra Section V.D.

[80] See Matteo Tonello & Matteo Gatti, *Board-Shareholder Engagement Practices*, HARVARD L. SCH. F. ON CORP. GOVERNANCE (Dec. 30, 2019), available at https://corpgov.law.harvard.edu/2019/12/30/board-shareholder-engagement-practices/; Cleary Gottlieb Steen & Hamilton LLP, *Shareholder Engagement Trends and Considerations* (Jan. 10, 2020), available at https://www.clearygottlieb.com/news-and-insights/publication-listing/shareholder-engagement-trends-and-considerations; Donna Fuscaldo, *Say Gives Retail Investors A Voice And Tesla Listens*, FORBES (Feb. 19, 2019), https://www.forbes.com/sites/donnafuscaldo/2019/02/19/say-gives-retail-investors-a-voice-and-tesla-listens/. See also letter from Business Roundtable dated February 3, 2020.

understand that companies today are more responsive to shareholder requests to engage through alternative channels than when our rules were last amended.[81] Moreover, raising these issues through one-on-one engagement with management may produce better outcomes than submitting shareholder proposals.[82] In addition, we note that shareholders engage directly with each other through various channels, and, accordingly, an issue that is sufficiently important to the broader shareholder base could be brought to the company's attention by other shareholders, including those that are eligible to submit a shareholder proposal. We also note that the proxy rules allow shareholders, including those that have held shares for less than one year, to conduct their own proxy solicitations in accordance with those rules.

For the reasons discussed above, we believe that the amended thresholds appropriately capture the various interests that should be considered when calibrating the eligibility of shareholder-proponents to access a company's proxy statement at little or no cost to the shareholder-proponent. As such, we are not incorporating the suggestions of certain commenters, such as adjusting the thresholds to $5,000, $10,000, or $15,000;[83] eliminating a minimum dollar investment for shareholders meeting a three-year holding period;[84] establishing thresholds that are contingent on the size of an investor's total investment portfolio;[85] or

---

[81] See, e.g., letter from Business Roundtable dated February 3, 2020.

[82] See T.Rowe Price, *Sustainable Investing* (April 2020), available at https://www.troweprice.com/content/dam/trowecorp/Pdfs/ESG_2019_AnnualReport-Global_30_April_2020_Final.pdf ("Our experience after many years of assessing ESG issues as part of our investment process is that direct, one-on-one engagement with companies produces better outcomes than shareholder resolutions.").

[83] See letter from Van Brenner dated November 21, 2019.

[84] See letter from Josh Feldblyum dated November 30, 2019.

[85] See letter from John Taylor dated November 14, 2019.

subjecting the thresholds to future inflation adjustments.[86] Although we recognize that a minimum amount of stock owned is not the only way to demonstrate a current and continued investment interest in a company, we do not believe that eliminating a minimum dollar investment for shareholders meeting a three-year holding period would be consistent with the concept of demonstrating a meaningful economic stake or investment interest in a company prior to submitting a shareholder proposal. In addition, although we appreciate that the thresholds will represent different proportional investments relative to each shareholder's total investment portfolio—e.g., they will represent a larger proportional investment where portfolio size is smaller and vice versa—we believe thresholds that vary based on the size of an investor's total investment portfolio would be difficult to administer. For example, such a requirement could necessitate a shareholder's submission and a company's verification of voluminous amounts of documentation for the purpose of demonstrating and ascertaining the size of the shareholder's total investment portfolio in order to ascertain the applicable ownership threshold. Thus, we are not adopting thresholds that vary based on the size of a proponent's total investment portfolio. We also are not adopting a provision that would require periodic future inflation adjustments. We believe that such a mechanism is unnecessary at this time in light of the tiered approach being adopted.

Although some commenters raised concerns about the effects the new thresholds could have on portfolio diversification, they did not provide data about costs or the likelihood of occurrence. They also did not provide data addressing the percentage of smaller investors that maintain a diversified portfolio or the diversification of holdings of the relatively smaller subset

[86] See letters from Business Roundtable dated February 3, 2020; Exxon Mobil Corporation dated February 3, 2020; FedEx Corporation dated February 3, 2020; Nasdaq, Inc. dated February 3, 2020; Society for Corporate Governance dated February 3, 2020.

of such investors that submit shareholder proposals. While we acknowledge that, in theory, some shareholders may not be able to satisfy the three-year ownership requirement without affecting portfolio diversification decisions to some degree, we believe the appropriate allocation of capital, taking into account various factors, including portfolio diversification and the importance of submitting a proposal for inclusion in a company's proxy statement, is something for the investor to determine. We also note that the three different ownership thresholds in the final rules will afford shareholders some flexibility in determining how to allocate capital while considering whether qualifying to submit a proposal in a shorter timeframe is in the shareholder-proponent's interest. In those situations where a shareholder decides not to alter portfolio diversification, we note that an issue that is sufficiently important to the broader shareholder base may be brought to the company's attention by other shareholders, including those that are eligible to submit a shareholder proposal.

ii. Percentage Test

As proposed, the amended rule will not include a component based on a percentage of shares owned. We believe that each of the revised thresholds represents a meaningful economic stake or investment interest such that a separate percentage-based threshold is unnecessary. We also believe that shareholders would be unlikely to rely on such a threshold in light of the new thresholds and that the amendment will avoid administrative complexities that could result from a percentage-based test. We also note that commenters who addressed it generally supported eliminating the current percentage ownership test.[87] Accordingly, we are not adopting a percentage-based component.

[87] See letters from CFA Institute dated February 3, 2020; Council of Institutional Investors dated January 30, 2020; Manhattan Institute for Policy Research dated February 3, 2020; James McRitchie dated February 2, 2020; National Association of Manufacturers dated February 3, 2020; John Taylor dated November 14, 2019.

iii. Aggregation

As proposed, aggregation of holdings for purposes of meeting the ownership requirements will not be permitted. Instead, each shareholder must satisfy one of the three ownership thresholds to be eligible to submit or co-file a proposal.[88] Although the Commission allowed shareholders to aggregate their holdings when it first adopted ownership thresholds in 1983, it did not provide reasons for doing so. Consistent with the views of several commenters, we believe that allowing shareholders to aggregate their securities to meet the new thresholds would undermine the goal of ensuring that each shareholder who wishes to use a company's proxy statement to advance a proposal has a sufficient economic stake or investment interest in the company.[89] We recognize this limitation could affect the ability of shareholders with smaller investments to submit shareholder proposals, but as explained above, we believe each shareholder-proponent should have a meaningful ownership stake in a company before being permitted to draw on company resources to include a proposal in the company's proxy statement as well as draw on the time, attention, and other resources of non-proponent shareholders.[90]

---

[88] Shareholders whose shares are held in joint tenancy may submit proposals individually or jointly. However, the one-proposal limit will apply collectively to all persons having an interest in the same shares. See Adoption of Amendments Relating to Proposals by Security Holders, Release No. 34-12999 (Nov. 22, 1976) [41 FR 52994 (Dec. 3, 1976)] ("1976 Adopting Release").

[89] See letters from Business Roundtable dated February 3, 2020; Center for Capital Markets Competitiveness dated January 31, 2020; Exxon Mobil Corporation dated February 3, 2020; International Bancshares Corporation dated January 23, 2020; Manhattan Institute for Policy Research dated February 3, 2020; National Association of Manufacturers dated February 3, 2020.

[90] In articulating the need for an ownership requirement in prior releases, the Commission has explained that shareholders who submit proposals should have a specified "economic stake" or "investment interest" in the company. See 1983 Adopting Release, supra note 2. See also Amendments to Rules on Shareholder Proposals, Release No. 34-39093 (Sep. 18, 1997) [62 FR 50682 (Sep. 26, 1997)] (noting that "[o]ne purpose of the requirement is to curtail abuse of the rule by requiring that those who put the company and other shareholders to the expense of including a proposal in proxy materials have had a continuous investment interest in the company."). In parts of this release, we use "ownership stake" in lieu of "economic stake" because we believe an ownership stake represents a type of economic stake.

Moreover, we do not agree with the commenter who suggested that a group of shareholders that collectively, but not individually, satisfies an ownership requirement is functionally the same as a single shareholder that satisfies the requirement.[91] Although the total dollar amount may be the same under either scenario, we do not believe that group ownership (where each member of the group does not individually satisfy one of the ownership requirements) represents an equivalent economic stake or investment interest as a single shareholder who satisfies the ownership requirements. Accordingly, we do not believe a group comprising shareholders, where each member of the group does not individually satisfy one of the ownership requirements, will have demonstrated a sufficient ownership interest to be eligible to submit a proposal. For similar reasons, we do not agree with commenters who suggested that aggregated holdings are indicative of a long-term investment interest,[92] or that a proposal submitted by a group of shareholders aggregating their holdings is "more worthy of consideration" than a proposal submitted by a single shareholder.[93] In our view, the more relevant consideration for these purposes is not the number of shareholder-proponents, but rather, whether each such proponent has a meaningful economic stake in the company. Accordingly, aggregation will not be permitted under the final amendments.[94]

---

[91] See letter from Tom Shaffner dated December 17, 2019.

[92] See letter from First Affirmative Financial Network, LLC dated January 24, 2020.

[93] See letter from Tom Shaffner dated December 17, 2019.

[94] We do not agree with the commenter who suggested that the amendment is premature and that we should first study the effects of the new ownership thresholds. See letter from Professor James D. Cox et al. dated February 2, 2020. As stated above, we do not believe that group ownership (where the group comprises shareholders none of whom individually meets one of the ownership requirements) represents a sufficient economic or investment interest to require inclusion of a proposal in a company's proxy statement. This view applies regardless of how frequently shareholders might elect to aggregate and, therefore, we do not believe it is necessary to first study the effects of the new ownership thresholds prior to adopting the amendment. We also do not agree with this and another commenter's suggestion that the amendment is at odds with other aspects of corporate and/or securities laws under which aggregation of holdings is permitted or required. We note that the primary examples cited by the

iv. Lead-Filer Designation

Although shareholders will not be able to aggregate their holdings under the amendment, they will continue to be permitted to co-file proposals as a group if each shareholder-proponent in the group meets an eligibility requirement.[95] However, we are not adopting rules requiring co-filers to identify a lead filer or specify whether the lead filer is authorized to negotiate a withdrawal on behalf of the co-filers. As several commenters observed, such a requirement does not appear necessary at this time as co-filers already tend to designate a lead filer.[96] Nevertheless, we continue to believe that, as a best practice, co-filers should clearly state in their initial submittal letter to the company that they are co-filing the proposal with other proponents and identify the lead filer, specifying whether such lead filer is authorized to negotiate with the company and withdraw the proposal on behalf of the other co-filers.[97]

---

commenter were the subject of a 5% ownership requirement, whereas the ownership requirements under the amended thresholds are considerably lower – i.e., $2,000, $15,000, and $25,000. In light of the relatively low ownership requirements under the amendment, we do not believe the ability to aggregate is necessary or appropriate. As previously stated, aggregate holdings at these ownership levels would not represent a sufficient economic or investment interest and could undermine the purpose of the ownership requirement. In addition, we do not agree with the commenter's suggestion that the amendment is inconsistent with the beneficial ownership provisions under the federal securities laws, which, among other things, require any "group" of beneficial holders owning more than five percent of a security registered under Section 12 of the Exchange Act to file a Schedule 13D or Schedule 13G. We note that the objectives of the beneficial ownership reporting requirements fundamentally differ from those of the shareholder-proposal rule.

[95] Under Section 13(d) and Section 13(g), a "group" is formed when two or more persons act together for the purpose of acquiring, holding, voting, or disposing of the securities. Congress created the "group" concept to prevent persons who seek to pool their voting or other interests in the securities of an issuer from evading the Section 13(d) or 13(g) obligations because no one person owns more than five percent of the securities. To the extent co-filers are acting together (or in concert with others) for the purpose of voting in favor of their proposals they should consider whether such activity constitutes a "group" for purposes of Section 13(d) and Section 13(g).

[96] See letters from Local Authority Pension Fund Forum dated February 3, 2020; New York State Comptroller dated February 3, 2020.

[97] We remind co-filers that ambiguities in the nature of coordination on a proposal's submission could prompt companies to seek exclusion under Rule 14a-8(i)(11). Specifically, if two or more shareholder-proponents submit substantially duplicative proposals but fail to clearly indicate that they intend to co-file or co-sponsor the proposal, the later-received proposal may be susceptible to exclusion under Rule 14a-8(i)(11).

B. Proposals Submitted on Behalf of Shareholders

1. Proposed Rule Amendment

We proposed to add a new eligibility requirement to Rule 14a-8 that would require shareholders that use a representative to submit a proposal for inclusion in a company's proxy statement to provide documentation that:

- Identifies the company to which the proposal is directed;
- Identifies the annual or special meeting for which the proposal is submitted;
- Identifies the shareholder-proponent and the designated representative;
- Includes the shareholder's statement authorizing the designated representative to submit the proposal and/or otherwise act on the shareholder's behalf;
- Identifies the specific proposal to be submitted;
- Includes the shareholder's statement supporting the proposal; and
- Is signed and dated by the shareholder.

2. Comments on the Proposed Rule Amendment

The proposed amendment generated a wide range of responses. Some commenters expressed the view that the proposed requirements were appropriate,[98] while others opposed

[98] See letters from British Columbia Investment Management Corporation dated February 3, 2020; Business Roundtable dated February 3, 2020; Center for Capital Markets Competitiveness dated January 31, 2020; CFA Institute dated February 3, 2020; Corporate Governance Coalition for Investor Value dated February 3, 2020; Exxon Mobil Corporation dated February 3, 2020; General Motors Company dated February 25, 2020; Nareit dated February 3, 2020; Nasdaq, Inc. dated February 3, 2020; National Association of Manufacturers dated February 3, 2020; School Sisters of Notre Dame Cooperative Investment Fund received January 24, 2020; Tom Shaffner dated December 17, 2019; Sisters of the Order of St. Dominic dated January 24, 2020; Southwestern Energy Company dated February 3, 2020.

them.[99] Several commenters stated that the proposed representations would help clarify the relationship between the shareholder-proponent and the representative with minimal burden to shareholders.[100] Other commenters recommended adding additional informational requirements regarding a shareholder-proponent's motives for submitting a proposal.[101] One of these commenters suggested revisions to the rule text that would require: (i) the proposal text to be embedded in the authorization letter, (ii) the shareholder-proponent to sign the authorization letter no later than the date the proposal is submitted, and (iii) the authorization letter to specify that the representative is authorized to revise the proposal and/or supporting statement.[102] Several commenters stated that representatives should not be permitted to submit proposals on behalf of shareholders, although two of these commenters seemed supportive of the proposed requirements in the absence of such a prohibition.[103]

Of commenters that were opposed to the proposed amendment, several expressed the view that the proposed informational requirements could interfere with the principles of agency

---

[99] See letters from AFL-CIO dated February 3, 2020; Boston Trust Walden et al. dated January 27, 2020; CalPERS dated February 3, 2020; Council of Institutional Investors dated January 30, 2020; Figure 8 Investment Strategies dated January 31, 2020; Illinois State Treasurer dated January 16, 2020; International Brotherhood of Teamsters dated February 3, 2020; Local Authority Pension Fund Forum dated February 3, 2020; James McRitchie dated February 2, 2020; Paul M. Neuhauser dated February 3, 2020; New York City Comptroller dated February 3, 2020; North Berkeley Wealth Management dated January 31, 2020; Shareholder Rights Group dated March 18, 2020; State Board of Administration of Florida dated February 3, 2020; John Taylor dated November 14, 2019; Trillium Asset Management dated February 3, 2020; Worker Owner Council of the Northwest dated February 3, 2020.

[100] See letters from Business Roundtable dated February 3, 2020; CFA Institute dated February 3, 2020; Nasdaq, Inc. dated February 3, 2020.

[101] See letters from Center for Capital Markets Competitiveness dated January 31, 2020; Corporate Governance Coalition for Investor Value dated February 3, 2020; Nareit dated February 3, 2020; Southwestern Energy Company dated February 3, 2020.

[102] See letter from Southwestern Energy Company dated February 3, 2020.

[103] See letters from CT Hagberg LLC dated February 3, 2020; Exxon Mobil Corporation dated February 3, 2020; Nasdaq, Inc. dated February 3, 2020.

under state law and/or a representative's ability to carry out its fiduciary duties.[104] For example, some commenters expressed concern that the proposed amendment would intrude on the agency relationship by requiring the shareholder-proponent to pre-authorize the form and content of a shareholder proposal prior to its submission,[105] or by requiring written authorization that is not required under state law.[106] Some commenters also stated that an amendment requiring this information is unnecessary because the information is often already provided.[107] Commenters also raised concerns about the effects the proposed requirements could have on entities, such as asset managers, that must act through agents.[108]

In response to a request for comment, two commenters stated that a representative's ability to deliver evidence of the shareholder-proponent's ownership sufficiently demonstrates the representative's authority to submit a proposal on a shareholder's behalf,[109] while two others stated that it does not sufficiently demonstrate such authorization.[110]

---

[104] See, e.g., letters from AFL-CIO dated February 3, 2020; As You Sow dated February 3, 2020; CalPERS dated February 3, 2020; Council of Institutional Investors dated January 30, 2020; Figure 8 Investment Strategies dated January 31, 2020; Interfaith Center on Corporate Responsibility dated January 27, 2020; International Brotherhood of Teamsters dated February 3, 2020; Worker Owner Council of the Northwest dated February 3, 2020.

[105] See, e.g., letters from AFL-CIO dated February 3, 2020; Boston Trust Walden et al. dated January 27, 2020; Shareholder Rights Group dated March 18, 2020.

[106] See, e.g., letter from AFL-CIO dated February 3, 2020.

[107] See, e.g., letters from AFL-CIO dated February 3, 2020; CalPERS dated February 3, 2020; James McRitchie dated February 2, 2020.

[108] See, e.g., letters from AFL-CIO dated February 3, 2020; International Brotherhood of Teamsters dated February 3, 2020; International Corporate Governance Network dated December 4, 2019; Paul M. Neuhauser dated February 3, 2020; New York City Comptroller dated February 3, 2020.

[109] See letters from Council of Institutional Investors dated January 30, 2020; James McRitchie dated February 2, 2020.

[110] See letters from Exxon Mobil Corporation dated February 3, 2020; Southwestern Energy Company dated February 3, 2020.

3. Final Rule Amendment

We are adopting the amendment as proposed, but with a modification in response to commenters that clarifies that the shareholder-proponent must identify the specific topic of the proposal, rather than the specific language of the proposal, to be submitted. The rule will require shareholders that use a representative to submit a proposal for inclusion in a company's proxy statement to provide documentation that:

- Identifies the company to which the proposal is directed;
- Identifies the annual or special meeting for which the proposal is submitted;
- Identifies the shareholder submitting the proposal and the shareholder's designated representative;
- Includes the shareholder's statement authorizing the designated representative to submit the proposal and otherwise act on the shareholder's behalf;
- Identifies the specific topic of the proposal to be submitted;
- Includes the shareholder's statement supporting the proposal; and
- Is signed and dated by the shareholder.

As discussed in the Proposing Release, companies receive proposals under Rule 14a-8 from individuals and entities that may not qualify to submit proposals at a particular company in their own name, but arrange to serve as a representative to submit a proposal on behalf of individuals or entities that have held a sufficient number of shares for the requisite amount of

time.[111]

We also understand 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. Often, the shareholder has an established relationship with the representative (e.g., the shareholder has previously used the representative to submit proposals on his or her behalf, or the representative serves as the shareholder's investment adviser). In practice, the representative typically submits the proposal to the company on the shareholder's behalf along with necessary documentation, including evidence of ownership (typically in the form of a broker letter) and the shareholder's written authorization for the representative to submit the proposal and act on the shareholder's behalf. After the initial submission, the representative often speaks for and acts on the shareholder's behalf in connection with the matter. When a representative speaks and acts for a shareholder, there may be a question as to whether the shareholder has a genuine and meaningful interest in the proposal, or whether the proposal is instead primarily of interest to the representative, with only an acquiescent interest by the shareholder.[112]

We believe that these amendments will help safeguard the integrity of the shareholder-proposal process and the eligibility restrictions by making clear that representatives are authorized to so act, and by providing a meaningful degree of assurance as to the shareholder-proponent's identity, role, and interest in a proposal that is submitted for inclusion in a company's proxy statement. We also believe that these requirements will reduce some of the

[111] See Proposing Release at 66465–66466.

[112] See, e.g., Baker Hughes Inc., SEC No-Action Letter 2016 WL 722853 (Feb. 22, 2016) (investment adviser failed to provide documentation sufficient to ascertain the shareholder's identity, role, or interest in the proposal); Chevron Corp., SEC No-Action Letter 2014 WL 262988 (Apr. 4, 2014) (same).

administrative burdens associated with confirming a shareholder's role in the shareholder-proposal process and that the burden on shareholder-proponents of providing this information will be minimal; in fact, we note that much of it is often already provided.

Although much of this information is already provided in accordance with staff guidance,[113] we do not agree with commenters who suggested that current practices obviate the need for an amendment.[114] We believe that an amendment will promote consistency among shareholder-proponents and provide greater clarity to those seeking to rely on the rule. In addition, we believe it is important that the documentation include the shareholder's statement authorizing the designated representative to submit the proposal and otherwise act on the shareholder's behalf, as well as the shareholder's statement supporting the proposal, neither of which is addressed in staff guidance. At this time, however, we do not believe that any of the additional informational requirements suggested by commenters are necessary to demonstrate a shareholder-proponent's identity, role, and interest in a proposal and, accordingly, we are not adding any additional requirements.

We do not expect these requirements will interfere with a shareholder-proponent's ability to use an agent, or prevent representatives who act as fiduciaries from carrying out their fiduciary duties. Although shareholder-proponents who elect to submit a proposal through a representative will be required to provide additional information about their submissions, the rule will not prevent them from using representatives in accordance with state law. Moreover, the rule's requirement to disclose this information is only a condition on the ability of a shareholder-

[113] See Staff Legal Bulletin No. 14I (Nov. 1, 2017).

[114] See, e.g., letters from AFL-CIO dated February 3, 2020; CalPERS dated February 3, 2020; James McRitchie dated February 2, 2020.

proponent, under federal law, to submit a proposal for inclusion in a company's proxy statement. The rule does not substantively alter the agency relationship between a shareholder and a representative. Thus, we do not agree with the commenter who stated that the proposed amendment "interferes with state agency law by requiring that shareholders provide express and specific authorization of the designated representative to submit a shareholder proposal."[115] Furthermore, in response to commenters who suggested that the amendment would intrude on a shareholder-proponent's ability to use an agent by requiring the shareholder-proponent to pre-authorize the form and content of a shareholder proposal prior to its submission,[116] we have revised the rule text to state that the shareholder-proponent must identify the specific topic (as opposed to the text) of the proposal to be submitted. Likewise, we do not believe that the rule will interfere with a representative's ability to act as a fiduciary or satisfy any applicable fiduciary obligations. Rather, the rule is intended to help shareholders and companies more clearly understand the nature and scope of the relationship between a shareholder-proponent and his or her representative.

In addition, we agree with those commenters who expressed the view that a representative's ability to obtain a broker letter from the shareholder's broker does not offer a sufficient degree of assurance as to the shareholder-proponent's identity, role, and interest in a proposal.[117] Although the ability to obtain a broker letter will generally require the shareholder's authorization, the scope of such authorization may not be evident. In this situation, it may be

---

[115] See letter from AFL-CIO dated February 3, 2020.

[116] See, e.g., letters from AFL-CIO dated February 3, 2020; Boston Trust Walden et al. dated January 27, 2020; Shareholder Rights Group dated March 18, 2020.

[117] See letters from Exxon Mobil Corporation dated February 3, 2020; Southwestern Energy Company dated February 3, 2020.

unclear whether a shareholder is aware of or has authorized the submission of the specific proposal to a particular company. The new requirements will provide a greater degree of certainty with respect to these issues with minimal burden on the shareholder-proponent.

Furthermore, we are clarifying in response to commenters[118] that, where a shareholder-proponent is an entity, and thus can act only through an agent, compliance with the amendment will not be necessary if the agent's authority to act is apparent and self-evident such that a reasonable person would understand that the agent has authority to act. For example, compliance generally would not be necessary where a corporation's CEO submits a proposal on behalf of the corporation, where an elected or appointed official who is the custodian of state or local trust funds submits a proposal on behalf of one or more such funds, where a partnership's general partner submits a proposal on behalf of the partnership, or where an adviser to an investment company submits a proposal on behalf of an investment company. On the other hand, compliance would be required where the agency relationship is not apparent and self-evident. For example, compliance would be required where an investment adviser submits a proposal on behalf of a client that is a shareholder. A private relationship between a third-party investment adviser and the adviser's client would not be apparent or self-evident because these private relationships are generally governed by private contractual arrangements where the scope of the principal-agent relationship does not as a matter of course extend to representation with respect to the submission of proposals. Additionally, there are inherent difficulties in ascertaining the scope of such a relationship, as investment advisers can provide a wide range of services to their

[118] See letters from AFL-CIO dated February 3, 2020; International Brotherhood of Teamsters dated February 3, 2020; International Corporate Governance Network dated December 4, 2019; Paul M. Neuhauser dated February 3, 2020; New York City Comptroller dated February 3, 2020.

clients,[119] which may or may not include shareholder advocacy on the client's behalf.[120]

C. The Role of the Shareholder-Proposal Process in Shareholder Engagement

1. Proposed Rule Amendment

We proposed to amend Rule 14a-8(b) to add a shareholder engagement component to the current eligibility criteria, which would require a statement from each shareholder-proponent that he or she is able to meet with the company in person or via teleconference no less than 10 calendar days, nor more than 30 calendar days, after submission of the shareholder proposal. Under the proposal, shareholders would also be required to include their contact information as well as business days and specific times that they are available to discuss the proposal with the company.

2. Comments on the Proposed Rule Amendment

We received numerous comments on the proposed amendment regarding a shareholder-proponent's statement of ability to engage with the company. Some commenters supported the proposed amendment,[121] while others opposed such a requirement.[122] Of those that opposed the

---

[119] See Regulation Best Interest: The Broker-Dealer Standard of Conduct, Release No. 34-86031 (June 5, 2019) [84 FR 33318 (July 12, 2019)], at 33319.

[120] An investment adviser may advise multiple clients who submit their own shareholder proposals, as long as the adviser complies with the one-proposal limitation. See infra Section II.D.3.

[121] See letters from Business Roundtable dated February 3, 2020; Center for Capital Markets Competitiveness dated January 31, 2020; CFA Institute dated February 3, 2020; Church Investor Group dated January 29, 2020; Energy Infrastructure Council dated February 3, 2020; International Corporate Governance Network dated December 4, 2019; Nareit dated February 3, 2020; Nasdaq, Inc. dated February 3, 2020; National Association of Manufacturers dated February 3, 2020; Pension Investment Association of Canada dated January 23, 2020; Robeco dated January 16, 2020; Society for Corporate Governance dated February 3, 2020.

[122] See, e.g., letters from AFL-CIO dated February 3, 2020; As You Sow dated February 3, 2020; Boston Common Asset Management dated February 3, 2020; Boston Trust Walden et al. dated January 27, 2020; CalPERS dated February 3, 2020; Ceres et al. dated February 3, 2020; John Chevedden dated January 30, 2020; Christian Brothers Investment Services, Inc. dated January 21, 2020; Council of Institutional Investors dated January 30, 2002; Figure 8 Investment Strategies dated January 31, 2020; First Affirmative Financial Network, LLC dated January 24, 2020; Harrington Investments, Inc. dated February 3, 2020; Interfaith Center on Corporate Responsibility dated January 27, 2020; International Brotherhood of Teamsters dated February 3, 2020; Local Authority Pension Fund Forum

proposed amendment, several expressed the view that such a requirement would not make companies more likely to engage with shareholders.[123] Some commenters also questioned the basis for and appropriateness of the 10 to 30 calendar-day window,[124] or suggested that requiring a statement of availability would impose a burden on shareholders.[125]

Several commenters raised questions about certain technical aspects of the proposal, such as whether the times specified for engagement should be during the company's normal business hours,[126] and when the 10 to 30 calendar-day period starts to run where co-filers submit their proposals on different dates.[127] One commenter stated that shareholder-proponents should be available to discuss the proposal, but encouraged the Commission to provide clarity as to whether the shareholder-proponent must identify a minimum number of dates and/or times that the proponent would be available to discuss the proposal, or whether the dates and/or times

---

dated February 3, 2020; Maryknoll Sisters of St. Dominic, Inc. dated January 17, 2020; Paul M. Neuhauser dated February 3, 2020; New York City Comptroller dated February 3, 2020; New York State Comptroller dated February 3, 2020; Nia Impact Capital dated February 2, 2020; NorthStar Asset Management, Inc. dated February 3, 2020; Pension Investment Association of Canada dated January 23, 2020; Paul Rissman dated January 15, 2020; Rockefeller Asset Management dated January 31, 2020; Segal Marco Advisors dated February 3, 2020; Shareholder Rights Group dated February 3, 2020; Singing Field Foundation dated January 31, 2020; State Board of Administration of Florida dated February 3, 2020; John Taylor dated November 14, 2019; Trillium Asset Management dated February 3, 2020; UAW Retiree Medical Benefits Trust dated January 30, 2020; Worker Owner Council of the Northwest dated February 3, 2020.

[123] See, e.g., letters from Council of Institutional Investors dated January 30, 2020; Local Authority Pension Fund Forum dated February 3, 2020; New York State Comptroller dated February 3, 2020; UAW Retiree Medical Benefits Trust dated January 30, 2020.

[124] See, e.g., letters from As You Sow dated February 3, 2020; Boston Trust Walden et al. dated January 27, 2020; Council of Institutional Investors dated January 30, 2020; Interfaith Center on Corporate Responsibility dated January 27, 2020.

[125] See, e.g., letters from Boston Trust Walden et al. dated January 27, 2020; John Chevedden dated January 30, 2020; UAW Retiree Medical Benefits Trust dated January 30, 2020.

[126] See letters from Center for Capital Markets Competitiveness dated January 31, 2020; Council of Institutional Investors dated January 30, 2020; Society for Corporate Governance dated February 3, 2020.

[127] See letter from Council of Institutional Investors dated January 30, 2020.

offered must be convenient to the company.[128] This commenter also suggested that a lack of clarity on these points could result in unnecessary no-action requests.[129]

A number of commenters stated that companies also should be required to be available to engage with the shareholder-proponent and/or to state that they attempted to engage with the proponent prior to submitting a no-action request.[130] Two commenters that were supportive of an engagement-related mechanism suggested that, instead of stating their availability to engage, shareholder-proponents should include a statement with their submission as to whether they attempted to engage with the company prior to submitting the proposal.[131] Another commenter indicated that a statement of general availability would be preferable.[132] Other commenters expressed the view that shareholder-proponents should be required to make a good-faith effort to meet with a company after stating their availability to engage,[133] or that there should be a penalty

[128] See letter from International Corporate Governance Network dated December 4, 2019. Another commenter also sought clarification on the ramifications of a shareholder being unable to meet on one of the dates the shareholder identifies. See letter from Boston Trust Walden et al. dated January 27, 2020.

[129] See letter from International Corporate Governance Network dated December 4, 2019.

[130] See letters from AFL-CIO dated February 3, 2020; CalPERS dated February 3, 2020; Ceres et al. dated February 3, 2020; Church Investor Group dated January 29, 2020; Council of Institutional Investors dated January 30, 2020; First Affirmative Financial Network, LLC dated January 24, 2020; Illinois State Treasurer dated January 16, 2020; International Brotherhood of Teamsters dated February 3, 2020; International Corporate Governance Network dated December 4, 2019; Local Authority Pension Fund Forum dated February 3, 2020; Loring, Wolcott & Coolidge dated January 31, 2020; James McRitchie dated February 2, 2020; Mercy Investment Services dated January 31, 2020; New York City Comptroller dated February 3, 2020; NorthStar Asset Management, Inc. dated February 3, 2020; Pension Investment Association of Canada dated January 23, 2020; Tom Shaffner dated December 17, 2019; Shareholder Rights Group dated February 3, 2020; State Board of Administration of Florida dated February 3, 2020; Trillium Asset Management dated February 3, 2020; US SIF dated January 31, 2020; Worker Owner Council of the Northwest dated February 3, 2020.

[131] See letters from Baillie Gifford & Co. dated February 3, 2020; Stewart Investors dated January 30, 2020.

[132] See letter from James McRitchie dated February 2, 2020.

[133] See letter from National Association of Manufacturers dated February 2, 2020.

for failing to engage.[134] Another commenter suggested that where the shareholder-proponent is different from the lead filer, the lead filer should be required to participate in the engagement.[135]

A number of commenters expressed concern about the requirement that the contact information and availability be the shareholder-proponent's, and not that of the shareholder's representative (if the shareholder uses a representative).[136] Some of these commenters suggested that this requirement would disadvantage shareholder-proponents who require a representative's assistance in utilizing and/or navigating the shareholder-proposal process.[137] Other commenters suggested that this requirement could have a chilling effect on shareholder-proposal submissions because shareholder-proponents may not feel comfortable engaging with companies themselves.[138] One commenter also expressed concern about a shareholder's private telephone

---

[134] See letters from Center for Capital Markets Competitiveness dated January 31, 2020; Nasdaq, Inc. dated February 3, 2020.

[135] See letter from Society for Corporate Governance dated February 3, 2020.

[136] See letters from Emily Aldridge dated January 31, 2020; Jennifer Astone dated January 17, 2020; Kate Barron-Alicante dated January 31, 2020; Jane Bulnes-Fowles dated February 3, 2020; Brian Canning January 31, 2020; Harvey Christensen dated January 28, 2020; Christian Brothers Investment Services, Inc. dated January 21, 2020; Clean Yield Asset Management dated February 3, 2020; Sara Culotta dated February 3, 2020; Daughters of Charity of St. Vincent de Paul dated January 30, 2020; John Eing dated January 31, 2020; Nancy Faris dated January 27, 2020; First Affirmative Financial Network, LLC dated January 24, 2020; Global Affairs Associates, LLC dated February 3, 2020; Gorge Sustainable Investing dated December 27, 2019; Green America et al. dated January 29, 2020; Patricia Hathaway dated January 31, 2020; Andrew Howard dated December 14, 2019; Neela Hummel dated January 31, 2020; Andrew Ish dated February 2, 2020; Brent Kessel dated January 31, 2020; Laird Norton Family Foundation dated January 28, 2020; Lynnea C. Lane dated February 3, 2020; James McRitchie dated February 2, 2020; Margaret Miars dated December 13, 2019; Thomas Miars dated December 13, 2019; Anne Miller dated January 23, 2020; Laura Morganelli dated January 31, 2020; Oneida Trust Enrollment Committee dated February 3, 2020; Pension Investment Association of Canada dated January 23, 2020; Rhia Ventures dated January 31, 2020; Cheryl Ritenbaugh dated January 17, 2020; Rockefeller Asset Management dated January 31, 2020; The Arntz Family Foundation dated January 14, 2020; The Pension Board – United Church of Christ, Inc. dated January 29, 2020; Upcyclers Network dated January 17, 2020; US SIF dated January 31, 2020; Luci Walker dated December 9, 2019; Barbara J. Wolf dated January 31, 2020; Ann W. Woll dated January 18, 2020.

[137] See, e.g., letters from Boston Trust Walden et al. dated January 27, 2020; Interfaith Center on Corporate Responsibility dated January 27, 2020; Singing Field Foundation dated January 31, 2020.

[138] See, e.g., letters from As You Sow dated February 3, 2020; Paul Rissman dated January 15, 2020.

number or email address being made public through the no-action process.[139] Another commenter indicated that the proposed amendment could indirectly raise costs on shareholders.[140]

3. Final Rule Amendment

We are adopting the amendment largely as proposed, but with some modifications in response to comments received. We believe that encouraging company-shareholder engagement through this new requirement will be beneficial both to shareholders and to companies. As we explained in the Proposing Release, while Rule 14a-8 provides a means for shareholder-proponents to advance proposals and solicit proxies from other shareholders, the rule is only one of many mechanisms for shareholders to engage with companies and their fellow shareholders and to advocate for the measures they propose. While other forms of engagement may sometimes accomplish a shareholder's interest in communicating with a company and its other shareholders without the burdens associated with including a proposal in a company's proxy statement, we understand that shareholder proposals are at times used as the sole method of engaging with companies even if the company is willing to discuss, and possibly resolve, the matter with the shareholder.[141] In those cases, Rule 14a-8 may result in a shareholder burdening other shareholders and the company with a proxy vote that may have been avoided had

---

[139] See letter from James McRitchie dated February 2, 2020.

[140] See Recommendation of the IAC, supra note 18.

[141] We recognize that some shareholder-proponents use a shareholder proposal as a way to open a dialogue with management and not with the objective of having the matter go to a vote. See Transcript of the Roundtable on the Proxy Process (Nov. 15, 2018) ("Roundtable Transcript"), available at https://www.sec.gov/files/proxy-round-table-transcript-111518.pdf, comments of Michael Garland, Assistant Comptroller, Corporate Governance and Responsible Investment, Office of the Comptroller, New York City.

meaningful prior engagement taken place.[142] We believe that having shareholder-proponents state their availability to discuss their proposal will facilitate dialogue between shareholders and companies in the shareholder-proposal process, and may lead to more efficient and less costly resolution of these matters. Company-shareholder engagement can thus be an efficient alternative to the shareholder-proposal process. We understand that proactive company engagement with shareholders has increased in recent years,[143] and that shareholders frequently do not submit, or ultimately withdraw, their proposals as a result of company-shareholder engagement.[144]

Under the amendment, shareholder-proponents will be required to provide the company with a written statement that they are able to meet with the company in person or via teleconference at specified dates and times that are no less than 10 calendar days, nor more than 30 calendar days, after submission of the proposal.[145] For example, for a proposal submitted on October 1, the shareholder-proponent would be required to identify dates of availability between

[142] We acknowledge that engagement outside the shareholder-proposal process can also result in burdens on companies, but our rules do not mandate that such activity occur.

[143] See letters in response to the Proxy Process Roundtable from Business Roundtable dated June 3, 2019; Chevron Corporation dated August 20, 2019; Society for Corporate Governance dated November 9, 2018.

[144] Company-shareholder engagement with respect to shareholder proposals frequently leads to withdrawn proposals. See, e.g., letters in response to the Proxy Process Roundtable from Everence Financial dated December 6, 2018 ("[A]n increasing number of resolutions end up being withdrawn by the proponent because of conversations between [the proponent] and the company."); Praxis Mutual Funds dated December 6, 2018 (same); Principles for Responsible Investment dated November 14, 2018 ("[A] growing number of shareholder proposals are withdrawn due to corporate management developing workable solutions with investors."). See also Proposing Release at 66478 fig.2.

[145] The contact information and availability will have to be the shareholder's, and not that of the shareholder's representative (if the shareholder uses a representative). The amendment, however, does not preclude a representative from participating in any discussions between the company and the shareholder. The proposal's date of submission is the date the proposal is postmarked or transmitted electronically. In the event the proposal is hand delivered, the submission date would be the date of hand delivery.

October 11 and October 31.[146] Although some commenters questioned the basis for this window of availability,[147] we believe that it is appropriate for several reasons. While we recognize the point made by commenters that some companies may choose not to engage until after the deadline for submitting proposals or later,[148] we believe that encouraging engagement shortly after submission can lead to swifter resolution of these matters and obviate the need for a no-action request. In this regard, we note that where a proposal is submitted at or near a company's deadline for receiving proposals, the company will have a relatively short amount of time to prepare and submit a no-action request.[149] Thus, early engagement may help avoid the time and expense of the no-action process. Nevertheless, the amended rule will not permit shareholders to identify availability earlier than 10 days after the proposal's submission, so that the company

[146] Companies that intend to seek exclusion under Rule 14a-8(b) based on a shareholder-proponent's failure to provide some or all of this information must notify the proponent of the specific defect(s) within 14 calendar days of receiving the proposal so that the shareholder-proponent has an opportunity to cure the defect(s), and the shareholder-proponent is required to respond to this notice within 14 days. See 17 CFR 240.14a-8(f)(1). Where a company sends a deficiency notice for the purpose of requesting identification of a shareholder-proponent's availability to engage, the shareholder-proponent must identify dates of the shareholder-proponent's availability that are within the remaining 10- to 30-day window. For example, where a proposal is submitted on October 1, the company's deficiency notice is received by the shareholder-proponent on October 15, and the shareholder-proponent responds to the deficiency notice by email on October 20, the shareholder-proponent would be required to identify business days between October 21 and October 31 that the shareholder-proponent is available to discuss the proposal.

[147] See, e.g., letters from As You Sow dated February 3, 2020; Boston Trust Walden et al. dated January 27, 2020; Council of Institutional Investors dated January 30, 2020; Interfaith Center on Corporate Responsibility dated January 27, 2020; New York City Comptroller dated February 3, 2020.

[148] See, e.g., letters from Boston Trust Walden et al. dated January 27, 2020; Interfaith Center on Corporate Responsibility dated January 27, 2020; UAW Retiree Medical Benefits Trust dated January 30, 2020.

[149] For a regularly-scheduled meeting, the deadline for submitting proposals is "120 calendar days before the date of the company's proxy statement released to shareholders in connection with the previous year's annual meeting." See 17 CFR 240.14a-8(e)(2). A company that intends to exclude a proposal "must file its reasons with the Commission no later than 80 calendar days before it files its definitive proxy statement and form of proxy with the Commission." If a proposal is received at or near the 120-day deadline and the company intends to file its definitive proxy statement at or near the anniversary of the prior year's proxy filing date, the company will generally have approximately 40 days from receiving the proposal to notify the Commission of its intention to exclude the proposal.

will have sufficient time to consider the proposal prior to engagement taking place.[150] In addition, shareholders may have a better sense of what their availability will be 10 to 30 days after submitting the proposal compared with longer periods. Moreover, shareholders have some degree of flexibility in choosing when to submit a proposal prior to the submission deadline and therefore can do so when they are more likely to have greater availability.

Shareholder-proponents will also be required to provide their contact information[151] and identify specific business days and times (i.e., more than one date and time) that they are available to discuss the proposal.[152] In response to commenters, we are modifying the final rule to clarify that the times specified should be during the regular business hours of the company's principal executive offices.[153] If these hours are not disclosed in the company's proxy statement,[154] the shareholder-proponent should identify times between 9:00 a.m. and 5:30 p.m. on business days in the time zone of the company's principal executive offices. If a company is not available to engage with the shareholder-proponent on the specific date(s) or time(s) originally identified by the shareholder-proponent, engagement may take place at a different date

---

[150] Although the rule will require shareholder-proponents to identify their availability within the 10- to 30-day window, the parties can arrange to engage on a date that is not within that window.

[151] In response to one commenter's concern regarding the potential for a shareholder's private contact information to be made publicly available through the no-action process, see letter from James McRitchie dated February 2, 2020, we note that Commission staff removes personally identifiable information from no-action requests and related correspondence before making these materials publicly available on the Commission's website.

[152] Where shareholders elect to co-file a proposal, all co-filers must either: (1) agree to the same dates and times of availability or (2) identify a single lead filer who will provide dates and times of the lead filer's availability to engage on behalf of all co-filers.

[153] See letters from Center for Capital Markets Competitiveness dated January 31, 2020; Council of Institutional Investors dated January 30, 2020; Society for Corporate Governance dated February 3, 2020.

[154] The Commission's proxy rules do not require issuers to disclose this information, but companies may choose to do so to facilitate shareholder engagement with respect to shareholder proposals. If an issuer chooses to disclose this information, we suggest that it appear alongside the deadline for submitting proposals.

and/or time, provided that it is acceptable to both the shareholder-proponent and company. If the shareholder-proponent's availability changes, the company should be notified and alternative date(s) and time(s) should be provided to the company.

We do not agree with the commenter who suggested that providing a general statement of the shareholder-proponent's availability would be preferable to identifying specific dates and times.[155] While a general statement of availability could indicate a shareholder-proponent's willingness to engage, the identification of specific dates and times would add certainty as to the shareholder-proponent's availability, and we believe that engagement may be more likely to occur where the company knows the shareholder-proponent's availability in advance.

The contact information and availability must be the shareholder-proponent's, and not that of the shareholder's representative, if any.[156] We do not agree with commenters who suggested that this requirement will disadvantage shareholder-proponents who require a representative's assistance in navigating the shareholder-proposal process.[157] We believe that a shareholder-proponent who elects to require a company to include a proposal in its proxy statement, requiring the company and other shareholders to bear the related costs, should be willing and available to discuss the proposal with the company and not simply rely on its representative to do so. At least one commenter suggested that shareholders could incur greater

---

[155] See letter from James McRitchie dated February 2, 2020.

[156] Where a shareholder-proponent is an entity, and thus can act only through an agent, and the agent's authority to act is apparent and self-evident such that a reasonable person would understand that the agent has authority to act on the entity's behalf, the contact information and availability may be that of the agent. Cf. supra Section II.B.3.

[157] See, e.g., letters from Boston Trust Walden et al. dated January 27, 2020; Interfaith Center on Corporate Responsibility dated January 27, 2020; Singing Field Foundation dated January 31, 2020.

costs as a result of the proposed amendment,[158] but we believe any cost will be de minimis given that engagement can take place through inexpensive means, such as teleconference calls.

We also believe that the ability to engage directly with the shareholder-proponent may encourage greater dialogue between the shareholder and the company, and may lead to more efficient and less costly resolution of these matters. As explained in the Proposing Release, however, shareholder-proponents may seek assistance and advice from lawyers, investment advisers, or others to help them draft shareholder proposals and navigate the shareholder-proposal process.[159] The shareholder-proponent's representative also may participate in any discussions between the company and the shareholder.[160] Thus, shareholder-proponents will be able to continue to seek and utilize the assistance of a representative.

Other than providing the clarifications discussed above, we are not making any changes to what we proposed. For example, we are not adopting a requirement suggested by commenters that shareholder-proponents include a statement with their submission as to whether they attempted to engage with the company prior to submitting the proposal.[161] The company will already know whether the shareholder attempted to engage prior to submission and the statement suggested by the commenter would not be available to other shareholders. Thus, there would be minimal value associated with providing such a statement.[162] To the extent engagement takes

---

[158] See Recommendation of the IAC, supra note 18.

[159] See Proposing Release at 66468.

[160] See supra note 145.

[161] See letters from Baillie Gifford & Co. dated February 3, 2020; Stewart Investors dated January 30, 2020.

[162] One commenter expressed the view that this information "would allow other shareholders to assess the attitude of the proponent and the company to the issue and to engagement generally." See letter from Baillie Gifford & Co. dated February 3, 2020. However, it is unclear how other shareholders would learn of this information absent imposing a new disclosure requirement on issuers, which we are not inclined to do at this time.

place prior to a proposal's submission, the new rule will encourage further dialogue between the shareholder-proponent and company after submission. In addition, although some commenters stated that shareholders should be required to make a good-faith effort to meet with a company after stating their availability to engage,[163] or that there should be a penalty for failing to engage,[164] the rule will not impose requirements governing specific engagement activities between the shareholder-proponent and the company.

Under the new rule, companies will not be required to engage with a shareholder-proponent or to state that they attempted to engage with the shareholder-proponent prior to submitting a no-action request, as some commenters suggested.[165] Because companies and their shareholders bear the burdens associated with including a shareholder proposal in their proxy materials, or seeking no-action relief to exclude such proposals, we believe companies are sufficiently incentivized to pursue less costly forms of engagement.

In light of a shareholder-proponent's election to use a company's proxy statement and other resources to solicit proxies for his or her proposal, we believe it is appropriate to require shareholder-proponents to state their availability to discuss the proposal with the company.

---

[163] See letter from National Association of Manufacturers dated February 2, 2020.

[164] See letters from Center for Capital Markets Competitiveness dated January 31, 2020; Nasdaq, Inc. dated February 3, 2020.

[165] See letters from AFL-CIO dated February 3, 2020; CalPERS dated February 3, 2020; Ceres et al. dated February 3, 2020; Church Investor Group dated January 29, 2020; Council of Institutional Investors dated January 30, 2020; First Affirmative Financial Network, LLC dated January 24, 2020; Illinois State Treasurer dated January 16, 2020; International Brotherhood of Teamsters dated February 3, 2020; International Corporate Governance Network dated December 4, 2019; Local Authority Pension Fund Forum dated February 3, 2020; Loring, Wolcott & Coolidge dated January 31, 2020; James McRitchie dated February 2, 2020; Mercy Investment Services dated January 31, 2020; New York City Comptroller dated February 3, 2020; NorthStar Asset Management, Inc. dated February 3, 2020; Pension Investment Association of Canada dated January 23, 2020; Tom Shaffner dated December 17, 2019; Shareholder Rights Group dated February 3, 2020; State Board of Administration of Florida dated February 3, 2020; Trillium Asset Management dated February 3, 2020; US SIF dated January 31, 2020; Worker Owner Council of the Northwest dated February 3, 2020.

Although some commenters questioned whether such a requirement would make it more likely that companies would choose to engage with shareholders,[166] we believe that the amendment is likely to eliminate certain frictions in the engagement process, thereby making it easier for companies to contact shareholders and, in turn, increasing the likelihood that engagement will occur.

D. One-Proposal Limit

1. Proposed Rule Amendment

We proposed an amendment to Rule 14a-8(c) to apply the one-proposal rule to "each person" rather than "each shareholder" who submits a proposal, so that the amended rule would state, "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." In the Proposing Release, we explained that under the proposed amendment, a shareholder-proponent would not be permitted to submit one proposal in its own name and simultaneously serve as a representative to submit a different proposal on another shareholder's behalf for consideration at the same meeting. Similarly, we explained that a representative would not be permitted to submit more than one proposal to be considered at the same meeting, even if the representative were to submit each proposal on behalf of different shareholders.

[166] See, e.g., letters from Council of Institutional Investors dated January 30, 2020; Local Authority Pension Fund Forum dated February 3, 2020; New York State Comptroller dated February 3, 2020.

2. Comments on the Proposed Rule Amendment

We received a number of comments on the proposed rule amendment. Commenters that expressed support for the proposed amendment indicated that such an amendment is necessary to prevent proponents from avoiding the one-proposal limit by submitting proposals on behalf of other shareholders.[167] However, a number of commenters that opposed the proposed amendment stated that it would interfere with a shareholder's ability to use a representative under state law and/or interfere with a representative's ability to effectively represent its clients.[168] For example,

---

[167] See letters from Business Roundtable dated February 3, 2020; Center for Capital Markets Competitiveness dated January 31, 2020; Senator Kevin Cramer dated July 28, 2020; Energy Infrastructure Council dated February 3, 2020; Exxon Mobil Corporation dated February 3, 2020; General Motors Company dated February 25, 2020; International Bancshares Corporation dated January 23, 2020; Manhattan Institute for Policy Research dated February 3, 2020; Nareit dated February 3, 2020; Nasdaq, Inc. dated February 3, 2020; National Association of Manufacturers dated February 3, 2020; Robeco dated January 16, 2002; Society for Corporate Governance dated February 3, 2020.

[168] See letters from AFL-CIO dated February 3, 2020; Emily Aldridge dated January 31, 2020; American Baptist Home Mission Societies dated January 31, 2020; Jennifer Astone dated January 17, 2020; As You Sow dated February 3, 2020; Kate Barron-Alicante dated January 31, 2020; Boston Trust Walden et al. dated January 31, 2020; Boston Trust Walden et al. dated January 27, 2020; British Columbia Investment Management Corporation dated February 3, 2020; Jane Bulnes-Fowles dated February 3, 2020; CalPERS dated February 3, 2020; Brian Canning dated January 31, 2020; Ceres et al. dated February 3, 2020; Christian Brothers Investment Services, Inc. dated January 21, 2020; Colorado Public Employees' Retirement Association dated February 3, 2020; Professor James D. Cox, et al. dated February 2, 2020; East Bay Municipal Utility District Employees' Retirement System dated January 15, 2020; John Eing dated January 31, 2020; Harold Erdman dated February 3, 2020; Figure 8 Investment Strategies dated January 31, 2020; Franciscan Sisters of Allegany, NY dated January 29, 2020; Global Affairs Associates, LLC dated February 3, 2020; Harrington Investments, Inc. dated February 3, 2020; Neela Hummel dated January 31, 2020; Interfaith Center on Corporate Responsibility dated January 27, 2020; International Brotherhood of Teamsters dated February 3, 2020; Andrew Ish dated February 2, 2020; Jayce Jordan dated January 17, 2020; Brent Kessel dated January 31, 2020; Laird Norton Family Foundation dated January 28, 2020; Local Authority Pension Fund Forum dated February 3, 2020; James McRitchie dated February 2, 2020; James McRitchie dated July 21, 2020; Mercy Investment Services, Inc. dated January 31, 2020; Laura Morganelli dated January 31, 2020; National Conference on Public Employee Retirement Systems dated February 3, 2020; Paul M. Neuhauser dated February 3, 2020; North American Securities Administrators Association, Inc. dated February 3, 2020; Pension Investment Association of Canada dated January 23, 2020; PNM Shareholders for a Responsible Future dated February 3, 2020; Paul Rissman dated January 15, 2020; Cheryl Ritenbaugh dated January 17, 2020; School Sisters of Notre Dame Cooperative Investment Fund received January 24, 2020; Segal Marco Advisors dated February 3, 2020; Shareholder Rights Group dated February 3, 2020; Sisters of St. Ursula dated January 23, 2020; Sisters of the Order of St. Dominic dated January 24, 2020; State Board of Administration of Florida dated February 3, 2020; The Arntz Family Foundation dated January 15, 2020; The Pension Board – United Church of Christ, Inc. dated January 29, 2020; Trillium Asset Management dated February 3, 2020; Upcyclers Network dated January 17, 2020; Barbara J. Wolf dated January 31, 2020; Ann W. Woll dated January 18, 2020. See also Recommendation of the IAC, supra note 18.

some of these commenters stated that the proposed amendment could prevent a shareholder-proponent from using his or her preferred representative if that representative has already submitted a proposal to the same company on behalf of another client,[169] prevent a representative from being able to represent a client in the shareholder-proposal process,[170] raise costs for shareholder-proponents,[171] or affect the competitive advantage of representatives that specialize in active engagement.[172] Another commenter stated that the proposed amendment "may limit the ability of institutional investors to select the agent of their own choosing to represent them for shareholder engagement purposes."[173]

Other commenters sought clarification with respect to the proposed rule's intended operation, or suggested modifications to the proposed amendments. For example, some commenters questioned whether the proposal would affect a representative's ability to present proposals on behalf of multiple shareholder-proponents at the shareholder meeting.[174] One of these commenters also sought clarification on whether the proposed rule's reference to "person" means a natural person or encompasses discrete entities made up of or employing multiple

---

[169] See letters from AFL-CIO dated February 3, 2020; Boston Trust Walden et al. dated January 27, 2020; Professor James D. Cox et al. dated February 2, 2020; James McRitchie dated February 2, 2020; Paul M. Neuhauser dated February 3, 2020; Shareholder Rights Group dated June 10, 2020.

[170] See letters from Segal Marco Advisors dated February 3, 2020; Trillium Asset Management dated February 3, 2020.

[171] See letters from Tom Shaffner dated December 17, 2019; Trillium Asset Management dated February 3, 2020. See also Recommendation of the IAC, supra note 18.

[172] See letter from Shareholder Rights Group dated February 3, 2020.

[173] See Recommendation of the IAC, supra note 18.

[174] See letters from AFL-CIO dated February 3, 2020; As You Sow dated February 3, 2020; Boston Trust et al. Walden dated January 31, 2020; CalPERS dated February 3, 2020; Domini Impact Investments dated February 3, 2020; New York City Comptroller dated February 3, 2020; New York State Comptroller dated February 3, 2020; PNM Shareholders for a Responsible Future dated February 3, 2020; Shareholder Rights Group dated February 3, 2020; Unitarian Universalist Association dated January 28, 2020.

natural persons, and whether co-filers of a single proposal would be precluded from using the same representative.[175] Another commenter suggested a modification to the proposed amendment that would require shareholders to certify that a proposal was submitted of their own accord and not at the request or solicitation of a representative that already submitted (or is considering submitting) a proposal to the same company.[176] This commenter stated that "[s]uch a certification would provide greater assurance that representatives are not actively soliciting multiple proposals and reduce the chances for abuse."[177]

3. Final Rule Amendment

We are adopting the amendment as proposed. As the Commission explained when it adopted the one-proposal restriction in 1976, the submission of multiple proposals by a single proponent "constitute[s] an unreasonable exercise of the right to submit proposals at the expense of other shareholders" and also may "tend to obscure other material matters in the proxy statement of issuers, thereby reducing the effectiveness of such documents."[178] At the time the one-proposal limitation was adopted, the Commission explained that it was "aware of the possibility that some proponents may attempt to evade the new limitations through various maneuvers, such as having other persons whose securities they control submit . . . proposals each in their own names."[179] To combat this type of abuse, the Commission clarified that the

---

[175] See letter from Boston Trust Walden et al. dated January 27, 2020.

[176] See letter from Society for Corporate Governance dated February 3, 2020.

[177] Id.

[178] See 1976 Adopting Release, supra note 88.

[179] Id.

limitation "will apply collectively to all persons having an interest in the same securities (e.g., the record owner and the beneficial owner, and joint tenants)."[180]

We continue to believe that this one-proposal limit is appropriate. In our view, the Commission's stated reasoning for the one-proposal limit applies equally to representatives who submit proposals on behalf of shareholders they represent. We believe permitting representatives to submit multiple proposals for the same shareholders' meeting can give rise to the same concerns about the expense and obscuring effect of including multiple proposals in the company's proxy materials, thereby undermining the purpose of the one-proposal limit.

Accordingly, the new rule will state that each person may submit no more than one proposal, directly or indirectly, to a company for a particular shareholders' meeting. It also will state that 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. Under the new rule, a shareholder-proponent will not be permitted to submit one proposal in his or her own name and simultaneously serve as a representative to submit a different proposal on another shareholder's behalf for consideration at the same meeting. Likewise, a representative will not be permitted to submit more than one proposal to be considered at the same meeting, even if the representative were to submit each proposal on behalf of different shareholders. Using the rule in this way undermines the one-proposal limit. The amended rule text will more effectively apply the one-proposal limit to shareholders and representatives of shareholders.

[180] Id. This limitation will continue to apply under the adopted amendments.

While some commenters expressed concern about the effect the amended rule could have on a shareholder's ability to use a representative or a representative's ability to effectively represent its clients,[181] the 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, nor do we believe it would interfere with a representative's ability to effectively represent its clients. The ability to provide such assistance to more than one shareholder is not affected. However, to the extent that the provider of such services submits a proposal, either as a proponent or as a representative, it will be subject to the one-proposal limit and will not be permitted to submit more than one proposal in total to the same company for the same meeting. In addition, we do not believe, as suggested by commenters,[182] that the amended rule will raise costs to a meaningful degree for shareholder-proponents or otherwise unduly restrict their options in selecting a representative because, while in some cases shareholder-proponents may need to submit a proposal on their own, they can otherwise enjoy all of the benefits of being represented by a representative of their choosing. For example, if a shareholder's representative of choice is unable to submit a proposal for the shareholder, because it has already made a submission on behalf of another client, the representative could still assist the shareholder with drafting the proposal, advising on steps in the submission process, and engaging with the company. For similar reasons, we do not agree that the rule will affect the competitive advantage of representatives that specialize in active

[181] See supra note 168.

[182] See letter from Trillium Asset Management dated February 3, 2020. See also Recommendation of the IAC, supra note 18.

engagement.[183] Nor do we agree that state agency law should govern the number of proposals a representative may submit on behalf of proponents when proponents and agents seek to make use of the opportunities afforded by the federal proxy rules.[184]

Some commenters questioned whether the amendment, which addresses the submission of proposals, would affect a representative's ability to present proposals on behalf of multiple shareholder-proponents at the same shareholders' meeting.[185] In order for shareholder-proponents who have submitted a proposal for inclusion in a company's proxy statement to remain eligible to do so at the same company within the following two years, shareholder-proponents must appear at the meeting and present their proposal.[186] However, a shareholder-proponent may satisfy this requirement by employing a representative who is qualified under state law to present the proposal on the proponent's behalf. The amendment is not intended to limit a representative's ability to present proposals on behalf of multiple shareholders at the same shareholders' meeting. The conduct of shareholder meetings, including how proposals are presented, is generally governed by state law, and does not raise the same concerns that are raised by a proponent's use of a company's proxy statement under the federal proxy rules. We believe that compliance with the substantive eligibility requirements of amended Rule 14a-8(c) will appropriately address the concerns we have with respect to the one-proposal limit, and we

---

[183] Cf. letter from Shareholder Rights Group dated February 3, 2020.

[184] See letter from CalPERS dated February 3, 2020.

[185] See letters from AFL-CIO dated February 3, 2020; As You Sow dated February 3, 2020; Boston Trust Walden et al. dated January 31, 2020; CalPERS dated February 3, 2020; Domini Impact Investments dated February 3, 2020; New York City Comptroller dated February 3, 2020; New York State Comptroller dated February 3, 2020; PNM Shareholders for a Responsible Future dated February 3, 2020; Shareholder Rights Group dated February 3, 2020; Unitarian Universalist Association dated January 28, 2020.

[186] 17 CFR 240.14a-8(h).

do not believe that the designation of a representative for the purpose of presenting a proposal at the shareholder meeting raises similar concerns.[187]

In response to certain commenters,[188] we note that under the final amendment, entities and all persons under their control, including employees, will be treated as a "person" for purposes of the amendment. As such, if an investment adviser at Advisory Firm A submits a proposal on behalf of a shareholder-proponent to Company Y, neither that investment adviser nor any other adviser at Advisory Firm A would be permitted to submit a proposal on behalf of a different shareholder-proponent at Company Y for the same meeting. However, the amendment will not prohibit a single representative from representing multiple co-filers in connection with the submission of a single shareholder proposal. Where multiple shareholders co-file a proposal, the company receives only one proposal and, therefore, the submission does not raise the types of concerns that Rule 14a-8(c) is intended to address.

We are not adopting a commenter's suggestion to require shareholders to certify that the proposal has been submitted of their own accord and not at the request or solicitation of a representative that already has submitted (or is considering submitting) a proposal to the same company.[189] We believe that the representations in Rule 14a-8(b)(1)(iv) will provide a meaningful degree of assurance as to the shareholder-proponent's identity, role, and interest in a

---

[187] The Commission has previously stated that allowing a representative to present a proposal on a shareholder's behalf "should provide greater assurance that the proposal will be presented at the meeting and that the proposal will be presented by a well-informed person." See 1982 Proposing Release, supra note 2. Thus, it may be important at a shareholders' meeting to ensure that a proposal is presented in accordance with state law by a well-informed person, and the use of a representative for this purpose with respect to multiple proposals does not "constitute an unreasonable exercise of the right to submit proposals at the expense of other shareholders" or "tend to obscure other material matters in the proxy statement of issuers, thereby reducing the effectiveness of such documents." Cf. 1976 Adopting Release, supra note 88.

[188] See letter from Boston Trust Walden et al. dated January 27, 2020. See also Recommendation of the IAC, supra note 18.

[189] See letter from Society for Corporate Governance dated February 3, 2020.

proposal that is submitted for inclusion in a company's proxy statement and that, therefore, the certification suggested by the commenter is unnecessary.

E. Resubmission Thresholds

1. Proposed Rule Amendment

We proposed to amend the resubmission thresholds under Rule 14a-8(i)(12); specifically, we proposed to replace the thresholds of 3, 6, and 10 percent with thresholds of 5, 15, and 25 percent, respectively. Under the proposed amendment, a shareholder proposal would be excludable from a company's proxy materials if it addressed substantially the same subject matter as a proposal, or proposals, previously included in the company's proxy materials within the preceding five calendar years if the most recent vote occurred within the preceding three calendar years and the most recent vote was:

- Less than 5 percent of the votes cast if previously voted on once;
- Less than 15 percent of the votes cast if previously voted on twice; or
- Less than 25 percent of the votes cast if previously voted on three or more times.

We did not propose changes to the "substantially the same subject matter" test, which focuses on the substantive concerns addressed by a proposal rather than the "specific language or actions proposed to deal with those concerns,"[190] or the duration of the cooling-off period. We did, however, seek comment on whether a change to the "substantially the same subject matter" standard was necessary or appropriate in light of the proposed amendments to the resubmission thresholds and whether to amend the duration of the cooling-off period.[191]

---

[190] See Proposing Release at 66471 n.115 (citing 1983 Adopting Release).

[191] See Proposing Release at 66473.

2. Comments on the Proposed Rule Amendment

Commenters expressed a wide range of views on the proposed rule amendment. Commenters that expressed support for the proposed amendment indicated that it would reduce the burden on shareholders and companies associated with resubmitted proposals and allow for exclusion of proposals that are unlikely to earn majority support in the near term.[192] Several commenters that were supportive of the proposed amendment expressed a preference for resubmission thresholds that are higher than those that were proposed.[193] A few of these commenters indicated that higher thresholds would be preferable in light of the influence proxy voting advice businesses have in the shareholder voting process.[194]

A number of commenters expressed concern that the new thresholds would stifle or delay adoption of shareholder-initiated reforms to the extent shareholder support develops gradually over time.[195] Other commenters expressed the view that the current resubmission thresholds are

---

[192] See letters from American Securities Association dated February 3, 2020; Business Roundtable dated February 3, 2020; Center for Capital Markets Competitiveness dated January 31, 2020; Senator Kevin Cramer dated July 28, 2020; Energy Infrastructure Council dated February 3, 2020; Exxon Mobil Corporation dated February 3, 2020; FedEx Corporation dated February 3, 2020; Fidelity Management & Research LLC dated February 3, 2020; Senator Phil Gramm dated January 29, 2020; International Bancshares Corporation dated February 3, 2020; Investment Company Institute dated February 3, 2020; Manhattan Institute for Policy Research dated February 3, 2020; Nareit dated February 3, 2020; Nasdaq, Inc. dated February 3, 2020; National Association of Manufacturers dated February 3, 2020; Society for Corporate Governance dated February 3, 2020.

[193] See letters from Business Roundtable dated February 3, 2020 (supporting thresholds at 6%, 15%, and 30%); Exxon Mobil Corporation dated February 3, 2020 (supporting thresholds at 10%, 25%, and 50%); FedEx Corporation dated February 3, 2020 (supporting thresholds at 6%, 15%, and 30%); General Motors Company dated February 25, 2020 (supporting thresholds at 6%, 15%, and 30%); Nasdaq, Inc. dated February 3, 2020 (supporting thresholds at 6%, 15%, and 30%); Society for Corporate Governance dated February 3, 2020 (supporting thresholds at 6%, 15%, and 30%).

[194] See letters from Business Roundtable dated February 3, 2020; Exxon Mobil Corporation dated February 3, 2020; Society for Corporate Governance dated February 3, 2020.

[195] See, e.g., letters from ACTIAM dated November 21, 2019; AFL-CIO dated February 3, 2020; ARGA Investment Management dated December 12, 2019; BC Target Benefit Pension Plan dated November 28, 2019; Senator Sherrod Brown dated August 21, 2020; CalPERS dated February 3, 2020; Congregation of St. Basil dated December 15, 2019; Council of Institutional Investors et al. dated July 29, 2020; Dominican Sisters of Springfield Illinois dated January 9, 2020; Form Letter Type A; Franciscan Sisters of Allegany, NY dated December 9, 2019; Franciscan Sisters of Perpetual Adoration dated December 6, 2019; International Corporate Governance Network

effective even though they may not have the same effect on resubmissions as when initially adopted.[196]

Two commenters that expressed concern about the effects of the proposed thresholds suggested alternative thresholds of 3, 10, and 15 percent or 5, 10, and 15 percent, respectively, if the Commission decided to revise the thresholds.[197] Another commenter stated that thresholds of 5, 7, and 10 percent would be preferable to the proposed thresholds.[198]

A number of commenters expressed the view that the proposed amendment would have a more pronounced effect at companies with dual-class voting structures,[199] and several

---

dated December 4, 2019; Jesuit Conference of Canada and the United Stated dated December 2, 2019; Lancaster Theological Seminary dated November 19, 2019; Maryknoll Fathers and Brothers dated December 5, 2019; Maryland and USA Northeast Province of the Society of Jesus dated December 19, 2019; Miller/Howard Investments dated January 3, 2020; New York State Comptroller dated February 3, 2020; Northwest Coalition for Responsible Investment dated January 27, 2020; Province of St. Joseph of the Capuchin Order dated December 9, 2019; Shareholder Rights Group dated January 6, 2020; Shareholder Rights Group dated June 10, 2020; Sisters of Bon Secours USA dated January 10, 2020; Sisters of Charity of the Blessed Virgin Mary dated November 21, 2019; Sisters of Mount St. Scholastica dated November 26, 2019; Sisters of the Precious Blood dated November 25, 2019; Ursuline Convent of the Sacred Heart, Toledo, OH dated November 26, 2019; Zevin Asset Management dated November 27, 2019. Some of these commenters cited proposals dealing with board declassification, climate change, and human rights risks as examples of proposals that took time to garner broader shareholder support. See, e.g., letters from ACTIAM dated November 21, 2019; BC Target Benefit Pension Plan dated November 28, 2019; Congregation of St. Basil dated December 15, 2019; Franciscan Sisters of Perpetual Adoration dated December 6, 2019; Lancaster Theological Seminary dated November 19, 2019; Maryknoll Fathers and Brothers dated December 5, 2019; Province of St. Joseph of the Capuchin Order dated December 9, 2019; Sisters of Bon Secours USA dated January 10, 2020; Sisters of Charity of the Blessed Virgin Mary dated November 21, 2019; Sisters of Mount St. Scholastica dated November 26, 2019; Sisters of the Precious Blood dated November 25, 2019; Zevin Asset Management dated November 27, 2019. For example, some commenters noted that proposals addressing declassified boards received less than 10% support in 1987 and 81% in 2012, and proposals addressing climate change received less than 5% support in 1998 and now receive "substantial, and even majority shareholder votes." See, e.g., letters from ACTIAM dated November 21, 2019; AEquo et al. dated January 28, 2020; Church Investment Group dated January 29, 2020; Rockefeller Asset Management dated January 31, 2020.

[196] See, e.g., letter from Segal Marco Advisors dated February 3, 2020. See also Recommendation of the IAC, supra note 18.

[197] See letters from CalPERS dated February 3, 2020; Washington State Investment Board dated January 22, 2020.

[198] See letter from British Columbia Investment Management Corporation dated February 3, 2020.

[199] See letters from AFL-CIO dated February 3, 2020; Boston Trust Walden et al. dated January 31, 2020; CFA Institute dated February 3, 2020; Connecticut State Treasurer dated January 31, 2020; Council of Institutional Investors dated January 30, 2020; Council of Institutional Investors et al. dated July 29, 2020; Representative Bill Foster et al. dated January 31, 2020; Friends Fiduciary Corporation dated February 2, 2020; Illinois State Treasurer

commenters recommended adopting alternative vote-counting methodologies for companies with these voting structures.[200]

Several commenters expressed the view that the level of shareholder support is not the sole or most appropriate measure or indication of a proposal's success.[201] These commenters suggested that a proposal may be considered successful if it leads to a settlement with management—regardless of shareholder support—or raises management's awareness about an issue.[202] Two commenters suggested adopting an exception that would apply in the event of a change in circumstances that would warrant resubmission.[203]

3. Final Rule Amendment

After considering the comments, we are adopting the amendment as proposed. Under amended Rule 14a-8(i)(12), a shareholder proposal will be excludable from a company's proxy materials if it addresses substantially the same subject matter as a proposal, or proposals, previously included in the company's proxy materials within the preceding five calendar years if

---

dated January 16, 2020; International Brotherhood of Teamsters dated February 3, 2020; International Corporate Governance Network dated December 4, 2019; Loring, Wolcott & Coolidge dated January 31, 2020; New York State Comptroller dated February 3, 2020; Shareholder Association for Research & Education dated January 30, 2020; Trillium Asset Management dated February 3, 2020.

[200] See letters from AFL-CIO dated February 3, 2020; Council of Institutional Investors dated January 30, 2020; Interfaith Center on Corporate Responsibility dated January 27, 2020; International Corporate Governance Network dated December 4, 2019; New York State Comptroller dated February 3, 2020; NorthStar Asset Management, Inc. dated February 3, 2020.

[201] See, e.g., letters from CalPERS dated February 3, 2020; Center for Political Accountability dated January 31, 2020; Council of Institutional Investors dated January 30, 2020; New York City Comptroller dated February 3, 2020; UAW Retiree Medical Benefits Trust dated January 30, 2020. See also Recommendation of the IAC, supra note 18.

[202] Id.

[203] See letters from Baillie Gifford & Co. dated February 3, 2020; Hal S. Scott dated January 6, 2020.

the most recent vote occurred within the preceding three calendar years and the most recent vote was:

- Less than 5 percent of the votes cast if previously voted on once;
- Less than 15 percent of the votes cast if previously voted on twice; or
- Less than 25 percent of the votes cast if previously voted on three or more times.[204]

In the Proposing Release, we expressed a concern that the current resubmission thresholds of 3, 6, and 10 percent do not adequately distinguish between proposals that are more likely to obtain broader or majority support upon resubmission and those that are not.[205] As such, we were concerned that the thresholds may not be functioning effectively to relieve companies and their shareholders of the obligation to consider, and spend resources on, matters that had previously been voted on and rejected by a substantial majority of shareholders without sufficient indication that a proposal could gain traction among the broader shareholder base in the near future. As a result, company and shareholder resources may end up being used to consider and vote on matters that are unlikely to be supported by shareholders. In the Proposing Release, we also noted that "the current thresholds may not have the same effect today on resubmissions as they did when they were initially adopted."[206] Several commenters questioned the relevance of the rate of exclusion over time.[207] While the resubmission thresholds are not

[204] When calculating the voting results for purposes of applying this rule, only votes for and against a proposal should be included in the calculation. Abstentions and broker non-votes should not be included. In addition, voting results should not be rounded up for purposes of determining whether the resubmission thresholds have been met. For example, a voting result of 4.85% should not be rounded up to 5%.

[205] See Proposing Release at 66470–66471.

[206] Id. at 66471.

[207] See supra note 196.

calibrated to achieve a specific rate of exclusion, we remain concerned that the current resubmission thresholds do not adequately distinguish between proposals that have a realistic prospect of obtaining broader or majority support in the near term and those that do not. The final amendments to the resubmission thresholds are intended to better achieve this purpose.

We recognize that some proposals may benefit from resubmission, among other factors, to obtain broader or majority support. However, we do not believe that companies and other shareholders should repeatedly bear the costs of proposals that have not demonstrated the potential of obtaining broader or majority support in the near term absent a significant change in circumstances. Moreover, if a proposal fails to generate meaningful support on its first submission, and is unable to generate significantly increased support upon resubmission, it is unlikely that the proposal will earn the support of a majority of shareholders in the near term.[208] Thus, in our view, a proposal that is unable to obtain the support of at least 1 in 20 shareholders on the first submission, 3 in 20 on the second submission, or 1 in 4 by the third submission should be subject to a temporary cooling-off period to help ensure that the inclusion of such proposals does not result in undue burdens on shareholders and companies. After the temporary cooling-off period, the proposal could once again be submitted to the company.

We recognize that initial levels of shareholder support may not always predict how shareholders will vote on an issue in the future. Nevertheless, we remain concerned that obtaining support of 3, 6, or 10 percent on a first, second, or third submission, respectively, does not demonstrate sufficient shareholder support, or a sufficient increase toward greater support, to

[208] Based on our review of shareholder proposals that received a majority of the votes cast between 2011 and 2018, approximately 90% received such support on the first submission. Of the remaining 10%, 60% received 40% or more of the votes cast on the initial submission. See Proposing Release at Section IV.B.3.iv.

warrant resubmission. Under the current thresholds, at least 90 percent of proposals remain eligible for resubmission.[209] These resubmitted proposals have been permitted even though, according to our analysis, only approximately 6.5 percent of proposals that fail to win majority support the first time go on to pass in a subsequent attempt.[210] Accordingly, it appears that under the current thresholds, the vast majority of shareholder proposals remain eligible for resubmission regardless of their likelihood of gaining broader or majority shareholder support, at least in the near term, requiring companies and shareholders to continually expend resources and consider proposals with minimal likelihood of success. In contrast, the new thresholds are designed to serve as better indicators of a proposal's path toward potentially greater shareholder support.

We note that some commenters indicated that achieving majority support is not the sole or most appropriate way to measure the success of a proposal.[211] In this regard, we believe that the new thresholds may also serve as better indicators of the likelihood that a proposal will result in an agreement between the company and the shareholder-proponent or raise management's awareness of an issue. For example, one observer posited that "[t]hirty-percent support is the level at which many boards take note of a proposal topic" and that "at 50% support, if the board is deemed to take insufficient action in response, many investors will consider voting against

---

[209] See Proposing Release at tbl.3.

[210] One commenter questioned the appropriateness of the baseline of 6.5%, stating, "The willingness of boards to implement proposals that a majority of shareholders will support means that the total universe of majority vote proposals is unobservable. Accordingly, the 6.5 percent of resubmitted proposals that go on to receive majority support is the wrong baseline for consideration." See letter from AFL-CIO dated February 3, 2020. The baseline represents observable data and we believe it would be speculative to categorize implemented proposals that had not received majority support as "majority vote" proposals.

[211] See, e.g., letters from CalPERS dated February 3, 2020; Center for Political Accountability dated January 31, 2020; Council of Institutional Investors dated January 30, 2020; New York City Comptroller dated February 3, 2020; UAW Retiree Medical Benefits Trust dated January 30, 2020.

incumbent directors at the next annual meeting."[212] We believe a proposal that satisfies the new thresholds will more likely be on a path toward broader support and, therefore, may be more likely to result in an agreement between the company and the shareholder-proponent or raise management's awareness of an issue. Moreover, we do not believe that a proposal must be resubmitted year after year to gain broader shareholder support or result in an agreement between the company and the shareholder-proponent.

While some commenters suggested higher or lower resubmissions thresholds, such that the amendments would potentially exclude more or fewer shareholder proposals, and recognizing that, for a particular proposal, any generally applicable threshold has the potential to be over- or under-inclusive, we believe the proposed amendments appropriately calibrate the resubmission criteria, taking into account the costs to companies and shareholders of responding to proposals that do not garner significant shareholder support and are unlikely to do so in the near future and the benefits to companies and their shareholders of facilitating an individual shareholder's ability to engage with a company and other shareholders on successive occasions through the shareholder-proposal process.

The amendments represent a modest increase to the initial resubmission threshold, and more significant increases to the second and third thresholds. As a result, there will be a 10 percentage point spread between the first and second threshold and between the second and third threshold. We believe that the more significant revisions to the second and third thresholds are appropriate due to the fact that a proposal will have already been considered by shareholders two or three times before becoming subject to these thresholds.

---

[212] See Jamie Smith, *Five Takeaways from the 2019 Proxy Season*, EY CENTER FOR BOARD MATTERS, July 23, 2019, at 7, available at https://assets.ey.com/content/dam/ey-sites/ey-com/en_us/topics/cbm/ey-cbm-2019-proxy-season-preview.pdf.

The increase to the initial resubmission threshold from 3 to 5 percent will allow for exclusion of proposals that are very unlikely to earn majority support upon resubmission and is intended to serve as a better indicator of proposals that are more likely to obtain majority support than the current threshold. Based on our analysis of the proposals that ultimately garnered majority support from 2011 to 2018, 90 percent did so on the first submission, and more than half of the proposals that were resubmitted garnered more than 40 percent on the first submission.[213] Of those that did not garner more than 40 percent on the first submission but subsequently obtained majority support, nearly all garnered support of at least 5 percent on the first submission.[214] While we recognize that there have been a few instances in which proposals that have failed to receive at least 5 percent of the votes cast have gone on to garner majority support, these instances appear to be infrequent and may be the result of factors other than or in addition to the resubmission.[215]

The increase to the second and third resubmission thresholds to 15 and 25 percent, respectively, are also intended to establish thresholds that are better indicators of proposals that have the possibility of obtaining broader or majority support in the near term than the current thresholds. We believe that proposals receiving these levels of support will have better demonstrated a sustained level of shareholder interest and a broadening of shareholder support to warrant management and shareholder consideration upon resubmission. We note that these thresholds are set significantly below the average and median support for initial submissions of

---

[213] See Proposing Release at Section IV.B.3.iv.

[214] Id.

[215] Based on our review of shareholder proposals that received a majority of the votes cast on a second or subsequent submission between 2011 and 2018, only 2% of the proposals that have failed to receive at least 5% of the votes cast have gone on to garner majority support. See Proposing Release at Section IV.B.3.iv.

34 and 30 percent, respectively.[216] In addition, of resubmitted proposals that ultimately obtain majority support, the overwhelming majority garner more than 15 percent on their second submission and more than 25 percent on their third submission. Based on our review of shareholder proposals that received a majority of the votes cast on a second or subsequent submission between 2011 and 2018, 95 percent received support greater than 15 percent on the second submission, and 100 percent received support greater than 25 percent on the third or subsequent submission.[217] In addition, of the 22 proposals that obtained majority support on their third or subsequent submissions, approximately 95 percent received support of over 15 percent on their second submission, and 100 percent received support of over 25 percent on their third or subsequent submission.[218] Thus, as with the initial resubmission threshold, we expect that these thresholds will permit exclusion of proposals that are unlikely to garner broader or majority support in the near term.

Overall, we believe that the amended resubmission thresholds would reduce the costs associated with management's and shareholders' repeated consideration of these proposals and their recurrent inclusion in the proxy statement while maintaining shareholders' ability to submit proposals and engage with companies on matters of interest to shareholders. We also believe that the new resubmission thresholds may lead to the submission of proposals that will evoke greater shareholder interest in, and foster more meaningful engagement between, management

---

[216] See Proposing Release at 66472.

[217] Id.

[218] Id. at n.123.

and shareholders, as the thresholds will incentivize shareholders to submit proposals on matters that resonate with a broader shareholder base to avoid exclusion under the rule.

While we acknowledge the concern expressed by some commenters that the new resubmission thresholds could delay consideration of shareholder-initiated ideas or reforms,[219] we do not believe that the new thresholds will stifle such activity because failure to achieve these levels of support will not act as a permanent bar from the proxy statement. Instead, shareholders will be able to resubmit substantially similar proposals for inclusion in the proxy statement after a temporary cooling-off period. In addition, while shareholder-proponents will not be permitted to use a company's proxy statement to require a shareholder vote during the cooling-off period, engagement with the company and other shareholders can continue during that time, and proponents can continue to use other methods to seek to broaden support for their ideas.

The thresholds reflect a careful and appropriate calibration of the resubmission criteria, taking into account the costs to companies and shareholders of responding to proposals that do not garner significant shareholder support (and are unlikely to do so in the near future) and the benefits to companies and their shareholders of facilitating an individual shareholder's ability to

[219] See, e.g., letters from ACTIAM dated November 21, 2019; AFL-CIO dated February 3, 2020; ARGA Investment Management dated December 12, 2019; BC Target Benefit Pension Plan dated November 28, 2019; CalPERS dated February 3, 2020; Congregation of St. Basil dated December 15, 2019; Council of Institutional Investors et al. dated July 29, 2020; Dominican Sisters of Springfield Illinois dated January 9, 2020; Form Letter Type A; Franciscan Sisters of Allegany, NY dated December 9, 2019; Franciscan Sisters of Perpetual Adoration dated December 6, 2019; International Corporate Governance Network dated December 4, 2019; Jesuit Conference of Canada and the United Stated dated December 2, 2019; Lancaster Theological Seminary dated November 19, 2019; Maryknoll Fathers and Brothers dated December 5, 2019; Maryland and USA Northeast Province of the Society of Jesus dated December 19, 2019; Miller/Howard Investments dated January 3, 2020; New York State Comptroller dated February 3, 2020; Northwest Coalition for Responsible Investment dated January 27, 2020; Province of St. Joseph of the Capuchin Order dated December 9, 2019; Shareholder Rights Group dated January 6, 2020; Sisters of Bon Secours USA dated January 10, 2020; Sisters of Charity of the Blessed Virgin Mary dated November 21, 2019; Sisters of Mount St. Scholastica dated November 26, 2019; Sisters of the Precious Blood dated November 25, 2019; Ursuline Convent of the Sacred Heart, Toledo, OH dated November 26, 2019; Zevin Asset Management dated November 27, 2019.

engage in the shareholder-proposal process on successive occasions. We note that, under the new rule, those proposals that are least likely to garner broad or majority shareholder support will be subject to exclusion, while the vast majority of proposals will remain eligible for resubmission.[220]

We are not adopting any changes to the vote-counting methodology used to determine whether a proposal is eligible for resubmission. We believe that it is most appropriate to treat votes in favor of a proposal in the same manner as the company when it tabulates votes and determines whether a proposal has achieved majority support. Calculating votes in this manner will help ensure that other shareholders and companies do not continue to bear the burdens associated with proposals that are unlikely to obtain majority support and/or be implemented by management. In addition, because issuers are not required to disclose voting results separately based on affiliate status or share class, proponents would be unable to readily ascertain whether the relevant resubmission thresholds have been satisfied if alternative vote-counting methodologies were adopted.[221] Accordingly, we are not adopting alternative vote-counting methodologies. We also are not adopting an exception to the rule that would allow an otherwise excludable proposal to be resubmitted if there were material developments that suggested a resubmitted proposal may garner significantly more votes than when previously voted on. There was little support among commenters for this type of mechanism, and we believe it would be

[220] Of the proposals resubmitted between 2011 and 2018, we estimate that approximately 85% would have been eligible for resubmission under the proposed resubmission thresholds. See Proposing Release at tbl.9. In 2018 alone, we estimate that the final amendments to the resubmission thresholds would have resulted in 5% of voted proposals being excludable.

[221] Cf. Item 5.07 of Form 8-K [17 CFR 249.308] (requiring disclosure of votes cast for, against, or withheld (in the case of director elections), as well as the number of abstentions and broker non-votes as to each matter voted upon); Rule 30e-1(b)(3) [17 CFR 270.13e-1(b)(3)] (similar).

difficult in many cases to determine how the intervening developments would affect shareholders' voting decisions and therefore difficult to apply such a provision in practice.

F. Momentum Requirement

1. Proposed Rule Amendment

In addition to proposing new resubmission thresholds of 5, 15, and 25 percent, we proposed to add a new provision to Rule 14a-8(i)(12) to allow companies to exclude proposals dealing with substantially the same subject matter as proposals previously voted on by shareholders three or more times in the preceding five calendar years that would not otherwise be excludable under the 25 percent threshold if (i) the most recently voted on proposal received less than a majority of the votes cast and (ii) support declined by 10 percent or more compared to the immediately preceding shareholder vote on the matter (the ''Momentum Requirement'').

In the Proposing Release, we explained that this requirement would have relieved management and shareholders from having to repeatedly consider, and bear the costs related to, matters for which shareholder interest had declined.[222] We also noted that it would have applied only to matters that had been previously voted on three or more times in the preceding five years, giving shareholder-proponents a number of years to advocate for, and the broader shareholder base ample opportunity to consider, the matters raised.[223]

2. Comments on the Proposed Rule Amendment

We received a number of comments on the proposed amendment. Commenters that expressed support for the proposal stated that such a requirement would relieve management and

[222] See Proposing Release at 66473.

[223] Id.

shareholders from having to repeatedly consider, and bear the costs related to, matters for which shareholder interest had declined.[224]

Many commenters objected to the proposed amendment with a number of them expressing concern that, under the proposed amendment, a proposal that gets higher overall support (e.g., 44 percent) compared to another proposal may be excluded if it experiences a decline in support of 10 percent or more, whereas a proposal receiving lower support (e.g., 27 percent) that does not experience a decline in support of 10 percent or more would not be excludable.[225] Another commenter indicated that 25 percent support sends a strong signal that shareholders are concerned about an issue and warrants resubmission.[226] Some commenters also

[224] See letters from American Securities Association dated February 3, 2020; Business Roundtable dated February 3, 2020; Corporate Governance Coalition for Investor Value dated February 3, 2020; International Bancshares Corporation dated January 23, 2020; Manhattan Institute for Policy Research dated February 3, 2020; Nasdaq, Inc. dated February 3, 2020; National Association of Manufacturers dated February 3, 2020.

[225] See letters from 444S Foundation et al. dated January 31, 2020; AFL-CIO dated February 3, 2020; Zehra R. Asghar dated February 3, 2020; As You Sow dated February 3, 2020; Kam Bellamy dated February 3, 2020; Samuel Bonsey dated February 3, 2020; Boston Trust Walden et al. dated January 31, 2020; Ghislaine Boulanger dated January 30, 2020; Andrew Boyd dated January 29, 2020; David Bragin dated February 1, 2020; Lisa Brick dated January 31, 2020; British Columbia Investment Management Corporation dated February 3, 2020; Marshall Brooks dated February 5, 2020; Thomas Buckner dated February 3, 2020; Laura J. Campos dated January 14, 2020; Canadian Coalition for Good Governance dated February 3, 2020; Hilary Clark dated February 3, 2020; Delbert Coonce dated January 30, 2020; Council of Institutional Investors dated January 30, 2020; Professor James D. Cox et al. dated February 2, 2020; Domini Impact Investments dated February 3, 2020; Christopher Hormel dated January 30, 2020; Artemis Joukowsky dated January 29, 2020; Mona Kanin dated January 29, 2020; Joyce Kutz dated February 1, 2020; Anna Lefer Kuhn dated February 3, 2020; Hanna Mahon dated January 31, 2020; Helene B. Marsh dated January 28, 2020; New York State Comptroller dated February 3, 2020; Judith Norell dated January 29, 2020; Angela Ocone dated February 3, 2020; Hayden Reilly dated January 29, 2020; Sarah Rose dated January 29, 2020; Hiroko Sakurazawa dated February 2, 2020; Elizabeth Schnee dated January 29, 2020; Ellen Seh dated January 28, 2020; Sarah Sills dated January 29, 2020; Emmanuel R. Sturman dated January 30, 2020; Jed Sturman dated February 1, 2020; Marilyn and Emanual Sturman dated January 30, 2020; Richard Teitelbaum dated February 2, 2020; UAW Retiree Medical Benefits Trust dated January 30, 2020; US SIF dated January 31, 2020; Peter Vandermark dated January 29, 2020; Julie & Steve Woodward dated January 29, 2020; Wright-Ingraham Institute dated February 3, 2020.

[226] See letter from International Corporate Governance Network dated December 4, 2019.

stated that the Momentum Requirement would add complexity to the rule.[227] Another commenter called for additional explanation and justification for the proposed amendment.[228]

Several commenters suggested modifications to the proposed amendment. Some commenters recommended requiring a decline in shareholder support greater than 10 percent.[229] Two commenters suggested requiring shareholder support to increase for a proposal to remain eligible for resubmission upon a third or subsequent submission in five years,[230] and another commenter recommended requiring a 10 percent increase in shareholder support to remain eligible for resubmission.[231] One commenter that opposed the Momentum Requirement stated that the rule, if adopted, should include "an exception in the event of a material change in the company's situation between the previous vote and the filing deadline."[232]

3. Final Rule Amendment

After considering the comments, we are not adopting the proposed amendment. We agree with commenters that the Momentum Requirement, as proposed, could at least in theory lead to anomalous results because, for example, under the proposed amendment, a proposal that gets higher overall support (e.g., 44 percent) compared to another proposal may be excluded if it

---

[227] See, e.g., letters from AFL-CIO dated February 3, 2020; CalPERS dated February 3, 2020; Canadian Coalition for Good Governance dated February 3, 2020; NorthStar Asset Management, Inc. dated February 3, 2020; Stewart Investors dated January 30, 2020; US SIF dated January 31, 2020.

[228] See Recommendation of the IAC, supra note 18.

[229] See, e.g., letters from Baillie Gifford & Co. dated February 3, 2020 (suggesting a 25% decline); Investment Company Institute dated February 3, 2020 (suggesting a 30% decline).

[230] See letters from General Motors Company dated February 25, 2020; Society for Corporate Governance dated February 3, 2020.

[231] See letter from Exxon Mobil Corporation dated February 3, 2020.

[232] See letter from Council of Institutional Investors dated January 30, 2020. See also letters from Baillie Gifford & Co. dated February 3, 2020; Hal S. Scott dated January 6, 2020, supra note 203.

experiences a decline in support of 10 percent or more, whereas a proposal receiving lower support (e.g., 27 percent) that does not experience a decline in support of 10 percent or more would not be excludable. In addition, we agree with commenters that the Momentum Requirement, as proposed, could render the resubmission basis for exclusion unnecessarily complex. Finally, we note that further consideration of a momentum requirement may be appropriate once the Commission has had an opportunity to evaluate its experience with the revised resubmission thresholds.

G. Other Matters

1. Response to Constitutional Objections

Several commenters raised First Amendment objections to the proposed amendments to the rule's procedural requirements.[233] We do not believe their arguments have merit. For decades, Rule 14a-8 has provided a procedural mechanism, subject to neutral eligibility criteria, for shareholders to submit proposals to companies for the company to include in its own proxy statement at the company's expense. The amendments do not disturb the basic functioning of this longstanding mechanism, but merely enhance existing limits on the ability of shareholders to make use of it. Because this mechanism "govern[s] speech by a corporation *to itself*," it "do[es] not limit the range of information that the corporation"—or shareholders—"may contribute to the public debate."[234] Rather, it simply "allocate[s] shareholder property between management and certain groups of shareholders."[235] The amendments do not restrict shareholders from

---

[233] See letters from CalPERS dated February 3, 2020; Shareholder Rights Group dated February 3, 2020; Shareholder Rights Group dated March 18, 2020; Ellen L. Weintraub, Commissioner, Federal Election Commission dated February 3, 2020.

[234] Pacific Gas & Electric Co. v. Public Utilities Comm'n of California, 475 U.S. 1, 14 n.10 (1986).

[235] Id.

speaking out on any issue, or from communicating their views to management by any means at their own expense. Nor do they prevent shareholders from seeking and relying on the assistance of others in doing so. Even to the extent a shareholder may have a First Amendment right to engage in internal corporate speech with other shareholders, any such right would not be infringed by the Commission's decision to limit the circumstances in which other shareholders must subsidize that speech.[236]

Furthermore, the amendments do not impose content-based or viewpoint-based limitations on the kinds of proposals a shareholder may submit for inclusion in a company's proxy statement. The amendments reasonably limit access to a company's proxy statement based on content-neutral and viewpoint-neutral criteria designed to appropriately consider the ability of a shareholder-proponent to put forth proposals for shareholder consideration, on the one hand, and the costs to the company and other shareholders associated with the inclusion of such proposals in the company's proxy statement, on the other.

2. Proposals Submitted to Open-End Investment Companies

In the Proposing Release, the Commission requested comment on whether any special eligibility provision should be made for shareholder proposals submitted to open-end investment companies since, unlike other issuers, open-end investment companies generally do not hold shareholder meetings annually.[237] In some cases, years may pass between the submission of a shareholder proposal and the next shareholder meeting. Due to the passage of time that may occur before an open-end investment company holds a shareholder meeting, the submission may no longer reflect the interests of the shareholder-proponent or may be in need of updating, or the

[236] Cf. Regan v. Taxation with Representation, 461 U.S. 540, 549 (1983).
[237] See Proposing Release at 66465.

proponent may no longer own the requisite amount of shares to require the company to include a proposal in its proxy statement. In response to these issues, we asked whether we should consider any special provisions to the effect that a proposal would expire after the passage of a specified amount of time, unless the shareholder-proponent reaffirmed the proposal.

Several commenters responded to the request for comment. Two commenters suggested that a provision such as what was described in the request for comment could ease the administrative burden for investment companies.[238] Another commenter stated that it could support a requirement for reconfirmation of the proponent's interest, "as long as the procedural requirements are well designed and not geared only to suppressing voicing of dissent."[239] A separate commenter expressed concern about "adding additional process requirements" with respect to submissions at open-end investment companies.[240]

At this time, we are not adopting a requirement that shareholder-proponents reaffirm their interest in a proposal submitted to an open-end investment company after the passage of a specified amount of time. We note that few commenters supported such a provision. We also understand that open-end investment companies currently may seek to obtain a shareholder-proponent's reaffirmation in such situations before including a proposal in their proxy statements and that where they are unable to confirm a shareholder-proponent's continuing ownership interest, the staff may agree that such proposals may be excluded from the proxy statement.[241] We may, however, revisit this issue in the future if it becomes necessary to do so.

---

[238] See letters from Fidelity Management & Research LLC dated February 3, 2020; Investment Company Institute dated February 3, 2020.

[239] See letter from Council of Institutional Investors dated January 30, 2020.

[240] See letter from Investors Against Genocide dated February 14, 2020.

[241] See, e.g., Fidelity Management & Research Co., SEC No-Action Letter 2015 WL 4911599 (Aug. 12, 2015).

3. Commission and Staff Role in the Rule 14a-8 Process

In the Proposing Release, we requested comment on whether the Rule 14a-8 process generally works well and whether the Commission and staff's role in the process should be altered.[242] For example, we asked whether the Commission staff should continue to review proposals companies wish to exclude, or whether the Commission should instead review these proposals. We also asked whether there is a different structure that might better serve the interests of companies and shareholders, and whether states are better suited to establish a framework governing the submission and consideration of shareholder proposals.

Several commenters responded to these requests for comment.[243] Most commenters seemed generally supportive of the Commission and staff's involvement in the process, but several expressed criticism of certain aspects of the no-action process.[244] For example, one commenter expressed the view that, while the no-action process generally works well and is less costly than alternatives, frequent changes in staff positions can increase uncertainty and costs for issuers and proponents.[245] Another commenter argued the rule lacks a clear statutory

---

[242] See Proposing Release at 66465.

[243] See letters from Business Roundtable dated February 3, 2020; Center for Capital Markets Competitiveness dated January 31, 2020; Council of Institutional Investors dated January 30, 2020; Exxon Mobil Corporation dated February 3, 2020; Local Authority Pension Fund Forum dated February 3, 2020; Manhattan Institute for Policy Research dated February 3, 2020; James McRitchie dated February 2, 2020; National Association of Manufacturers dated February 3, 2020; New York State Comptroller dated February 3, 2020; State Board of Administration of Florida dated February 3, 2020; John Taylor dated November 14, 2019.

[244] See letters from Business Roundtable dated February 3, 2020; Center for Capital Markets Competitiveness dated January 31, 2020; Council of Institutional Investors dated January 30, 2020; Local Authority Pension Fund Forum dated February 3, 2020; James McRitchie dated February 2, 2020; National Association of Manufacturers dated February 3, 2020; New York State Comptroller dated February 3, 2020; John Taylor dated November 14, 2019.

[245] See letter from New York State Comptroller dated February 3, 2020.

mandate.[246] Another commenter seemed supportive of Commission and staff involvement in the process, but stated that the vast majority of its members "do not believe the [staff's] 'no-action' letter process is administered in a consistent and transparent manner."[247] This commenter suggested that the Commission consider alternatives to improve consistency, such as "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," or revising the no-action process "to allow for enhanced review and oversight mechanisms to achieve greater consistency."[248] This commenter also suggested other modifications to the shareholder-proposal rule.[249]

Two commenters suggested that the shareholder-proposal process should be allowed to be governed by state law and a company's bylaws.[250] One of these commenters indicated that such a mechanism would allow for greater flexibility on a company-by-company basis, taking into consideration a company's shareholder base, and that dispute resolution at the state-court level could allow a consistent body of law to develop "as opposed to conflicting decisions in different federal courts."[251] The other commenter suggested that companies should have the option to elect a system governed by state law, which could improve market efficiency, but expressed the view that "most publicly traded companies would opt for the stable expectations of

---

[246] See letter from Manhattan Institute for Policy Research dated February 3, 2020.

[247] See letter from Business Roundtable dated February 3, 2020.

[248] Id.

[249] Id.

[250] See letters from Exxon Mobil Corporation dated February 3, 2020; Manhattan Institute for Policy Research dated February 3, 2020.

[251] See letter from Exxon Mobil Corporation dated February 3, 2020.

sticking with the SEC default rule" rather than a state-law option at least in the near term.[252] Another commenter questioned whether "state governments are better equipped to establish a framework for submission and consideration of shareholder proposals," and expressed the view that a shareholder-proposal process governed by state law would increase administrative and legal costs for shareholders and companies, as well as state governments.[253] A separate commenter also objected to the notion of allowing the shareholder-proposal process to be governed by state law, and expressed the view that the staff's no-action process "is superior to litigation of differences over inclusion of shareholder proposals."[254]

The primary purpose of seeking public comment on these issues was to gain a better understanding of commenters' views regarding the current role of the Commission and staff in the shareholder-proposal process and to solicit input with respect to possible areas for improvement. While we did not receive many comments in response to the requests for comment, the comments received were helpful in evaluating at a high level what generally works well and whether the Commission and staff's role in the process should be altered.

We acknowledge commenters' concerns regarding the need for a consistent application of Rule 14a-8. As the Commission has previously stated, "the staff's views on certain issues may change from time-to-time, in light of re-examination, new considerations, or changing conditions which indicate that its earlier views are no longer in keeping with the objectives of Rule 14a-8."[255] We continue to believe that changes in staff views may be necessary on

---

[252] See letter from Manhattan Institute for Policy Research dated February 3, 2020.

[253] See letter from New York State Comptroller dated February 3, 2020.

[254] See letter from Council of Institutional Investors dated January 30, 2020.

[255] See Statement of Informal Procedures for the Rendering of Staff Advice with Respect to Shareholder Proposals, Release No. 34-12599 (July 7, 1976) [41 FR 29989 (July 20, 1976)], at 29990 ("Statement of Informal Procedures").

occasion. For this reason, and although the staff strives to apply the rule in a consistent and transparent manner, participants in the shareholder-proposal process "should not consider the prior enforcement positions of the staff on proposals submitted to other issuers to be dispositive of identical or similar proposals submitted to them."[256]

As noted above, one commenter suggested that greater oversight by the Commission could help with consistency and transparency.[257] As the Commission has previously stated, "The Commission does not engage in any formal proceedings in connection with shareholder proposal matters, nor has it adopted any formal procedures in that regard."[258] While we are not adopting such formal proceedings at this time, we note that the staff may seek the Commission's views on certain matters related to Rule 14a-8, including certain changes in staff positions.[259]

With respect to the commenters that supported companies' ability to elect a shareholder-proposal process governed by state law or a company's bylaws, we note that shareholder voting rights are governed by state rather than federal law and that shareholder-proponents must own shares entitled to vote on their proposals.[260] We further note that a shareholder proposal must be a proper subject for action under state law to be eligible for inclusion in a company's proxy statement.[261] Thus, while Rule 14a-8 provides a federal process for proxy voting and solicitation

---

[256] Id.

[257] See letter from Business Roundtable dated February 3, 2020.

[258] See Statement of Informal Procedures, supra note 255.

[259] See 17 CFR 202.1(d).

[260] See Rule 14a-8(b)(1).

[261] See Rule 14a-8(i)(1).

with respect to a shareholder proposal, matters of corporate organization such as voting rights and whether a proposal is a proper subject for action remain governed by state law.

Although we are not implementing changes in these areas at this time, we will consider the comments received in connection with any future rulemaking or modifications to the no-action process.

III. TRANSITION MATTERS

The final amendments will become effective 60 days after they are published in the Federal Register and will apply to any proposal submitted for an annual or special meeting to be held on or after January 1, 2022. However, a shareholder that has continuously held at least $2,000 of a company's securities entitled to vote on the proposal for at least one year as of [INSERT DATE 60 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER], and continuously maintains at least $2,000 of such securities from [INSERT DATE 60 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER] through the date he or she submits a proposal, will be eligible to submit a proposal to such company, and need not satisfy the amended share ownership thresholds under Rule 14a-8(b)(1)(i)(A)-(C), for an annual or special meeting to be held prior to January 1, 2023.[262] A shareholder relying on this transition provision must follow the procedures set forth in Rule 14a-8(b)(2) to demonstrate that the shareholder (i) continuously held at least $2,000 of the company's securities entitled to vote on the proposal for at least one year as of [INSERT DATE 60 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER][263] and (ii) continuously held at least $2,000 of such securities from [INSERT

---

[262] See Rule 14a-8(b)(1)(i)(D).

[263] To determine whether a shareholder satisfies this ownership threshold, the shareholder should look at whether, on any date within the 60 calendar days before [INSERT DATE 60 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER], the shareholder's investment is valued at $2,000 or greater. See supra note 55. Aggregation will not be allowed for purposes of determining compliance with this temporary provision.

DATE 60 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER] through the date the proposal is submitted to the company. The shareholder will also be required to provide the company with a written statement that the shareholder intends to continue to hold at least $2,000 of such securities through the date of the shareholders' meeting at which the proposal will be considered. This temporary provision will expire on January 1, 2023.

IV. OTHER MATTERS

If any of the provisions of these rules, or the application thereof to any person or circumstance, is held to be invalid, such invalidity shall not affect other provisions or application of such provisions to other persons or circumstances that can be given effect without the invalid provision or application.

Pursuant to the Congressional Review Act,[264] the Office of Information and Regulatory Affairs has designated these amendments as a "major rule," as defined by 5 U.S.C. 804(2).

V. ECONOMIC ANALYSIS

We are mindful of the costs and benefits of the rule amendments. The discussion below addresses the economic effects of the amendments, including their anticipated costs and benefits, as well as their likely effects on efficiency, competition, and capital formation.[265] We also analyze the potential costs and benefits of reasonable alternatives to the amendments. Where

[264] 5 U.S.C. 801 et seq.

[265] Section 3(f) of the Exchange Act, Section 2(b) of the Securities Act of 1933, and Section 2(c) of the Investment Company Act require us, when engaging in rulemaking that requires us to consider or determine whether an action is necessary or appropriate in (or, with respect to the Investment Company Act, consistent with) the public interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation. Additionally, Section 23(a)(2) of the Exchange Act requires us, when making rules or regulations under the Exchange Act, to consider, among other matters, the impact that any such rule or regulation will have on competition and states that the Commission shall not adopt any such rule or regulation which will impose a burden on competition that is not necessary or appropriate in furtherance of the Exchange Act.

possible, we have attempted to quantify the costs, benefits, and effects on efficiency, competition, and capital formation expected to result from the final rule amendments.

We have provided both a qualitative assessment and, where feasible, quantified estimates of the potential effects of the rule amendments. We also have incorporated data and other information provided by commenters to assist in the analysis of the economic effects of the rule amendments. However, as explained in more detail below, because we do not have, have not received, and, in certain cases, do not believe we can reasonably obtain data that may inform certain economic effects, we are unable to quantify those effects. We further note that even in cases where we have some data or have received some data regarding certain economic effects, the quantification of these effects is particularly challenging due to the number of assumptions that we would need to make to estimate the benefits and costs of the rule amendments.

For example, on August 14, 2020, a preliminary draft analysis ("Preliminary Staff Analysis") conducted by Commission staff in October 2019 using certain data obtained from Broadridge Financial Solutions, Inc. ("Broadridge") was placed in the public comment file for the Proposing Release.[266] As noted in the Proposing Release and discussed in the memorandum accompanying the Preliminary Staff Analysis, the data supplied by Broadridge suffered from significant limitations. In noting certain limitations in the Proposing Release, we encouraged commenters to submit additional data to the public comment file.[267]

We concur with the conclusions of the Commission's Chief Economist set forth in the August 14, 2020 memorandum accompanying the Preliminary Staff Analysis. Despite the staff's

[266] Memorandum Regarding Analysis of Data Provided by Broadridge Financial Solutions, Inc. (Aug. 14, 2020) ("Memorandum"), Appendix A, available at https://www.sec.gov/comments/s7-23-19/s72319-7645492-222330.pdf.

[267] See Proposing Release at 66498 n.245; Memorandum.

attempts to analyze the data set, as a result of its significant limitations, neither the data set nor the associated Preliminary Staff Analysis could be used to reliably assess the potential impact of our rule amendments on retail shareholders.

A. Introduction

We are amending certain procedural requirements of—and the provision relating to resubmitted proposals under—Rule 14a-8, the shareholder-proposal rule. The Commission has conducted various forms of outreach over the years on the proxy process, including hosting the Proxy Process Roundtable and soliciting public input on both the Rule 14a-8 ownership thresholds and the costs of submitting shareholder proposals.[268] That input informed our economic analysis in the Proposing Release and this release. We also requested comment on the estimates and data in the Proposing Release to help us refine our economic analysis. We considered all of this information thoroughly, leveraging our decades of experience with Rule 14a-8, when evaluating the effects of the rule amendments.

After carefully reviewing all of the comments received, we supplemented our analysis to investigate certain issues raised by commenters. We are adopting the rule amendments substantially as proposed and, based on our analysis of the available evidence and data, and our consideration of the comments received, our primary conclusions about the likely economic effects of the rule amendments have not changed substantively. The benefits of the rule are largely attributable to direct cost savings for companies that may process fewer shareholder proposals annually and certain benefits to shareholders directly, as well as through their ownership in companies, derived from an ability to focus on shareholder proposals that are more likely to garner majority-voting support. The costs of the rule are attributable to certain costs to

[268] See supra Section I.A.

shareholder-proponents in navigating the new thresholds and becoming eligible to submit proposals under the new thresholds, as well as any costs that would arise if the final rules result in the exclusion of shareholder proposals that otherwise would have garnered majority support or garnered majority support more quickly. We discuss the benefits and costs of the rule amendments in detail in Sections V.D and V.E below.

Some commenters concurred with our assessment of the effects of the proposed rule amendments[269] while other commenters raised concerns with our analysis and conclusions in the Proposing Release.[270] Before addressing specific comments in more detail throughout the Economic Analysis, we address certain overarching issues raised by commenters.

First, a number of commenters expressed the view that the Commission had not identified an economic need for the rule amendments because the economic analysis in the Proposing Release did not document a market failure or other basis for the amendments. For example, some commenters argued that the decreasing trend in the number of submitted proposals, the increasing trend in the average voting support for certain proposals, and the fact that most companies do not receive any proposals during any given year suggests that there is no economic justification for the rule amendments.[271] As a general matter, we believe it is appropriate for the

---

[269] See, e.g., letters from American Securities Association dated February 3, 2020; Business Roundtable dated February 3, 2020; Center for Capital Markets Competitiveness dated January 31, 2020; Compass Lexecon dated December 23, 2019.

[270] See, e.g., letters from Lucian A. Bebchuk dated February 3, 2020; CalPERS dated February 3, 2020; John Coates and Barbara Roper dated January 30, 2020; Shareholder Rights Group dated January 6, 2020.

[271] See, e.g., letters from As You Sow dated February 3, 2020; CalPERS dated February 3, 2020; Council of Institutional Investors dated January 30, 2020; First Affirmative Financial Network, LLC dated January 24, 2020; Interfaith Center on Corporate Responsibility dated January 27, 2020; Richard A. Liroff dated January 28, 2020; Local Authority Pension Fund Forum dated February 3, 2020; James McRitchie dated February 2, 2020; Presbyterian Church dated January 28, 2020; Tom Shaffner dated December 17, 2019; Shareholder Rights Group dated January 6, 2020; UAW Retiree Medical Benefits Trust dated January 30, 2020; US SIF dated January 31, 2020. See also Recommendation of the IAC, supra note 18. Some other commenters also raised concerns about amending the resubmission thresholds. In particular, commenters argued that the low number of excludable

Commission to engage in retrospective review, including revisiting our rules on shareholder proposals, to ensure that they are functioning as intended. As discussed in the Proposing Release, certain aspects of the shareholder-proposal rule—including the ownership thresholds—had not been reviewed by the Commission in more than 20 years prior to the Proposing Release. As part of that review, we observed that (1) the overwhelming majority of shareholder proposals are submitted by a very small number of proponents and (2) a significant number of proposals that are eligible to be resubmitted under the current resubmission thresholds continue to receive low levels of support from fellow shareholders.[272] Because, in part, shareholder proposals impose direct and opportunity costs on shareholders and indirect costs on shareholders through their ownership in companies, the Commission has long held the view that it is appropriate to condition eligibility for those that submit shareholder proposals pursuant to Rule 14a-8 on indicia of an alignment of interest with non-proponent shareholders and to provide for a cooling-off period for proposals that receive low levels of support.[273] In addition, shareholders' ability to communicate with companies and other shareholders has evolved due to technological advancements and developing market practices. As a result, shareholders now have more tools

---

proposals under current resubmission thresholds does not imply that the resubmission thresholds are currently too low because proponents now tend to modify resubmitted proposals to increase the voting support they receive, proponents engage in more outreach than in the past which improves voting outcomes, and more active participation of proxy voting advice businesses and institutional investors can improve voting outcomes ultimately resulting in low numbers of excludable resubmitted proposals. In addition, some commenters argued that the rule amendments are unnecessary because shareholders already are unlikely to resubmit proposals that garner low levels of support. See, e.g., letters from AFL-CIO dated February 3, 2020; Principles for Responsible Investment dated February 3, 2020; Segal Marco Advisors dated February 3, 2020. Nevertheless, we believe that shareholder proposals impose direct and opportunity costs on shareholders and companies, and the amended resubmission thresholds are designed to decrease those costs by imposing a cooling-off period for proposals that receive low levels of support.

[272] Under the current thresholds, at least 90% of proposals remain eligible for resubmission. These resubmitted proposals have been permitted even though, according to our analysis, previously only approximately 6.5% of proposals that fail to win majority support the first time achieve majority support in a subsequent attempt. See supra notes 209 and 210 and accompanying text.

[273] See supra Section II.A.3 and II.E.3.

at their disposal to engage with a company's board and management, as well as other shareholders, in ways that may be more efficient for all parties than under the Rule 14a-8 process. The amendments we are adopting are designed to revise the thresholds to better ensure that the significant attendant burdens for other shareholders and companies associated with the inclusion of such proposals in the company's proxy statement are incurred in connection with those proposals that are (i) submitted by shareholders with an economic stake or investment interest in the company that demonstrates a reasonably sufficient alignment of interest with non-proponent shareholders and (ii) with respect to resubmissions, more likely to receive support from fellow shareholders and, accordingly, are more likely to lead to an action that is approved by its shareholders.[274]

Second, some commenters argued that the Proposing Release did not consider all of the potential benefits of various shareholder proposals and thus did not adequately analyze the costs of the amendments to companies and, as a result, to their shareholders, that could result from the exclusion of shareholder proposals.[275] We recognize that shareholder proposals may bring benefits to companies and their shareholders and that the potential loss of those benefits resulting from the exclusion of certain proposals that are not otherwise proposed by other shareholders would be a cost of the rule. Thus, to the extent that the final rule amendments may exclude proposals that may bring benefits to companies and their shareholders, we qualitatively describe the cost that may arise. We do not focus on specific types of shareholder proposals or attempt to

[274] See supra note 2 and accompanying text.

[275] See, e.g., letters from AFL-CIO dated February 3, 2020; Lucian A. Bebchuk dated February 3, 2020; Center for Political Accountability dated January 31, 2020; Council of Institutional Investors dated January 30, 2020; Richard A. Liroff dated January 28, 2020; UAW Retiree Medical Benefits Trust dated January 30, 2020. See also Recommendation of the IAC, supra note 18.

quantify whether excluded proposals would have resulted in economically beneficial changes, as suggested by some commenters.[276] As a threshold matter, under state corporate law, those evaluations are properly left to the company's owners—the shareholders. In addition, our regulation of shareholder proposals under Rule 14a-8 has not been, nor would it be under the final amendments,[277] designed to judge the economic value of any particular shareholder proposal, or intended to take a position on the merits of any shareholder proposal topic.[278] By way of example, it would be inappropriate and outside of our regulatory remit to make a determination that any particular proposal, for example one that has been disapproved by 90 percent of a company's voting shareholders, would have been beneficial (or costly) to those shareholders as it is the shareholders who ultimately determine the value of a proposal to a particular company. Rather, the rule focuses on setting thresholds at which it is appropriate for a shareholder proposal—regardless of its substance—to be included in the company's proxy materials at the expense of the other shareholders (directly and indirectly as owners of the company), either as an initial submission, or as a resubmission.

Moreover, even if the statutory remit and historic approach of the Commission to such matters were to change fundamentally, focus on the potential economic effects of specific types of shareholder proposals would be inherently speculative, as it would require us to opine on the

[276] See infra note 426. See also infra Section V.E.2.

[277] For purposes of the economic analysis, we use the term "final amendments" to refer collectively to the amendments to Rules 14a-8(b), 14a-8(c), and 14a-8(i)(12).

[278] See Statement of Informal Procedures, supra note 255 (stating that the Commission has no interest in the merits of particular security holder proposals and that its "sole concern is to insure that public investors receive full and accurate information about all security holder proposals that are to, or should, be submitted to them for their action"). This is consistent with the federal securities laws' general approach to public company disclosure, which eschews merit-based regulation and instead focuses on the need to provide information material to investment and voting decisions.

merits, and estimated costs and benefits, of proposals—or categories of proposals—without knowing sufficient details of the proposals or the companies for which they are advanced. Moreover, there are significant methodological and empirical challenges to quantifying whether excluded proposals would have resulted in economically beneficial changes to the company, including the difficulty of assessing whether a particular proposal would be beneficial to a particular company, for example because any decision driven by such a proposal would be part of an overarching array of decisions that collectively affect the company's business and prospects. It is also difficult to disentangle the effect of shareholder proposals from other effects such as the effect of direct communication of shareholders with management. A proposal that is subject to a cooling-off period may be approved in the future or, instead of waiting, shareholders who supported the proposal may use other methods to engage with the company on the issue. Consequently, the marginal cost of not allowing a shareholder proposal that would have benefited the company to go forward during the cooling-off period may be quite low. In addition, the relevant data does not exist and existing data cannot be generalized to estimate the benefits of shareholder proposals across a broad set of those proposals.[279]

Finally, some commenters criticized the data and method used to estimate the benefits of the proposed rule amendments, which we primarily expect to come in the form of cost savings to shareholders directly and through their ownership in companies.[280] As a response to these

[279] See infra Section V.E.2.

[280] See, e.g., letters from AFL-CIO dated February 3, 2020; As You Sow dated February 3, 2020; Better Markets dated February 3, 2020; CalPERS dated February 3, 2020; John Coates and Barbara Roper dated January 30, 2020; Council of Institutional Investors dated January 30, 2020; Impax Asset Management dated January 20, 2020; Interfaith Center on Corporate Responsibility dated January 27, 2020; International Brotherhood of Teamsters dated February 3, 2020; Richard A. Liroff dated January 28, 2020; Paul M. Neuhauser dated February 3, 2020; Segal Marco Advisors dated February 3, 2020; Tom Shaffner dated December 17, 2019; UAW Retiree Medical Benefits Trust dated January 30, 2020.

comments, we discuss in more detail below the limitations associated with our estimates of those savings, including that we are unable to predict how shareholder-proponents might modify their behavior in response to the final amendments. We also have revised our cost savings analysis to take into account the additional cost estimates provided by commenters.[281]

The economic analysis proceeds as follows. Section V.B discusses the baseline against which we will measure the costs and benefits of the rule amendments and the effects of the rule amendments on efficiency, competition and capital formation. Section V.C provides our estimate of the reduction in the number of shareholder proposals as a result of the rule amendments. As discussed in more detail below, the net effect of the rule amendments will be the result of a combination of factors as there will likely be an increase in the number of excludable proposals from the baseline, but any such increase in the number of excludable proposals as a result of the changes to the initial submission thresholds may be mitigated by changes in proponent behavior as a response to the rule amendments. Any shareholder that meets the current initial submission threshold (e.g., holding $2,000 of company stock for at least one year), but does not already meet the length of holding or other thresholds under the amended rule and desires to submit a proposal can hold onto the company stock until it satisfies the three-year holding period or can otherwise adjust his or her holdings to meet the amended thresholds. As this discussion illustrates, the changes in shareholder-proponent behavior, in particular, in the areas of investment amount and holding period, and the effects thereof are difficult to quantify, including as a result of the relatively small percentage of shareholders that submit shareholder proposals. Section V.D discusses the benefits, costs, and effects on efficiency, competition, and capital formation of the rule amendments by type of affected party. In particular, Section V.D.1

[281] See infra Section V.D.1.i.

discusses the effects of the rule amendments on companies that receive shareholder proposals, Section V.D.2 discusses the effects of the rule amendments on the non-proponent shareholders of those companies, and Section V.D.3 discusses the effects of the rule amendments on shareholder-proponents. Finally, Section V.E discusses other effects of the rule that were raised by commenters,[282] and Section V.F discusses reasonable alternatives to the amendments.

B. Economic Baseline

The baseline against which we measure the costs, benefits, and the impact on efficiency, competition, and capital formation of the final rule amendments consists of the current regulatory framework[283] and the current practices for shareholder proposal submissions.[284] The final

---

[282] Section V.E also discusses additional baseline considerations raised by commenters.

[283] See Proposing Release at 66474 for a detailed description of state laws, corporate bylaws prepared under state law, and federal securities laws that jointly govern the shareholder-proposal process.

[284] See Proposing Release at 66476 for a detailed description of current market practices related to shareholder proposals, including general trends documenting the number of shareholder proposals and voting support over time, the distribution of ownership across shareholder-proponents, disclosures associated with the use of a representative, and shareholder proposal resubmissions.

We believe that the 2018 data used in the Proposing Release to describe the economic baseline is representative of current market practices surrounding the shareholder-proposal process because 2018 was a year of low market stress and 2018 data are recent. Our review of industry publications also suggests that the 2018 proxy season is largely representative of recent proxy seasons, including the 2019 proxy season (e.g., Broadridge & PwC, ProxyPulse: 2019 Proxy Season Review, available at https://www.broadridge.com/_assets/pdf/broadridge-proxypulse-2019-review.pdf; Sullivan & Cromwell Report, supra note 60). Further, our review of comment letters suggests that the results of our analysis of the effects of the amendments to the resubmission thresholds using 2011–2018 data likely would be qualitatively similar if we expanded our sample to include 2019 data. See letter from Council of Institutional Investors dated May 19, 2020.

A commenter criticized the use of one year of data for some of this analysis arguing that a single year of data may not be representative of current practices. See letter from Boston Trust Walden et al. dated January 27, 2020. We believe the 2018 data are representative.

For most of our analysis both in this release and in the Proposing Release we use data from 2018 because we believe that using more recent data would not materially alter our conclusions. Nevertheless, we acknowledge that certain market developments, such as the Covid-19 pandemic, may affect certain aspects of our statistics, such as the adjustment of the $2,000 threshold for the growth in Russell 3000. Whenever relevant, we have updated certain relevant statistics throughout the release using more recent data.

amendments to Rule 14a-8(b), Rule 14a-8(c), and Rule 14a-8(i)(12) will affect all companies subject to the federal proxy rules that receive shareholder proposals, shareholders of these companies, and the proponents of these proposals.[285] We discuss each one of these affected parties below.

1. Companies

The final amendments will affect companies that expect to receive shareholder proposals. For each shareholder proposal a company receives, the company will incur costs to consider the proposal. For each shareholder proposal that meets the eligibility criteria, a company will incur costs associated with its response, which could include engaging with the proponent, including the proposal in the company's proxy statement, or submitting a no-action request to Commission staff.[286] Although not required, no-action letters are submitted by most companies seeking to exclude shareholder proposals from their proxy statements.[287] For the proposals that are not eligible for submission under Rule 14a-8, the company may incur the costs associated with submitting a no-action request to Commission staff. More specifically, the costs that companies

---

[285] The amendments may also have second-order effects on providers of administrative and advisory services related to proxy solicitation and shareholder voting. Nevertheless, we believe that any such effects likely will be small because shareholder proposals are a small fraction of management proposals and so any potential change in the number of excludable shareholder proposals as a result of the rule amendments likely will have a limited effect on the business of providers of administrative and advisory services related to proxy solicitation and shareholder votes.

Some commenters argued that the economic analysis in the Proposing Release did not consider the impact of the rule amendments on groups other than shareholders, such as the company's employees and society in general. See, e.g., letters from Better Markets dated February 3, 2020; Council of Institutional Investors dated January 30, 2020; Local Authority Pension Fund Forum dated February 3, 2020; Pulte Institute for Global Development dated January 31, 2020. We acknowledge that the rule amendments may affect groups other than a company's shareholders, but we lack information that would allow us to reliably estimate the number of those entities and the effects of the rule amendments on those entities.

[286] As we discuss in detail in Sections V.B.2 and V.D.2 below, the company's costs and benefits are indirectly borne by its shareholders.

[287] See Rule 14a-8(j). While Rule 14a-8(j) requires a company to "file its reasons" for exclusion with the Commission, most companies provide such information in the form of a no-action request.

incur include, to the extent applicable, costs to: (i) review the proposal and address issues raised in the proposal (including time dedicated by internal legal, corporate governance, communications, and investor relations staff, law firms and other service providers, subject matter experts, executive management, and the board of directors on evaluating each proposal); (ii) engage in discussions with the proponent(s); (iii) print and distribute proxy materials, and tabulate votes on the proposal; (iv) communicate with proxy voting advice businesses and non-proponent shareholders (e.g., proxy solicitation costs) and engage with non-proponent shareholders; (v) if the company intends to exclude the proposal, file a notice with the Commission; and (vi) prepare a statement of opposition to the submission.

Some commenters added that the costs that companies incur to consider a shareholder proposal depend on, among others: (i) whether the proposal is an initial submission or resubmission;[288] (ii) whether or not the company seeks no-action relief from Commission staff;[289] (iii) the nature of the proposal, including whether the topic of the proposal is one with which the company is familiar;[290] (iv) whether the company engages with the proponent,

[288] For example, some commenters stated that in the case of statements in opposition of resubmitted proposals, companies often repeat the arguments made in a prior year, which should result in a lower cost of responding to resubmissions relative to first-time submissions. See, e.g., letters from AFL-CIO dated February 3, 2020; CalPERS dated February 3, 2020; Council of Institutional Investors dated January 30, 2020; Interfaith Center on Corporate Responsibility dated January 27, 2020; International Brotherhood of Teamsters dated February 3, 2020; Principles for Responsible Investment dated February 3, 2020; UAW Retiree Medical Benefits Trust dated January 30, 2020. See also letter in response to the Proxy Process Roundtable from Shareholder Rights Group dated December 4, 2018. In certain instances, however, resubmissions could be costlier than initial submissions. For example, companies might decide to challenge a resubmission or to make a concession to the proponent in exchange for the proposal being dropped and incur the associated costs following low support for the initial submission.

[289] See, e.g., letters from CalPERS dated February 3, 2020; John Coates and Barbara Roper dated January 30, 2020; Council of Institutional Investors dated January 30, 2020; International Brotherhood of Teamsters dated February 3, 2020; Richard A. Liroff dated January 28, 2020.

[290] See, e.g., letters from Council of Institutional Investors dated January 30, 2020; Richard A. Liroff dated January 28, 2020.

whether the proponent engages with the company, and, if there is engagement, the manner of the engagement (e.g., face-to-face meetings versus phone calls);[291] (v) the corporate governance of the company, and any changes thereto, over the course of the years of submission;[292] (vi) the importance of the issue raised in the proposal to the company and the proponent and the resources each utilizes;[293] and (vii) the need to seek outside legal advice, proxy solicitation services, consulting services, or other advisory services to respond to the proposal.[294] Hence, there is variation in the costs that companies incur to process shareholder proposals.[295]

The benefits of shareholder proposals to companies (and indirectly their shareholders) generally are the facilitation of shareholder engagement with the company and other shareholders and, in the case of a shareholder proposal that is adopted, the potential benefit of that proposal to the company (and indirectly its shareholders). These benefits are difficult to isolate from other forms of engagement and corporate activities, and cannot be reasonably

---

[291] See, e.g., letters from Council of Institutional Investors dated January 30, 2020; International Brotherhood of Teamsters dated February 3, 2020; Richard A. Liroff dated January 28, 2020.

[292] See, e.g., letter from Richard A. Liroff dated January 28, 2020.

[293] See, e.g., letter from Council of Institutional Investors dated January 30, 2020.

[294] See, e.g., letters from John Coates and Barbara Roper dated January 30, 2020; Council of Institutional Investors dated January 30, 2020; Richard A. Liroff dated January 28, 2020.

[295] We requested from commenters, but did not receive, data that would allow us to estimate the opportunity costs associated with shareholder proposals. One commenter noted that there is no reliable evidence that companies have to forgo economically beneficial activities because of the need to respond to shareholder proposals. See letter from Council of Institutional Investors dated January 30, 2020. Other commenters, however, agreed that shareholder proposals impose opportunity costs on companies and their shareholders. See, e.g., letters from American Securities Association dated February 3, 2020; Business Roundtable dated February 3, 2020; Nareit dated February 3, 2020; National Association of Manufacturers dated February 3, 2020; Society for Corporate Governance dated February 3, 2020.

quantified.[296] In any event, as discussed below we do not expect the amendments to significantly reduce shareholder engagement.[297]

We estimate that 18,594 companies are subject to the federal proxy rules and thus could potentially be affected by the final rule amendments; out of the 18,594 companies, 5,637 actually filed proxy materials with the Commission during calendar year 2018.[298] Among all Russell

---

[296] See infra Section V.E.2 for additional details.

[297] See infra Section V.C.

[298] The affected companies (i.e., 18,594) comprise 5,758 companies with a class of securities registered under Section 12 of the Exchange Act, 20 companies without a class of securities registered under Section 12 of the Exchange Act that filed proxy materials, and 12,718 registered management investment companies, and 98 Business Development Companies. Of 5,690 entities that filed proxy materials with the Commission, we identified 53 that were not companies, and have excluded these from our estimate of companies that filed proxy materials during calendar year 2018.

We estimate the number of registrants with a class of securities registered under Section 12 of the Exchange Act by reviewing all Forms 10-K filed during calendar year 2018 with the Commission and counting the number of unique registrants that identify themselves as having a class of securities registered under Section 12(b) or Section 12(g) of the Exchange Act. Foreign private registrants that filed Forms 20-F and 40-F and asset-backed registrants that filed Forms 10-D and 10-D/A during calendar year 2018 with the Commission are excluded from this estimate. This estimate excludes BDCs that filed Form 10-K in 2018.

We identify the issuers without a class of securities registered under Section 12 of the Exchange Act that filed proxy materials as those (1) subject to the reporting obligations of Exchange Act Section 15(d) but that do not have a class of equity securities registered under Exchange Act Section 12(b) or 12(g) and (2) that filed any proxy materials during calendar year 2018 with the Commission. The proxy materials we consider in our analysis are DEF14A; DEF14C; DEFA14A; DEFC14A; DEFM14A; DEFM14C; DEFR14A; DEFR14C; DFAN14A; N-14; PRE 14A; PRE 14C; PREC14A; PREM14A; PREM14C; PRER14A; PRER14C. Form N-14 can be a registration statement and/or proxy statement. We manually review all Forms N-14 filed during calendar year 2018 with the Commission and we exclude from our estimates Forms N-14 that are exclusively registration statements. To identify registrants reporting pursuant to Section 15(d) but not registered under Section 12(b) or Section 12(g), we review all Forms 10-K filed in calendar year 2018 with the Commission and count the number of unique registrants that identify themselves as subject to Section 15(d) reporting obligations but with no class of equity securities registered under Section 12(b) or Section 12(g).

We estimate the number of unique registered management investment companies based on Forms N-CEN filed between June 2018 and August 2019 with the Commission. Open-end funds are registered on Form N-1A. Closed-end funds are registered on Form N-2. Variable annuity separate accounts registered as management investment companies are trusts registered on Form N-3.

BDCs are entities that have been issued an 814- reporting number. Our estimate includes 88 BDCs that filed Form 10-K in 2018 as well as BDCs that may be delinquent or have filed extensions for their filings. Our estimate excludes six wholly-owned subsidiaries of other BDCs.

3000 companies that held annual meetings in calendar year 2018, 439 (15 percent) received at least one shareholder proposal.[299] Among S&P 500 companies, 266 (53 percent) received at least one shareholder proposal in 2018.

2. Non-proponent shareholders

The final amendments may also affect non-proponent shareholders of companies receiving shareholder proposals. These shareholders, particularly when considered in the aggregate, may incur significant costs to consider and vote on these proposals. Several commenters to the Commission's proposed amendments to the exemptions from the proxy rules for proxy voting advice, particularly institutional investors who typically vote a large number of proposals (which may include company and shareholder proposals) each proxy season, expressed that they face significant resource challenges in determining how to vote on those proposals.[300] In addition, all shareholders may incur passed-through costs associated with companies' consideration and processing of shareholder proposals and experience the economic impact of shareholder proposals that are implemented. According to a recent study based on the 2016 Survey of Consumer Finances, approximately 65 million households owned stocks directly or indirectly

---

The entities that filed proxy materials with the Commission (i.e., 5,690) are subset of affected entities (i.e., 18,594) that filed any of the following proxy materials during calendar year 2018 with the Commission: DEF14A; DEF14C; DEFA14A; DEFC14A; DEFM14A; DEFM14C; DEFR14A; DEFR14C; DFAN14A; N-14; PRE 14A; PRE 14C; PREC14A; PREM14A; PREM14C; PRER14A; PRER14C.

[299] Several companies received multiple shareholder proposals during calendar year 2018. In addition, a few proposals were submitted to companies outside of the Russell 3000 index. Using FactSet's corporate governance database, SharkRepellent (available at https://sharkrepellent.net), we estimate that in 2018, there were 19 voted shareholder proposals at 11 companies outside of the Russell 3000 index. Our analysis focuses on proposals submitted to companies within the Russell 3000 index because this sample represents the vast majority of submitted shareholder proposals.

[300] See, e.g., letters from Investment Company Institute dated February 3, 2020; New York State Comptroller dated February 3, 2020; Ohio Public Employees Retirement System dated February 3, 2020. We received mixed comments from some of these commenters on the proposed amendments to Rule 14a-8.

(through other investment instruments).[301] Our analysis of Form N-CEN data shows that there were 14,605 registered investment companies as of May 2020.[302] Non-proponent shareholders may benefit from shareholder proposals as a component of overall engagement as discussed above and, in certain cases, certain shareholders may benefit if they otherwise would have incurred the costs to submit a substantially similar proposal.

3. Proponents of shareholder proposals

Proponents of shareholder proposals can be motivated by expectations of pecuniary and non-pecuniary benefits and may be affected by the final amendments, which may limit their ability to submit shareholder proposals. We estimate that there were 170 proponents—38 individual proponents and 132 institutional proponents—that served as lead proponent or co-proponent during calendar year 2018 and submitted a shareholder proposal that was included in a proxy statement.[303] As broad context, we note that the ratio of the number of estimated proponents whose proposals appeared in proxy statements during 2018 (i.e., 170) to the number of direct and indirect investors in companies subject to the proxy rules (i.e., 65 million) is extremely small (i.e., 0.0000026 to one). The ratio is less than three shareholder-proponents per million investors. In other words, for both institutional and retail shareholders, the pool of

---

[301] See Jesse Bricker et al., *Changes in U.S. Family Finances from 2013 to 2016: Evidence from the Survey of Consumer Finances*, 103 FED. RES. BULL. at 20, 39 (Sept. 2017), available at https://www.federalreserve.gov/publications/files/scf17.pdf ("Bricker et al. (2017)") (51.9% of the 126.0 million families represented owned stocks). This is a triennial survey, and the latest data available as of this time is from the 2016 survey.

[302] Data is retrieved from Form N-CEN filings with the Commission as of May 2020. Form N-CEN only covers institutional investors that are registered investment companies.

[303] Data is retrieved from proxy statements (see Proposing Release at 66487 for a discussion of this data and its limitations). This data includes only shareholder proposals that appeared on the companies' proxy statements in 2018. In a broader set of submitted shareholder proposals, which includes voted, omitted, and withdrawn proposals, we estimate that 278 unique proponents submitted a proposal as lead proponent or co-proponent during calendar year 2018. Data is retrieved from ISS Analytics.

shareholders that has demonstrated an interest in submitting shareholder proposals generally is separate and distinct from the overall general pool of shareholders. As a result, extrapolating from the general pool of shareholders to the pool of shareholders with an interest in submitting a proposal (and vice versa) is unlikely to provide a meaningful basis for analysis and insight.

C. Estimated reduction in the number of shareholder proposals

We expect the primary economic effects of the final amendments, in the aggregate, to derive from the reduction in shareholder proposals included in companies' proxy statements. Because of the potential ways in which proponents may satisfy, or alter their behavior to satisfy, the amended ownership thresholds for initial submissions, we believe it is more likely that the reduction in shareholder proposals will result from the amendments to the resubmission thresholds. The magnitude of the overall reduction will determine the magnitude of the benefits and costs discussed in Section V.D below.[304]

We received two comments on the Preliminary Staff Analysis and the August 14, 2020 memorandum.[305] One of these commenters asserted that the Commission should have provided

[304] Some commenters stated that the economic analysis should consider the interaction of the effects of the amendments to Rule 14a-8 with the effects of the amendments to Rule 14a-2(b). See, e.g., letter from Senator Sherrod Brown dated August 21, 2020. In particular, commenters argued that the amendments to Rule 14a-2(b) will make it harder for shareholder proposals to meet the amended resubmission thresholds because the amendments to Rule 14a-2(b) will allow management to influence proxy voting advice businesses' recommendations related to proposals that management considers unfavorable to them. See, e.g., letters from Ceres et al. dated February 3, 2020; Shareholder Rights Group dated January 6, 2020; Trillium Asset Management dated February 3, 2020. A commenter also stated that the amendments to Rule 14a-2(b) will increase shareholders' costs of processing shareholder proposals because the cost of proxy voting advice businesses will increase and proxy voting advice will be issued with a delay. See, e.g., letter from Council of Institutional Investors dated January 30, 2020. To the extent that there is an increase in shareholders' costs of processing shareholder proposals from the amendments to Rule 14a-2(b), any cost savings associated with the increase in excludable proposals as a result of the amendments to Rule 14a-8 may be higher. Nevertheless, we believe that any such effects that result from the interaction between the amendments to Rule 14a-8 and Rule 14a-2(b) likely will be small because the final amendments to Rule 14a-2(b) include certain revisions intended to mitigate the unintended consequences identified by commenters (i.e., undue influence and increased costs).

[305] See letters from Council of Institutional Investors et al. dated September 4, 2020; Sherrod Brown dated August 21, 2020.

the public notice of and an opportunity to comment on the Preliminary Staff Analysis in the Proposing Release.[306] As discussed above and in the August 14, 2020 memorandum, when Commission staff receives a data set in the context of a rulemaking, it often will attempt to conduct preliminary analyses with the data in an effort to determine whether analysis of the data could reliably inform the Commission's decision-making, including assessing limitations in the data and assumptions regarding the data that would be necessary or appropriate as well as its analytical value to the proposed rulemaking in light of those limitations and assumptions. Consistent with that approach, staff analyzed the data set provided by Broadridge in connection with the Commission's consideration of the proposed amendments to Rule 14a-8. However, as described in the August 14, 2020 memorandum from the Commission's Chief Economist accompanying the Preliminary Staff Analysis, due to the significant limitations in the data and the extent and nature of the related assumptions that would be necessary to make use of it, neither the data set nor the associated Preliminary Staff Analysis could be used to reliably assess the potential impact of our rule amendments on retail shareholders and accordingly, neither the data nor the related analysis were included in the Proposing Release. This is not an unprecedented occurrence in the context of a proposed rulemaking, and we note that in the Proposing Release the Commission requested that commenters submit data that would allow the Commission to reliably assess the impact of the proposal.[307]

The Commission satisfied its obligation under the Administrative Procedure Act ("APA") to include in the Proposing Release "either the terms or substance of the proposed rule or a

[306] See letter from Council of Institutional Investors et al. dated September 4, 2020.

[307] See Proposing Release at 66508–66509.

description of the subjects and issues involved,"[308] and to "give interested persons an opportunity to participate in the rule making through submission of written data, views, or arguments."[309] These requirements also entail a duty "to identify and make available technical studies and data that it has employed in reaching the decisions to propose particular rules."[310] As the Commission's Chief Economist explained in his August 14, 2020 memorandum accompanying the Preliminary Staff Analysis, the staff did not rely on the Broadridge data set or the Preliminary Staff Analysis in formulating its recommendations for the Commission, having concluded that the data set had limitations that significantly narrowed its potential value in analyzing the impact of the proposed amendments. Consequently, the Commission did not rely on this data or analysis in determining to propose the amendments.

Although the Commission was not obligated to do so, it referenced the Broadridge data set and its limitations in the Proposing Release and invited commenters to submit data that would allow us to reliably estimate the potential effects of the rule.[311] Moreover, we have provided an opportunity for public comment on the Preliminary Staff Analysis as well as a memorandum from the Chief Economist discussing the limitations of that analysis, which were placed in the

[308] 5 U.S.C. 553(b)(3).

[309] Id. 553(c).

[310] Owner-Operator Indep. Drivers Ass'n, Inc. v. Fed. Motor Carrier Safety Admin., 494 F.3d 188, 201-03 (D.C. Cir. 2007) (quotation omitted).

[311] Broadridge was not identified in the Proposing Release. Until recently, Broadridge had asked not to be identified as the source of the data set. Additionally, Broadridge did not submit the data set to the public comment file in response to the request for comment. After receiving confirmation that the staff could attribute the Broadridge data set by name, the staff added the Preliminary Staff Analysis to the comment file.

public comment file on August 14, 2020.[312] In formulating the final amendments, we have considered the comments received since that time, as discussed further below.[313]

Two commenters asserted that the Proposing Release should have addressed the figures in the Preliminary Staff Analysis, including the attempts to estimate the percentage of all companies for which less than 25% or 5% of accounts in the Broadridge data set would be eligible to have their shareholder proposal included in the company's proxy statement under the baseline and under the proposed amendments.[314]

As described in the August 14, 2020 memorandum, the Broadridge data set suffered from significant limitations. As only one example, in analyzing the potential impact of possible changes to shareholder proposal eligibility, the staff was unable to determine with reasonable accuracy from the data set whether the snapshot of account holdings provided by Broadridge could be used to determine whether individual investors in fact met ownership and duration

---

[312] One commenter noted that the Preliminary Staff Analysis was added to the comment file after the comment period closed in February 2020. See letter from Council of Institutional Investors et al. dated September 4, 2020. The Proposing Release made clear, however, that we or the staff "may add studies, memoranda, or other substantive items to the comment file during this rulemaking." See Proposing Release at 66458. Moreover, the Commission and staff have historically considered comments submitted after a comment period closes but before adoption of a final rule, consistent with the Commission's Informal and Other Procedures (17 CFR 202.6). Consistent with that practice, we have done so here.

[313] We disagree with a commenter who argued that the inclusion of the Preliminary Staff Analysis in the comment file *after* the Proposing Release was inconsistent with the staff's Current Guidance on Economic Analysis in SEC Rulemakings. See letter from Council of Institutional Investors et al. dated September 4, 2020 (citing Current Guidance on Economic Analysis in SEC Rulemakings, available at https://www.sec.gov/divisions/riskfin/rsfi_guidance_econ_analy_secrulemaking.pdf ("Staff Guidance")). As noted above, the Proposing Release specifically indicated that "studies, memoranda, or other substantive items" might be added to the comment file during the rulemaking. Nor does the Staff Guidance require that the Commission engage in economic analysis based on data that it reasonably believes cannot reliably inform an assessment of the benefits and costs of a rule. See Staff Guidance at 14. Rather, the Staff Guidance is designed to allow for flexibility in the context of any particular rulemaking (id. at 2) and the approach taken here was appropriate in the circumstances. In any event, the Staff Guidance is derived from the Commission's statutory obligations under the APA and the Exchange Act, among others, and does not itself impose enforceable obligations independent of those requirements.

[314] See letters from Council of Institutional Investors et al. dated September 4, 2020; Sherrod Brown dated August 21, 2020.

thresholds under the current or revised eligibility requirements (and therefore was unable to determine with reasonable accuracy the potential impact), because the data set does not identify account holdings as of the deadline to submit a shareholder proposal or as of the annual meeting date. Rather, it only includes data points as of the record date, which do not extend sufficiently in time to capture the minimum holding requirements. Additionally, neither Broadridge nor the staff were able to confirm that the anonymized accounts in the Broadridge data set represented retail shareholders, and the data was provided on an account-level basis, not an investor-level basis, while investors may hold securities in the same company through more than one account. For these and other reasons, including those set forth in the August 14, 2020 memorandum, we believe the Broadridge data, including through the Preliminary Staff Analysis, cannot be used to reliably determine the number of retail investors who would be affected by the proposed amendments.

In addition, and apart from the specific issues associated with the limitations of the Broadridge data and the reliability of the Preliminary Staff Analysis, we do not believe an analysis of which companies have, for example, 5%, 10%, or 25% of their accounts eligible to submit proposals under the current or revised submission thresholds provides a meaningful basis on which to analyze the impact of the proposals. We note, for example, that we approximate that only roughly 0.0003% of investors actually submitted shareholder proposals that appeared in 2018 proxy statements, and that such a general analysis would not allow us to estimate reliably the impact of the proposals on that small subset of shareholders that are likely to submit proposals.[315]

[315] 0.0003% = 170 unique proponents that submitted proposals that were included in a company's proxy statement as lead proponent or co-proponent during calendar year 2018 / 65 million U.S. investors. See supra note 72.

Separate from the limitations inherent in extrapolating from a large pool of shareholders with diversified preferences to a very small subset of that group that expresses a specific preference, such a general analysis is static and, therefore, would not reflect the expectation that shareholders with a specific preference for submitting a proposal would adjust their holdings to meet the revised submission thresholds, including by holding shares for an additional period of time or otherwise adjusting their portfolios. For example, many investors also invest through investment funds, which would not be captured by company-specific account-level data. However, these shareholders could reallocate their fund holdings to increase their positions in individual companies if they desired to submit a shareholder proposal and did not want to wait to meet the revised eligibility requirements. Shareholders also could make various other adjustments to their holdings to address their individual eligibility preferences. Because, as discussed below, we do not expect the marginal cost of these adjustments to be significant, the inability to account for this behavior significantly narrowed the potential value of the analysis in analyzing the impact of possible changes to the eligibility thresholds.

One commenter expressed the view that it was inappropriate to distinguish between retail investors who have filed proposals in the past and those who have not in considering the likely impact of the proposed amendments on retail shareholders.[316] This commenter argued that investors who have not exercised their rights to have a shareholder proposal included in the company's proxy statement would nonetheless bear a cost if those rights were taken away, because a right can have value even if it is not exercised.

Even looking at a broader set of submitted shareholder proposals, which includes voted, omitted, and withdrawn proposals, the estimated 278 unique proponents who submitted a proposal as lead proponent or co-proponent during calendar year 2018 represent only approximately 0.0004% of all shareholders. See Memorandum.

[316] See letter from Council of Institutional Investors et al. dated September 4, 2020.

The Commission notes that every retail shareholder cited by the commenter whose current eligibility to submit a proposal is based on having held at least $2,000 worth of company stock for at least one year will continue to be eligible to submit a proposal during the transition period. In addition, while these shareholders' eligibility may be affected in the future, they can maintain their eligibility at that time by simply continuing to maintain at least $2,000 of company stock. More generally, the Commission has considered the potential costs and benefits of the rule amendments, including those associated with retail shareholders who, in the future, would meet the current eligibility thresholds but who may not meet the revised thresholds because, for example, they choose not to continue to hold at least their $2,000 worth of company securities for any additional required time. We continue to believe that, to the extent that any shareholder who has held at least $2,000 worth of company securities for one year chooses not to meet the revised eligibility thresholds, including by simply holding that same dollar amount of stock for a maximum of two additional years, that shareholder has not demonstrated a sufficient investment interest in a company to be able to draw on company and shareholder resources for the purpose of including a proposal in the company's proxy statement, including requiring fellow shareholders to potentially review, consider, and vote on that proponent's proposal.

Moreover, as discussed in more detail below, the costs to the shareholder-proponent to submit a proposal are low, including when compared to the costs incurred by companies and non-proponent shareholders, such as, among others, the costs to the shareholder to review, consider, and vote on the proposal. To the extent that the potential shareholder-proponents cited by the commenter incur additional costs to maintain eligibility under the new thresholds—including, for example, costs associated with maintaining at least $2,000 worth of stockholdings for a maximum of two additional years (which could be offset to some extent by benefits of

holding the shares)—we believe those costs would be appropriate in light of the related benefits of the rule amendments, including those associated with an increased alignment of interest between the proponent and the non-proponent shareholders who would incur costs associated with reviewing, considering, and voting on the proponent's proposal.[317]

We also believe that the cost, if any, to shorter-term shareholders that have not previously demonstrated a desire to submit a shareholder proposal of the potentially applicable longer holding periods under the amended thresholds is likely to be small for a number of reasons. For example, and more specifically, (1) given that such a small number of total shareholders have submitted proposals over time, it would not be expected that a significant number of smaller, shorter-term shareholders that have not previously demonstrated a desire to submit a shareholder proposal would change their preferences and desire to submit a proposal, and (2) even if a particular shareholder changed his or her preferences, he or she could choose to remain eligible by incurring the marginal cost of holding at least $2,000 of his or her current shareholding for a total of three years. Accordingly, we estimate the potential loss in value cited by the commentator, if any, to be low.

In the Proposing Release, we estimated the reduction in the number of shareholder proposals assuming no change in shareholder-proponent behavior as a result of the rule amendments.[318] This analysis provides an upper bound estimate of the reduction in shareholder proposals that is unlikely to be observed in practice because shareholder-proponents are expected

---

[317] For the same reason, we disagree with one commenter's assertion that "the impact of the proposed amendments would be much broader than the Commission's release asserted, effectively depriving most retail shareholders of the rights and ability to use the shareholder proposal process to protect and advance their interests as investors." See letter from Council of Institutional Investors et al. dated September 4, 2020. As noted above, every retail shareholder cited by the commenter who currently is eligible to submit a proposal by having held $2,000 worth of company stock for at least one year will continue to be eligible to submit a proposal by simply continuing to maintain $2,000 of company stock for a maximum of two additional years.

[318] See Proposing Release at 66496–66498.

to respond to the final amendments by taking actions to mitigate the effects of rule amendments on their ability to submit proposals. Such actions may reduce the magnitude of the final amendments' effects on the number of shareholder proposals, thereby reducing the benefit of the amendments but also reducing the costs. However, as noted above, extrapolating from the general pool of shareholders has significant limitations, and it is difficult to anticipate the shareholder-proponents' responses. Accordingly, it should be recognized that our efforts to provide a quantitative analysis are inherently limited. In this section, we first summarize the analysis included in the Proposing Release from which we estimate the upper bound of the reduction and then describe how changes in shareholder-proponent behavior could affect the magnitude of the reduction in shareholder proposals.

Table 1 below provides an estimated range of the upper bound of the percentage of current shareholder proposals that we anticipate could be excludable as a result of the rule amendments assuming no change in shareholder-proponents' behavior and not taking into account the temporary effect of the transition period that the final rules provide.[319] As discussed in more detail below, we do not believe this assumption will prove to be correct in practice. We can only estimate the range, and not a precise number, of the reduction in shareholder proposals associated with changes to the ownership thresholds because we do not have data on duration of holdings for shareholder-proponents.[320] We do not expect the final amendments relating to the

[319] See Proposing Release at 66496 for details on the methodology and its limitations. Table 1 does not account for possible overlap of excludable proposals across final amendments. In particular, if final amendments result in a particular proposal being excludable under both amended Rule 14a-8(b) and amended Rule 14a-8(i)(12), we include this proposal in the estimation of the effects for both of the final amendments.

[320] Several commenters provided staff with statistics related to equity holdings of U.S. investors. In particular, several commenters provided ownership data regarding themselves or their clients. See, e.g., letters from CalPERS dated February 3, 2020; First Affirmative Financial Network, LLC dated January 24, 2020; James McRitchie dated November 5, 2019; James McRitchie dated July 21, 2020. One commenter cited a Department of Labor study observing that the median brokerage account balance of U.S. investors was $6,200 in 2013. See letter from Better

Markets dated February 3, 2020 (citing ADVANCED ANALYTICAL CONSULTING GROUP & DELOITTE, BROKERAGE ACCOUNTS IN THE UNITED STATES (Nov. 30, 2015), available at https://www.dol.gov/sites/dolgov/files/EBSA/researchers/analysis/retirement/brokerage-accounts-in-the-us.pdf ("Department of Labor Study")). Another commenter cited the same Department of Labor study noting that households with a brokerage account owned $248,000 in stocks on average in 2013. See letter from Jane Bulnes-Fowles dated February 3, 2020 (citing the Department of Labor Study). A third commenter cited a Census Bureau study observing that among U.S. households, the median holdings of stocks and mutual funds was $47,000 in 2016. See letter from Paul Rissman dated January 15, 2020 (citing JONATHAN EGGLESTON & ROBERT MUNK, NET WORTH OF HOUSEHOLDS: 2016, U.S. CENSUS BUREAU (Oct. 2019), available at https://www.census.gov/content/dam/Census/library/publications/2019/demo/p70br-166.pdf). A fourth commenter cited a study from the National Institute on Retirement Security, which analyzed data from the U.S. Census Bureau and showed that the median U.S. retirement account balance is zero, and from those accounts with a non-zero balance, the median account balance is approximately $40,000. See, e.g., letter from AFL-CIO dated February 3, 2020 (citing JENNIFER ERIN BROWN ET AL., RETIREMENT IN AMERICA: OUT OF REACH FOR WORKING AMERICANS?, NATIONAL INSTITUTE ON RETIREMENT SECURITY, at 1 (Sept. 2017), available at https://www.nirsonline.org/wp-content/uploads/2018/09/SavingsCrisis_Final.pdf) ("Brown (2017)"). A fifth commenter cited a report documenting an average 401(k) balance in the third quarter of 2019 of $105,200. See letters from Shareholder Commons dated January 31, 2020 (citing FIDELITY INVESTMENTS, BUILDING FINANCIAL FUTURES, available at https://sponsor.fidelity.com/binpublic/06_PSW_Website/documents/Building_Financial_Futures.pdf). Some commenters cited a median value of retail investors' stock portfolios equal to $27,699. See, e.g., letter from Better Markets dated February 3, 2020. A final commenter cited a Federal Reserve bulletin according to which the median retirement portfolio in the United States was $60,000 in 2016. See, e.g., letter from Ceres et al. dated February 3, 2020 (citing Bricker et al. (2017), supra note 301). See also letter from James McRitchie dated July 21, 2020 (providing statistics on share ownership similar to the statistics provided by other commenters). Relatedly, some commenters noted that in practice, shareholder-proponents must hold a share value significantly higher than the required ownership threshold because stock prices are volatile and share ownership thresholds must be maintained for a certain period of time. See, e.g., letter from First Affirmative Financial Network, LLC dated January 24, 2020. The above-mentioned statistics provide information that is additional to the ownership data from proxy statements and no-action letters because they provide ownership information of potential rather than current proponents. Nevertheless, these statistics do not allow us to distinguish between the holdings of all shareholders and the holdings of the shareholders that are likely to submit a proposal, so we have not used them in our analysis.

Other commenters provided us with statistics on shareholders' ownership duration (see also Proposing Release at 66490 for additional statistics on shareholders' ownership duration). In particular, one commenter cited a white paper that estimated the average duration of holdings across all shareholders of nine months as of December 2018 using data of share turnover for NYSE listed securities. See letter in response to the Proxy Process Roundtable from Shareholder Rights Group dated December 4, 2018. Another commenter cited an academic study, which estimated that the average holding period for individual accounts at a U.S. discount brokerage was 16 months between 1991 and 1996. See letter from AFL-CIO dated February 3, 2020 (citing Brad Barber & Terrance Odean, *Trading Is Hazardous to Your Wealth: The Common Stock Investment Performance of Individual Investors,* 55 J. FIN. 773, 775 (2000) ("Barber & Odean (2000)")). Using the same data as in Barber & Odean 2000, another paper found that the median holding period of individual investors is 207 trading days. See Deniz Anginer, Snow Xue Han & Celim Yildizhan, *Do Individual Investors Ignore Transaction Costs?* (Working Paper, 2018), available at https://ssrn.com/abstract=2972845. A third commenter cited a study, which estimated that the average holding period of mutual funds between 2005 and 2015 was 15 to 17 months. See letter from AFL-CIO dated February 3, 2020 (citing Anne M. Tucker, *The Long and The Short: Portfolio Turnover Ratios & Mutual Fund Investment Time Horizons*, 43 J. CORP. L. 581 (2018)). Finally, another commenter cited an academic study that showed that the median duration of holdings for institutional investors in 2015 was two years. See letter from Institute for Policy Integrity dated February 3, 2020 (citing K.J. Martijn Cremers & Simone M. Sepe, *Institutional Investors, Corporate Governance, and Firm Value*, 41 SEATTLE U. L. REV. 387, 403 (2018)). Nevertheless, it is difficult to infer duration of holdings of shareholder-proponents from these studies because they do not separately consider holdings of shareholders that already submitted or are likely to submit shareholder proposals. Drawing conclusions about duration of holdings based on the data provided by commenters would be inherently speculative because

one-percent ownership threshold and shareholder engagement or the final amendment requiring certain documentation when using a representative to meaningfully impact the number of shareholder proposals included in companies' proxy statements, because the one-percent ownership threshold currently is rarely utilized in light of the $2,000/one-year threshold and the majority of shareholders that submit a proposal through a representative already provide much of the documentation that is mandated by the final amendments, consistent with existing staff guidance.[321]

Table 1: Upper bound estimate of the percentage of excludable proposals by rule amendment assuming no change in shareholder-proponents' behavior

Amendment:	
Rule 14a-8(b) – ownership thresholds and prohibition on aggregation[322]	0 - 56%
Rule 14a-8(c) – one proposal per person[323]	2%

shareholder-proponents constitute a very small (i.e., three shareholder-proponents per million investors) and non-random set of shareholders.

[321] See Proposing Release 66499.

[322] See Proposing Release at 66497. Table 1 uses data from proxy statements to estimate the number of excludable proposals as a result of the final amendments to Rule 14a-8(b) and Rule 14a-8(c). Our analysis using data from no-action letters yields qualitatively similar results. The low end of the range (i.e., 0%) assumes that all of the 170 proponents held the stock for three years. The high end of the range (i.e., 56%) assumes that none of the 170 proponents, all of whom held the stock for one year, held the stock for three years, and assumes that proponents do not hold any more company stock outside of the single account that they cite for their public proof of ownership. We believe these assumptions are overinclusive.

Table 1 estimates the joint impact of the amendments to the ownership thresholds and the prohibition on aggregation of shareholdings on the number of shareholder proposals included in companies' proxy materials. On the one hand, we estimate that changing the ownership thresholds while maintaining shareholders' ability to aggregate holdings across shareholder-proponents would have resulted in a reduction in the number of shareholder proposals included in companies' proxy statements in 2018 between zero and 54 percent. On the other hand, we estimate that prohibiting aggregation of holdings across shareholder-proponents without raising ownership thresholds would not have resulted in a change in the number of shareholder proposals included in companies' proxy statements in 2018.

[323] See Proposing Release at 66497.

Rule 14a-8(i)(12) – resubmission thresholds[324]	5%

These estimates are subject to several significant limitations and should be interpreted with caution. First, as noted earlier, when estimating the number of potentially excludable shareholder proposals in the analysis above, we assume that proponent behavior with respect to shareholder proposal submissions will remain unchanged. In reality, we believe this is highly unlikely. As noted, of the 65 million U.S. investors, only 170 submitted shareholder proposals that appeared in proxy statements in 2018 and were subsequently voted, and of those, only 38 were individuals (the rest were institutional investors). To meet the new initial submission thresholds, these investors—who typically already have owned at least $2,000 of company stock for at least one year or perhaps longer—would already be eligible to submit a proposal due to their holding period or the size of their holding, or would need to hold the same amount of stock for at most two more years.[325]

[324] In the Proposing Release, we estimated that the amendments to Rule 14a-8(i)(12) could have resulted in 30 additional excludable proposals in 2018. See Proposing Release at 66500 n.259. Because we are not adopting the proposed Momentum Requirement, our estimated reduction in the number of shareholder proposals is lower than the estimate in the Proposing Release. In particular, we estimate that the amendments to the resubmission thresholds could result in 23 additional excludable proposals in 2018, which is approximately 5% of the 423 shareholder proposals that appear as first-time submissions or resubmissions during 2018 in a report prepared by the Council of Institutional Investors (see Proposing Release at 66469 n.92). See Proposing Release at 66490 n.197.

One commenter estimated the number of excludable proposals as a result of the amendments to the resubmission thresholds to be around 21%. See letter from Sustainable Investments Institute dated February 3, 2020. The commenter's analysis only examines the effects of the rule amendments on environmental and social proposals; it does not include governance and other proposals in the analysis. In addition, based on our understanding of the methodology used, we believe that the commenter's estimate of the effect of the rule amendments is overstated because the commenter counts as excludable all proposals that do not meet the resubmission thresholds regardless of whether those proposals were ultimately resubmitted or not. We are unable to confirm whether the commenter's classification of proposals as resubmissions is accurate. The same limitations apply to the updated analysis using data from the 2020 proxy season conducted by Sustainable Investments Institute and included as an attachment to the letter from Council of Institutional Investors et al. dated July 29, 2020.

[325] If they held more than $2,000 but less than $15,000 or $25,000 in stock and had not yet met the three-year holding period.

Accordingly, we believe it is likely that, in response to the amendments, proponents that desire to submit a proposal but could be precluded from submitting shareholder proposals due to the new requirements would decide to hold shares for a longer period or increase their holdings of certain stocks to meet the amended eligibility requirements.[326] If shareholders respond by changing their investment behavior, or if many currently eligible holders are already long-term holders, the actual number of newly excludable shareholder proposals as a result of changes to Rule 14a-8(b) and Rule 14a-8(c) will likely be significantly lower than the upper bound of excludable proposals estimated above.

Second, another significant limitation in our data, and accordingly in the estimates presented in Table 1, is that it relies on proof of ownership letters provided by shareholder-proponents in connection with their shareholder proposals. Those letters typically are written by a broker-dealer or custodian of the shares and are written solely for the purpose of proving that the proponent meets the minimum size and length of ownership threshold requirements. For a number of reasons, which may include privacy concerns because in many cases these letters are made public, proponents may choose to keep some of their holdings in accounts that are separate from the account they use to prove compliance with the ownership thresholds. Thus, this analysis could underestimate proponents' actual holdings and, accordingly, overestimate the number of newly excludable proposals.

Third, an issue that is sufficiently important to the broader shareholder base can be brought to the company's attention by other shareholders, including those that continue to be eligible to submit a shareholder proposal. Therefore, to the extent that shareholders with

[326] We note that portfolio reallocation is not costless or frictionless. We discuss costs associated with this type of reallocation in detail below in Section V.D.

holdings that satisfy the amended ownership thresholds choose to take up proposals of shareholder-proponents precluded from submitting certain proposals under the final rule amendments, these proposals may continue to be included in companies' proxy statements.[327]

Fourth, the aggregate reduction in shareholder proposals may be lower than the one estimated above if shareholder-proponents decide to rotate proposals on similar topics among different companies or to submit proposals to the same company but on a different topic in response to changes to the resubmission thresholds. Lastly, shareholder-proponents may use alternative avenues of communication with management, which will not impact the number of excludable proposals but may impact the aggregate economic effects of the rule amendments. While we expect changes in behavior described above to moderate the reduction in submitted shareholder proposals and impact the economic effects of the rule amendments, we cannot quantify the magnitude of this impact because we cannot reliably predict the extent to which shareholder-proponents would change their behavior in response to final amendments.

In addition, our estimation of newly excludable proposals does not reflect the final amendments' transition provision, which will temporarily decrease the number of excludable

---

[327] As discussed below, institutional investors are less likely to be affected by the amendments to the ownership thresholds than retail investors (see infra note 392 and accompanying text). Several commenters discussed the likelihood of shareholders with larger stakes taking up shareholder proposals of proponents who would no longer meet amended eligibility requirements. In particular, one commenter argued that some asset managers have conflicts that may make them less likely to take up proposals that would have been submitted by the newly excludable proponents. The commenter asserted that some asset managers are reluctant to submit proposals against a company's management because they rely on a company's management for the assignment of the administration of the company's defined contribution plan and the inclusion of the asset manager's products in the menu of investment options available to plan participants. See letter from Lucian A. Bebchuk dated February 3, 2020 (citing Lucian A. Bebchuk & Scott Hirst, *Index Funds and the Future of Corporate Governance: Theory, Evidence, and Policy*, 119 COLUM. L. REV. 2029 (2019)). In addition, commenters indicated that some larger shareholders may become more active in submitting shareholder proposals but this response will be muted by regulatory disincentives, the fact that large investors are less nimble than smaller investors that have more flexibility to submit proposals on emerging matters, and the fact that large institutions have direct access to management and thus are less likely to submit a shareholder proposal. See, e.g., letters from Council of Institutional Investors dated January 30, 2020; Interfaith Center on Corporate Responsibility dated January 27, 2020; James McRitchie dated February 2, 2020.

proposals as a result of the amendments to the ownership thresholds.[328] Finally, we note that while the final amendments may result in a reduction in the number of shareholder proposals, companies may always elect to include in their proxy materials, or implement proposals, that will otherwise be excludable if they believe that those proposals will benefit shareholders.[329]

D. Analysis of Costs and Benefits and Effects on Efficiency, Competition, and Capital Formation of the Final Rule Amendments

1. Companies

As a result of the final amendments, companies will likely experience cost savings because they will be able to exclude more proposals. Here, we note again that shareholders may take steps to significantly offset the effects resulting from the change to the initial submission thresholds at relatively low cost (e.g., a shareholder who currently meets the current threshold of holding at least $2,000 of company stock for one year can, to the extent that it has not already held the stock for three years, meet the revised threshold by holding the stock for at most two more years or can rely on the transition provision for a temporary period of time).[330] Thus, we are more confident that the changes in the resubmission thresholds will reduce the number of

---

[328] The transition provision will temporarily exempt from the new ownership thresholds certain shareholder-proponents that met the former eligibility requirements and maintain continuous ownership of their shares, allowing these shareholders to continue to submit shareholder proposals for inclusion in companies' proxies for a period of time using the $2,000 threshold.

[329] Among shareholder proposals resubmitted to Russell 3000 companies during 2011 to 2018, ten proposals appeared in company proxies and were voted on despite receiving low voting support in prior submissions and being eligible for exclusion under the current resubmission thresholds.

[330] Commenters have also argued that certain proponents use the threat of submitting a shareholder proposal as a means to force the company to implement unrelated changes. See, e.g., letter from Center for Capital Markets Competitiveness dated January 31, 2020. We are unable to confirm whether and how frequently these events occur but we believe that the rule amendments may reduce the occurrence of any such events because proponents would need to either invest more money in the company or hold the company's shares for a longer period of time to make the threat credible.

shareholder proposals. Companies incur direct costs associated with the consideration and processing of submitted proposals. Moreover, companies may experience cost savings if shareholders are discouraged from submitting proposals that would be excludable based on the final amendments. This is because companies incur certain direct costs even in connection with excludable proposals (e.g., companies will need to file a notice with the Commission that they intend to exclude the proposal).[331]

i. Cost Savings due to Fewer Shareholder Proposals

To quantify the cost savings companies will likely experience as a result of the final amendments, we use the estimated upper bound reduction in the number of shareholder proposals from Section V.C above and estimates provided by commenters on the average costs that companies incur to process shareholder proposals.[332]

---

[331] It is also possible that, as a result of the revised resubmission thresholds, proponents of proposals that are unlikely to meet the resubmission thresholds may be less likely to submit those proposals initially because they expect that their proposals will be excluded on a subsequent resubmission.

[332] A number of commenters responded to our request for data on the cost of shareholder proposals. One commenter indicated that, based on the experience of one of its staffers who had represented registrants, no-action correspondence represents the most substantial cost related to shareholder proposals, with a marginal cost to the company of less than $20,000. See, e.g., letter from CalPERS dated February 3, 2020. Two commenters cited the $18,982 cost estimate to print and mail a single shareholder proposal included in the Paperwork Reduction Act ("PRA") section of the Proposing Release and derived from a July 2009 survey by Business Roundtable. See letters from John Coates and Barbara Roper dated January 30, 2020; Council of Institutional Investors dated January 30, 2020 (citing the cost estimates from the letter in response to Facilitating Shareholder Director Nominations, Release No. 34-60089 (June 10, 2009) [74 FR 29024 (June 18, 2009)] from Business Roundtable dated August 17, 2009, available at https://www.sec.gov/comments/s7-10-09/s71009-267.pdf) ("2009 BRT Letter"). Yet another commenter indicated that the cost of shareholder proposals ranges from $50,000 to $100,000 or more per proposal. See letter from Business Roundtable dated February 3, 2020 (noting that "[a]lthough 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"). Finally, according to a commenter, the $87,000 to $150,000 per proposal is a fair range of cost estimates for typical proposals, even though the cost of certain proposals may exceed the high end of the range. See letter from Center for Capital Markets dated January 31, 2020.

One commenter conducted a survey of its members regarding the costs associated with shareholder proposals. See letter from Society for Corporate Governance dated February 3, 2020. According to the survey, 24% of the respondents stated that they spend no money or a negligible dollar amount on average annually to manage/respond to shareholder proposals, 12% stated that they spend more than a negligible amount but less than $5,000, eight

Some commenters criticized the estimates of costs that companies incur to process shareholder proposals used in the estimation of the cost savings to companies in the Proposing Release. A number of commenters argued that the cost estimates discussed in the economic analysis of the Proposing Release were unreliable.[333] In particular, commenters argued that the $150,000 cost estimate provided by a commenter in response to the Proxy Process Roundtable[334] and used as an upper bound of our cost estimates in the Proposing Release is unreliable because: (i) it is not based on any hard data; (ii) it is based on costs incurred by financial services firms

---

percent mentioned that they spend between $5,000 and $10,000, and 29% stated that they spend between $10,000 and $20,000. In addition, a number of survey respondents indicated that they spend more than $20,000. For example, one respondent reported costs "[i]n excess of $50,000"; one respondent reported costs of "well over" $125,000; and a third respondent reported incurred expenses of $109,792 in 2018, which included the cost of seeking no-action relief, for one proposal and $133,587 in 2019 for a proposal that was ultimately included in the proxy statement. Two other respondents reported costs of up to $100,000; and another respondent reported costs of "more than $200,000" in "outside counsel expenses alone" to process the shareholder proposals it receives. Although informative, we are unable to use these survey responses to precisely estimate cost savings associated with the rule amendments because they refer to the annual cost of shareholder proposals for each respondent rather than the cost of a single proposal. While we have information of the number of proposals submitted at each company in the Russell 3000 index, we lack information on the identity of respondents in the survey. Thus, we are unable to estimate the average cost of a single proposal from this data. For example, although 24% of respondents stated that they spend no money or a negligible dollar amount on average annually to manage/respond to shareholder proposals, we are unable to determine whether this is because they do not spend money to respond or because they have not received proposals. Several of the respondents noted in their comments that they had not received a shareholder proposal in recent years. Further, the Council of Institutional Investors estimates that S&P 500 companies received 77% of the proposals received by Russell 3000 companies as of the end of the third quarter 2017 (see Jonas Kron & Brandon Rees, *Frequently Asked Questions about Shareholder Proposals*, COUNCIL OF INSTITUTIONAL ADVISORS, at 1 (last visited Aug. 21, 2020), available at https://www.cii.org/files/10_10_Shareholder_Proposal_FAQ(2).pdf ("CII FAQ")), but 47% of the Society for Corporate Governance survey respondents were not in the S&P 500. Further, the types of costs included in the survey responses differ across respondents and so we cannot use the survey responses to estimate the total cost of a typical shareholder proposal.

[333] See letters from AFL-CIO dated February 3, 2020; As You Sow dated February 3, 2020; Better Markets dated February 3, 2020; CalPERS dated February 3, 2020; John Coates and Barbara Roper dated January 30, 2020; Council of Institutional Investors dated January 30, 2020; CtW Investment Group dated February 3, 2020; Impax Asset Management dated January 20, 2020; Interfaith Center on Corporate Responsibility dated January 27, 2020; International Brotherhood of Teamsters dated February 3, 2020; Richard A. Liroff dated January 28, 2020; Paul M. Neuhauser dated February 3, 2020; Segal Marco Advisors dated February 3, 2020; Tom Shaffner dated December 17, 2019; UAW Retiree Medical Benefits Trust dated January 30, 2020. Some of the points raised by commenters were also discussed in the Proposing Release. See Proposing Release at 66496.

[334] See letter in response to the Proxy Process Roundtable from American Securities Association dated June 7, 2019.

rather than corporations; and (iii) it is likely at the high end of a range of costs.[335] Commenters also argued that the $50,000 per proposal cost estimate provided by one observer[336] and used as a lower bound of our cost estimates in the Proposing Release likely is unreliable because it is based on anecdotal reports.[337] Finally, a number of commenters, without providing cost estimates of their own, argued that the actual costs of processing shareholder proposals are lower than existing cost estimates because these estimates are exaggerated by certain commenters.[338]

Some other commenters stated that the economic analysis should distinguish between the costs that are discretionary (e.g., cost of submitting a no-action request to Commission staff, the decision to use an outside law firm instead of in-house personnel, or the expenses related to soliciting investors) and mandatory (e.g., the cost of printing and mailing the shareholder

---

[335] See, e.g., letters from Better Markets dated February 3, 2020; John Coates and Barbara Roper dated January 30, 2020; Council of Institutional Investors dated January 30, 2020; Interfaith Center on Corporate Responsibility dated January 27, 2020; Segal Marco Advisors dated February 3, 2020; Tom Shaffner dated December 17, 2019; UAW Retiree Medical Benefits Trust dated January 30, 2020.

[336] See Statement of Darla C. Stuckey, President and CEO, Society for Corporate Governance, before the H. Comm. on Financial Services, Subcomm. on Capital Markets and Government Sponsored Enterprises, Sept. 21, 2016 (noting "a lower legal cost estimate based on anecdotal discussions with [the Society for Corporate Governance] members of $50,000 per proposal").

A number of commenters criticized cost estimates that other commenters provided and were cited in the Proposing Release but which we did not use in the estimation of cost savings because they fell within the lower and upper bounds of the cost estimates we used. See, e.g., letters from AFL-CIO dated February 3, 2020; Council of Institutional Investors dated January 30, 2020; Interfaith Center on Corporate Responsibility dated January 27, 2020; RK Invest Law dated February 3, 2020; Segal Marco Advisors dated February 3, 2020; UAW Retiree Medical Benefits Trust dated January 30, 2020.

[337] See, e.g., letters from John Coates and Barbara Roper dated January 30, 2020; Council of Institutional Investors dated January 30, 2020.

[338] See, e.g., letters from AFL-CIO dated November 1, 2017 (enclosed in November 27, 2019 letter); Athena Impact dated January 17, 2020; Dominican Sisters of Springfield Illinois dated January 23, 2020; Impax Asset Management dated January 20, 2020; Stephen Lewis dated January 29, 2020; Neuberger Berman dated January 27, 2020; US SIF dated January 31, 2020. As discussed in more detail below, the cost estimates used in the economic analysis are informed by the Commission's decades-long experience with Rule 14a-8 and the various forms of outreach on the proxy process that the Commission has conducted over the years. See infra note 346.

proposal materials).[339] Relatedly, for those costs that are discretionary, some commenters argued that companies' decisions to incur those costs may be suboptimal and to the detriment of investors.[340] In particular, several commenters argued that the volume of unsuccessful no-action requests is suggestive of an unproductive use of company resources, and thus the actual, non-

[339] See, e.g., letters from AFL-CIO dated February 3, 2020; Council of Institutional Investors dated January 30, 2020; CtW Investment Group dated February 3, 2020; First Affirmative Financial Network, LLC dated January 24, 2020; Impax Asset Management dated January 20, 2020; International Brotherhood of Teamsters dated February 3, 2020; Richard A. Liroff dated January 28, 2020; James McRitchie dated February 2, 2020; US SIF dated January 31, 2020.

A commenter also argued that the largest cost associated with shareholder proposals is the cost of submitting a no-action request to Commission staff, and "the only proposals excludable under the new rules would be those that otherwise could meet the requirements of Rule 14a-8, and would not fall within the subset of proposals likely to generate the highest costs." See letter from John Coates and Barbara Roper dated January 30, 2020. We understand this comment to mean that the proposals excludable under the rule amendments would be those that otherwise meet the requirements of Rule 14a-8 and thus companies would not be required to incur costs associated with a no-action request to exclude those proposals. We disagree with the commenter's assessment, including as a factual matter. For example, a proposal that may be excludable under the new rules because the proponent did not have a sufficiently long-term interest in the company also may have been excludable by the company for one of the other reasons enumerated in paragraph (i) of Rule 14a-8. To the extent that the rule amendments will deter proponents from submitting some shareholder proposals that are excludable under the rule amendments and other Rule 14a-8 requirements, companies and their shareholders could realize cost savings by avoiding having to seek no-action relief for those shareholder proposals.

Some commenters implied that because many proposals are withdrawn, the cost of shareholder proposals is small. See, e.g., letter from Impax Asset Management dated January 20, 2020. We disagree with this assertion because companies may incur significant direct and opportunity costs to engage with shareholders and achieve the withdrawal of a proposal.

Some commenters also suggested that if companies wish to avoid the expenses associated with shareholder proposals, they could simply include those proposals in their proxy materials. See, e.g., letter from Impax Asset Management dated January 20, 2020. Companies and their shareholders incur costs associated with the inclusion of proposals in the proxy materials. In addition, we believe that companies likely will expend time and effort to analyze and assess a shareholder proposal, either because it is not obvious whether the proposal will be beneficial for shareholders or because further communication with the proponent may be beneficial.

[340] See, e.g., letters from Council of Institutional Investors dated January 30, 2020; First Affirmative Financial Network, LLC dated January 24, 2020; Richard A. Liroff dated January 28, 2020; James McRitchie dated February 2, 2020; US SIF dated January 31, 2020. See also Brown (2017), supra note 320, at 21; Adam M. Kanzer, *The Dangerous "Promise of Market Reform": No Shareholder Proposals*, Harvard Law School Forum on Corporate Governance and Financial Regulation (Jun. 15, 2017), available at https://corpgov.law.harvard.edu/2017/06/15/the-dangerouspromise-of-market-reform-no-shareholder-proposals/, at 2; James McRitchie, *SRI Funds & Advisors Send Open Letters on Lawsuits Against Shareholders*, CORPGOV.NET (Mar. 24, 2014), available at https://www.corpgov.net/2014/03/sri-funds-advisors-send-open-letters-on-lawsuits-against-shareholders/; letter in response to the Proxy Process Roundtable from Investor Voice, SPC dated November 14, 2018.

discretionary costs of processing shareholder proposals (and consequently the actual cost savings of the rule amendments) are low.[341] As a response to commenters that were concerned with distinguishing between discretionary and non-discretionary costs, we use an estimate of non-discretionary costs (i.e., the cost of printing and mailing shareholder proposals) as the lower bound for our direct cost savings estimates in the economic analysis.[342]

Several commenters also argued that the economic analysis should consider the marginal rather than the average cost of shareholder proposals, and suggested the marginal costs would be significantly lower than the average costs because all fixed costs of handling proposals will remain.[343] While we agree with the commenters that the economic analysis should consider the marginal cost of shareholder proposals, we do not believe that the marginal costs would be significantly lower than the average costs because many of the costs associated with processing shareholder proposals are variable costs, such as reviewing the proposal and addressing issues raised in the proposal, engaging in discussions with the proponent, and printing and mailing materials associated with the particular proposal.

We recognize that there is variation in the costs to companies of responding to shareholder proposals, and we have considered all of the comments received in estimating cost savings to companies. In response to these comments, we have adjusted our estimate of the lower end of the costs. We use the estimate of $18,982 to print and mail a single shareholder proposal, rounded up to $20,000, as the lower bound for our direct cost estimates in the

---

[341] See, e.g., letters from Council of Institutional Investors dated January 30, 2020; First Affirmative Financial Network, LLC dated January 24, 2020.

[342] See infra note 344.

[343] See, e.g., letters from John Coates and Barbara Roper dated January 30, 2020; Council of Institutional Investors dated January 30, 2020.

economic analysis.[344] We continue to use $150,000 as the upper bound for our direct cost estimates in the economic analysis, which we believe represents a reasonable upper end of potential costs of processing a shareholder proposal, including legal and management time to consider a shareholder proposal and the cost of submitting a no-action request to Commission staff.[345] Nevertheless, we acknowledge that the cost of processing certain proposals may be outside of this $20,000 to $150,000 range due to the large variation in the types of proposals.[346]

---

[344] The $18,982 estimate was derived in 2009 and is equal to $22,600, when adjusted for inflation (see supra note 58 for the source of inflation adjustment data). To be conservative in our cost savings estimates and for ease of discussion and calculations, we use $20,000 as the rounded up estimate of $18,982. See letters from John Coates and Barbara Roper dated January 30, 2020; Council of Institutional Investors dated January 30, 2020.

See Proposing Release at 66510 (citing 2009 BRT Letter, supra note 332). We use this cost estimate as the lowest range because the cost of printing and mailing a shareholder proposal is the only non-discretionary cost that all companies must incur when they are required to include a shareholder proposal in their proxy statement. The cost of printing and mailing shareholder proposals, however, only captures a subset of the direct costs that the company may incur. It is unclear whether this cost estimate captures the cost of tallying votes for an additional shareholder proposal. In addition, this cost estimate is the average cost of printing and mailing a shareholder proposal rather than the marginal cost of printing and mailing an additional shareholder proposal.

[345] See Proposing Release at 66461. See letter from Center for Capital Markets, dated January 31, 2020.

[346] Some commenters suggested that the Commission should have conducted independent research on the cost of shareholder proposals. See, e.g., letters from Council of Institutional Investors dated January 30, 2020; Interfaith Center on Corporate Responsibility dated January 27, 2020. We note that the Commission has conducted various forms of outreach over the years on the proxy process, including hosting the Proxy Process Roundtable and soliciting public input on the Rule 14a-8 ownership thresholds and the costs of submitting shareholder proposals. That input informed our cost estimates in the Proposing Release, and we specifically requested comment on the estimates and data to help us refine our analysis. We considered all of this information thoroughly, leveraging our decades of experience with Rule 14a-8, when evaluating whether the available information is reliable and sufficient. We have no reason to believe that additional study of the costs of shareholder proposals would yield materially different information, nor are we aware of additional sources of information that would further inform these cost estimates.

One commenter also argued that the cost estimate of shareholder proposals used in the economic analysis of the Proposing Release is inconsistent with the cost estimate of shareholder proposals used in the PRA of the release. See letter from John Coates and Barbara Roper dated January 30, 2020. Our revised economic analysis takes into account the lowest cost estimate discussed in the PRA of the Proposing Release. The cost estimates in the PRA section of this release may be different than the cost estimates in the economic analysis because the economic analysis applies a range of cost estimates to all proposals (i.e., those that are included in the proxy statement without seeking no-action relief, those that are included in the proxy statement after seeking no-action relief, those that are omitted from the proxy statement after seeking no-action relief, and those that are withdrawn) while the PRA uses an average cost estimate per proposal category. In addition, the PRA makes certain assumptions regarding hourly costs to arrive at a cost estimate per proposal category while the economic analysis uses per-proposal cost estimates provided by commenters or surveys.

Hence, we estimate that, as a result of the final amendments to Rule 14a-8(b) and Rule 14a-8(c), all Russell 3000 companies together may experience an upper bound annual cost savings associated with a decrease in the number of submitted proposals ranging from $332,400 to $72.30 million per year.[347] In addition, we estimate that as a result of the final amendments to the resubmission thresholds, all Russell 3000 companies together may experience an upper bound annual cost savings associated with a decrease in the number of submitted proposals ranging from $831,000 to $6.23 million per year.[348] In total, we estimate that all Russell 3000 companies may experience an upper bound of annual cost savings ranging from $1.16 million to

---

[347] $332,400 = $20,000 (see supra note 344) x 2% (i.e., minimum upper bound percentage of excludable proposals as a result of the amendments to Rules 14a-8(b) and 14a-8(c) from Table 1 above) x 831 (i.e., all proposals submitted to be considered at 2018 shareholders' meetings).

$72.30 million = $150,000 (see supra note 344) x 58% (i.e., maximum upper bound percentage of excludable proposals as a result of the amendments to Rules 14a-8(b) and 14a-8(c) from Table 1 above) x 831 (i.e., all proposals submitted to be considered at 2018 shareholders' meetings).

Our analysis assumes that the distribution of ownership for proponents with exact ownership information in the proxy statements is the same as the distribution of ownership for proponents with minimum or no ownership information in the proxy statements and the distribution of ownership for proponents that submitted proposals that were ultimately withdrawn or omitted. Our analysis also applies the same per-proposal cost estimate to voted, omitted, and withdrawn proposals, and it applies the same per-proposal cost estimate to operating companies and management companies. Further, our analysis does not account for overlap in the excludable proposals under the various aspects of the rule amendments. Lastly, our analysis assumes that companies will not reallocate the time and resources that will be freed up as a result of the reduction in proposals to process the remaining proposals, if any.

[348] $831,000 = $20,000 (see supra note 344) x 5% (i.e., upper bound percentage of excludable proposals as a result of the amendments to Rule 14a-8(i)(12) from Table 1 above) x 831 (i.e., all proposals submitted to be considered at 2018 shareholders' meetings).

$6.23 million = $150,000 (see supra note 344) x 5% (i.e., upper bound percentage of excludable proposals as a result of the amendments to Rule 14a-8(i)(12) from Table 1 above) x 831 (i.e., all proposals submitted to be considered at 2018 shareholders' meetings).

Our analysis applies the same per-proposal cost estimate to voted, omitted, and withdrawn proposals and to operating companies and management companies. In addition, our analysis assumes that the amendments to Rule 14a-8(i)(12) will have the same effect on proposal eligibility of voted, withdrawn, and omitted proposals. Lastly, our analysis assumes that companies will not reallocate the time and resources that will be freed up as a result of the reduction in proposals to process the remaining proposals, if any.

$78.53 million per year, assuming no change in proponents' behavior as a result of the final amendments.

Commenters argued that the cost savings estimated in the Proposing Release and arising from the rule amendments are not substantial because: (i) shareholder proposals are a small fraction of management proposals and so the cost savings of the rule amendments will be small;[349] and (ii) the cost savings arising from the rule amendments are small relative to companies' market capitalization and relative to the costs arising from the rule amendments.[350] Commenters also suggested that the cost of shareholder proposals is small for smaller companies because smaller companies do not receive proposals frequently, and so any benefits to those companies due to the rule amendments is limited.[351] We acknowledge that the costs of shareholder proposals may be a small percentage of companies' market capitalization but we continue to believe that these costs are nonetheless significant in terms of the time and attention from company management. Further, we continue to believe that the rule amendments better ensure that the attendant burdens for other shareholders and companies associated with the processing of shareholder proposals and the inclusion of such proposals in the company's proxy statement are incurred in connection with those proposals that are (1) submitted by shareholders with a sufficient demonstrated interest in the company and (2) with respect to resubmissions,

---

[349] See, e.g., letter from AFL-CIO dated February 3, 2020; Council of Institutional Investors dated January 30, 2020.

[350] See, e.g., letters from Council of Institutional Investors dated January 30, 2020; CtW Investment Group dated February 3, 2020; Impax Asset Management dated January 20, 2020; Interfaith Center on Corporate Responsibility dated January 27, 2020; International Brotherhood of Teamsters dated February 3, 2020; Segal Marco Advisors dated February 3, 2020; UAW Retiree Medical Benefits Trust dated January 30, 2020.

[351] See letter from Paul M. Neuhauser dated February 3, 2020. Another commenter argued that the proposed amendments will disproportionately benefit a small subset of large companies. See letter from Sustainable Investments Institute dated February 3, 2020.

more likely to receive support from fellow shareholders.[352] Lastly, the cost savings estimates cited by commenters only reflect a subset of the benefits of the rule amendments (i.e., the benefits that we were able to quantify in our economic analysis) and does not include a quantification of other qualitative benefits of the rule amendments, which are discussed below.

ii. Other Economic Benefits to Companies

In addition to the direct cost savings to companies discussed above, by requiring a statement from the proponent that he or she is willing to meet with the company after submission of the shareholder proposal, the final amendments may encourage more direct communication between the proponent and the company. This may foster potential beneficial shareholder engagement more generally; it may promote more frequent resolution of proposals outside the voting process. Although companies would incur costs (e.g., management and legal time) to engage with shareholder-proponents, companies may choose to do so if they expect a benefit, including if they expect the cost of the resolution outside of the proxy process to be lower than the cost that they and their shareholders would incur to process a shareholder proposal.[353] We

[352] Analysis in the Proposing Release showed that of resubmitted proposals that ultimately obtain majority support, the overwhelming majority have garnered more than 15% on their second submission and more than 25% on their third submission. Based on our review of shareholder proposals that received a majority of the votes cast on a second or subsequent submission between 2011 and 2018, 95% received support greater than 15% on the second submission, and 100% received support greater than 25% on the third or subsequent submission. In addition, of the 22 proposals that obtained majority support on their third or subsequent submissions, approximately 95% received support of over 15% on their second submission, and 100% received support of over 25% on their third or subsequent submission. See Proposing Release at Section IV.B.3.iv.

[353] Some commenters supported the idea that requiring a statement from the proponent that he or she is willing to meet with the company will improve communication between proponents and companies. See, e.g., letters from Business Roundtable dated February 3, 2020; Center for Capital Markets Competitiveness dated January 31, 2020; Church Investment Group dated January 29, 2020; National Association of Manufacturers dated February 3, 2020. Other commenters, however, argued that certain companies are unwilling to engage with proponents and there is no evidence that this rule amendment will actually increase engagement between management and shareholder-proponents. See, e.g., letters from AFL-CIO dated February 3, 2020; Boston Trust Walden et al. dated January 27, 2020; CalPERS dated February 3, 2020; Ceres et al. dated February 3, 2020; Council of Institutional Investors dated January 30, 2020; International Brotherhood of Teamsters dated February 3, 2020; Local Authority Pension Fund Forum dated February 3, 2020; Paul M. Neuhauser dated February 3, 2020; Segal Marco Advisors dated February 3,

believe that this requirement may increase engagement between management and shareholder-proponents because it will require proponents to set aside time to communicate with management and provide specific contact information to facilitate that discussion. This amendment will enable companies to know whom to contact and when to do so if they wish to engage with the proponent about the proposal. Further, although the revised rule will not require companies to engage with shareholder-proponents, companies may be more likely to engage if they are provided with the shareholder-proponent's contact information and availability at the time the proposal is submitted.

Also, to the extent that the practices of certain proponents are not already consistent with the final amendments related to proposals submitted through a representative, the final amendments will likely benefit companies by clearly communicating to companies that proponents authorize representatives to act on their behalf. The requirements under the final amendments would provide a meaningful degree of assurance as to the shareholder-proponent's identity, role, and interest in a proposal that is submitted for inclusion in a company's proxy statement.[354] Further, the final amendments will likely result in cost savings to companies that currently expend resources to obtain information that is not provided by proponents but will be required under the final amendments.[355] We expect that any cost savings associated with the final amendments related to proposals submitted through a representative will likely be small

2020; Trillium Asset Management dated February 3, 2020; UAW Retiree Medical Benefits Trust dated January 30, 2020.

[354] See, e.g., letters from Business Roundtable dated February 3, 2020; Center for Capital Markets Competitiveness dated January 31, 2020; National Association of Manufacturers dated February 3, 2020.

[355] See, e.g., Business Roundtable dated February 3, 2020; Center for Capital Markets Competitiveness dated January 31, 2020; Nasdaq, Inc. dated February 3, 2020.

because most proponents and representatives already provide much of the documentation and information required by the rule amendments.

To the extent that the final amendments will reduce the costs to companies of processing shareholder proposals, the final amendments may result in efficiency improvements. In addition, to the extent that the final amendments will reduce costs to companies associated with the shareholder-proposal process, the final amendments may be a positive factor in the decision of businesses to become public reporting companies, which could positively affect capital formation on the margin.[356] Nevertheless, we believe that any such effects likely will be minimal because most firms receive few proposals each year and the costs of responding to proposals likely are a small percentage of the costs associated with being a public company.[357] In addition, companies that have recently had an initial public offering infrequently receive shareholder proposals.[358]

Several commenters argued that the rule amendments will increase companies' cost of capital by reducing the effectiveness of shareholder oversight, the efficiency of corporate governance arrangements, the extent to which governance arrangements conform with best governance practice, and companies' overall environmental, social, and governance ("ESG")

---

[356] See, e.g., letters from American Securities Association dated February 3, 2020; Center for Capital Markets Competitiveness dated January 31, 2020; see also letter in response to the Proxy Process Roundtable from Center for Capital Markets Competitiveness dated December 20, 2018.

[357] Between 1997 and 2018 for Russell 3000 companies that received a proposal, the median number of proposals was one per year. See Roundtable Transcript, supra note 141, comments of Brandon Rees, Deputy Director of Corporations and Capital Markets, AFL-CIO; see also letters in response to the Proxy Process Roundtable from Ceres dated November 13, 2019; Mercy Investment Services, Inc. dated December 3, 2018; Presbyterian Church U.S.A. dated November 13, 2018.

[358] See infra note 395.

performance.[359] Relatedly, one of these commenters argued that the rule amendments will harm capital formation because investors might shy away from capital markets if they believe that their ability to make changes to companies that would benefit the companies and their shareholders is compromised.[360] We agree with commenters that the proxy system is important to the cost of capital and capital formation, and some changes prompted by shareholder proposals may be considered beneficial by other shareholders. Nevertheless, there are a number of avenues through which shareholders can encourage change at public companies. Under the final amendments, shareholders can and, we expect, will continue to pursue these other avenues of engagement, which may help mitigate any potential increase in the number of excludable proposals. In addition, we note again that many proposals that would be newly excludable under these rule amendments would be (1) those in which the proponent has not demonstrated a meaningful interest in the company (e.g., by holding $2,000 of stock for three years, or higher amounts for shorter periods of time) or (2) resubmissions of proposals which shareholders have already expressed substantial disapproval (e.g., at least 75 percent, 85 percent or 95 percent disapproval) in prior years. We believe these changes will improve capital formation because companies and fellow shareholders will no longer expect to bear the costs of responding to, reviewing, and voting on these types of proposals, which we believe do not warrant use of the company's proxy statement.

[359] See, e.g., letters from Lucian A. Bebchuk dated February 3, 2020; Ceres et al. dated February 3, 2020; Illinois Treasurer dated January 16, 2020; Interfaith Center on Corporate Responsibility dated January 27, 2020; International Brotherhood of Teamsters dated February 3, 2020; James McRitchie dated February 2, 2020; Oxfam dated February 3, 2020; Segal Marco Advisors dated February 3, 2020; UAW Retiree Medical Benefits Trust dated January 30, 2020.

[360] See letter from Lucian A. Bebchuk dated February 3, 2020.

iii. Costs of Updating Policies and Procedures

We acknowledge here, as we did in the Proposing Release, that companies may incur one-time costs to amend their policies and procedures in light of the final amendments. The one-time costs that companies may incur include (i) reviewing the requirements of the final amendments; (ii) modifying the existing policies and procedures to align with the requirements of the final amendments; and (iii) preparing new training materials and administering training sessions for staff in affected areas. According to commenters, the change to a three-tiered approach to submission thresholds will also increase compliance complexity because companies will be required to consider multiple thresholds for the purpose of evaluating whether a proposal is eligible for exclusion.[361] Nevertheless, we expect the one-time costs and the costs associated with increased complexity to be minimal because companies already have in place policies and procedures to implement Rule 14a-8's requirements and will only need to modify those policies and procedures to comply with the final amendments rather than create new policies and procedures.[362]

iv. Effects on Competition

To the extent that the final amendments will result in cost savings for U.S. firms, the final amendments may improve U.S. firms' competitive position relative to foreign firms, because foreign firms are not subject to the federal proxy rules.[363] Further, to the extent that the final amendments to the ownership (resubmission) thresholds will have disproportionate effects on

---

[361] See, e.g., letters from AFL-CIO dated February 3, 2020; Council of Institutional Investors dated January 30, 2020; Local Authority Pension Fund Forum dated February 3, 2020.

[362] No company or company representatives argued that the final rule amendments will increase administrative costs.

[363] See Proposing Release at 66459 n.3.

smaller (larger) companies, the final amendments may alter competition between firms of different sizes.[364] The amendments to the ownership thresholds could have a disproportionate effect on companies with smaller market capitalization because shareholder-proponents' holdings are more likely to be below the amended ownership thresholds in smaller companies, to the extent that investors hold stocks proportionately to the companies' market capitalization (e.g., investors hold the market portfolio).[365] In addition, the final amendments to the resubmission thresholds will likely have a greater effect on larger companies because larger companies are more likely to receive shareholder proposals.[366] Nevertheless, we expect that any such effects likely will be minimal because the cost of processing shareholder proposals likely is a small percentage of companies' total cost of operations.

2. Non-proponent shareholders

Non-proponent shareholders may benefit from the decrease in the number of proposals because they may commit fewer resources to reviewing and voting on shareholder proposals.[367]

---

[364] See infra Section V.E.1 for detailed discussion of the potentially disproportionate effects of the rule amendments.

[365] See, e.g., John Y. Campbell, *Household Finance*, 61 J. FIN. 1553 (2006) (discussing households' stock holdings).

See also, e.g., letters from CalPERS dated February 3, 2020; Council of Institutional Investors dated January 30, 2020; Paul Rissman dated January 15, 2020; Trillium Asset Management dated February 3, 2020 (arguing that the amended thresholds will have a larger effect on smaller companies).

[366] Our analysis shows that 20% of resubmitted shareholder proposals at S&P 500 companies would be excludable under the proposed resubmission thresholds, as compared to 12% of proposals resubmitted to non-S&P 500 firms. See Proposing Release at 66502.

[367] One commenter argued that the costs shareholders incur to review and consider shareholder proposals are discretionary because "[a]ny shareholder that thinks analyzing the proposal is a waste of time and resources can simply decide not to review them. Instead, the shareholder could either follow the advice of a hired proxy advisor, or vote by default with management, thereby supporting the status-quo world without the proposal." See letter from Institute for Policy Integrity dated February 3, 2020. Nevertheless, we note that institutional shareholders commit significant resources to reviewing and voting on shareholder proposals. See infra note 372. See also Commission Guidance Regarding Proxy Voting Responsibilities of Investment Advisers, Guidance, Release Nos. IA-5325 IC-33605 (Jul. 22, 2020) [84 FR 47420 (Sept. 10, 2019)].

We are unable to quantify the costs to non-proponent shareholders of reviewing and voting on shareholder proposals, but we believe the cost savings from a decrease in the number of proposals will be significant. The reason is that the number of non-proponent shareholders at each registrant is very large in absolute terms and relative to the number of shareholder-proponents. Consequently, we expect the aggregate cost savings associated with the elimination of a shareholder proposal (e.g., the aggregate cost to shareholders to review and vote on the proposal) will be significant in absolute terms and much larger when compared to the potential costs to shareholder-proponents, such as the costs to craft and submit the proposal or, in the case of a potential proponent, the costs to acquire and hold shares for a sufficient period of time to meet the eligibility requirements.

While these cost savings are difficult to estimate across the wide array of shareholder types, we believe that the cost savings are significant. For example, we note that many investment advisers (among others) retain proxy voting advice businesses to perform a variety of services to reduce the burdens associated with proxy voting determinations, including determinations on shareholder proposals.[368] One major proxy voting advice business, Institutional Shareholder Services ("ISS"), reports a fee ranging from $5,000 to above $1,000,000 for these services[369] and 2,000 institutional clients,[370] which suggests an aggregate lower bound cost of $10 million and an upper bound cost of $2 billion for these clients of

[368] We have limited data on fees charged by proxy voting advisory services. ISS reports a fee ranging from $5,000 to above $1,000,000 on Form ADV, and this covers a broad range of services provided by ISS (e.g., voting services, governance research, ratings provision, etc.).

[369] See ISS Form ADV dated Mar. 27, 2020 available at https://www.issgovernance.com/file/duediligence/iss-adv-part-2a-march-2020.pdf, at 5.

[370] See ISS Form ADV dated Apr. 23, 2020 available at https://reports.adviserinfo.sec.gov/reports/ADV/111940/PDF/111940.pdf, at 14.

outsourcing certain voting related matters, not including the internal costs associated with voting, including the monitoring of the proxy voting advice businesses. We recognize that these fees cover a broad range of services provided by ISS (e.g., voting services, governance research, ratings provision, etc.) in addition to reviewing and providing voting advice and services with respect to shareholder proposals.[371] They also reflect an aggregate cost and not the incremental cost of considering an additional shareholder proposal. However, these figures are nonetheless an indication that institutional shareholders commit significant resources to reviewing and voting on shareholder proposals.[372] Similarly, with respect to retail shareholders, we note that, if we assume a company has 100,000 shareholders and 50% of them (in number) are individual investors who spend 0–60 minutes reading a proposal at a cost of $25 per hour, then the consideration of one proposal could impose a cost of $0 – $1,250,000 for the individual shareholders of such a hypothetical company.

While these figures do not provide a reliable basis for quantifying the cost savings of the amendments to non-proponent shareholders of a reduction in the number of shareholder proposals, they provide general support for our belief that the costs to non-proponent shareholders of analyzing and voting on shareholder proposals are significant, particularly in comparison to the costs to proponents to (i) meet the eligibility criteria and (ii) craft and submit a proposal. At a minimum, this supports the Commission's longstanding view that there should be

---

[371] See id.

[372] Indeed, a number of commenters to the Commission's proposed amendments to the exemptions from the proxy rules for proxy voting advice, particularly institutional investors who typically vote a large number of proposals each proxy season, expressed that they face significant resource challenges in determining how to vote on shareholder proposals. See, e.g., letters in response to Amendments to Exemptions from the Proxy Rules for Proxy Voting Advice, Release No. 34-87457 (Nov. 5, 2019) [84 FR 66518 (Dec. 4, 2019)] from Ohio Public Employees Retirement System dated February 3, 2020; Council of Institutional Investors dated February 13, 2020; Investment Company Institute dated February 3, 2020; MFS Investment Management dated February 3, 2020; Institutional Adviser Association dated February 3, 2020.

a demonstrated alignment of ownership and investment interest between shareholder-proponents and shareholders generally. In addition, if the final amendments are effective in excluding proposals that are not submitted by proponents with a long-term or significant interest in the company or that are unlikely to receive support from other shareholders or to be implemented by management, then the decrease in the number of proposals may allow shareholders to focus their limited resources on the assessment and processing of proposals that are more likely to be aligned with their interests or have the potential to garner majority support and be implemented. Shareholders also will benefit indirectly from any decrease in the costs borne by companies.[373]

We discuss potential costs to companies and non-proponent shareholders from the potential decrease in the number of proposals as a result of the rule amendments in Section V.E.2 below.

3. Proponents of shareholder proposals

The final amendments may impose costs on proponents of shareholder proposals. These costs may arise as a result of a currently eligible proponent either having to invest additional funds to immediately submit a proposal or having to wait to submit a shareholder proposal and thus forgo the potential benefits associated with the immediate inclusion of the proposal in a company's proxy statement at the expense of other shareholders and the company. In each instance, we expect the shareholder-proponent who has not met the eligibility thresholds to choose the option that yields the greatest net benefit for himself or herself. For example, in

[373] See, e.g., letter from Business Roundtable dated February 3, 2020. See also letter in response to the Proxy Process Roundtable from Business Roundtable dated June 3, 2019 (noting "shareholders can lose sight of matters of true economic significance to the company if they are spending time considering one, or even numerous, immaterial proposals. The resources and attention expended in addressing shareholder proposals cost the company and its shareholders in absolute dollars and management time and, perhaps worse, divert capital resources to removal of an immediate distraction and away from investment in value-adding allocations, such as research and development and corporate strategy").

instances where the benefit to the proponent associated with a more immediate proposal submission is large enough, we expect that the proponent will elect to incur the costs of investing additional funds to satisfy the amended ownership thresholds. The amended ownership thresholds, however, may deter proponents from submitting proposals for which the aggregate benefit to all shareholders exceeds the cost to the proponent of submitting a proposal. This may occur because the cost of meeting the new ownership thresholds is incurred by the proponent while any benefits associated with the proposal are widely dispersed among all shareholders. Nevertheless, since we believe these behavioral responses of proponents involve relatively modest costs, we expect that in many instances, the final amendments will not represent a significant hurdle for shareholder-proponents.

Commenters stated their belief that because of the final amendments to the ownership thresholds, shareholder-proponents may incur higher administrative costs to track their holdings for more than one year and prove their eligibility to submit a proposal.[374] Further, the change to a three-tiered approach could increase compliance complexity because shareholder-proponents will be required to consider multiple thresholds for the purpose of evaluating whether a proposal is eligible for exclusion, although we would expect those costs to be minimal for current proponents because those proponents already have in place processes to comply with Rule 14a-8's requirements and will only need to modify these processes to comply with the final rule rather than creating new ones.[375]

---

[374] The commenter stated that costs that proponents would bear as a result of longer holding periods include administrative costs to track their holdings for more than one year and prove their eligibility to submit a proposal. This commenter also stated that this administrative cost will also be higher whenever the proponent changes brokers or banks. See, e.g., letter from AFL-CIO dated February 3, 2020.

[375] See, e.g., letters from AFL-CIO dated February 3, 2020; Council of Institutional Investors dated January 30, 2020; Local Authority Pension Fund Forum dated February 3, 2020.

In addition, following the transition period, the final amendments to the ownership thresholds and the limitation on the ability to aggregate holdings across proponents may impose costs on proponents that currently satisfy the ownership thresholds but do not currently satisfy the new thresholds, who may take actions to preserve their ability to submit shareholder proposals under the new thresholds.[376] These costs may arise from some combination of: (i) shareholder-proponents' efforts to reallocate shareholdings in their portfolio to satisfy the dollar ownership thresholds; (ii) decreased diversification of shareholder-proponents' portfolio because a larger portion of their wealth may be invested in a particular company;[377] and (iii) shareholder-proponents holding the shares for longer periods of time to satisfy the duration thresholds.

A shareholder-proponent that chooses to reallocate assets to meet the new ownership thresholds may incur transaction costs to buy shares and, depending on the shareholder-proponent's liquidity, may incur transaction costs to sell other assets to raise cash to buy shares or incur borrowing costs to raise cash to buy shares. However, we expect a negligible number of shareholders to incur these costs because, as discussed elsewhere in this release, most investors do not submit proposals. Furthermore, in theory, reallocation of portfolio assets might mean that a shareholder-proponent deviates from what would be an efficient portfolio in the absence of the final amendments. For example, a shareholder who held the minimum amount of shares for the purpose of submitting a shareholder proposal for the minimum amount of time could, instead of holding $2,000 of shares for an additional two years, choose to increase her holdings in a company from $2,000 to $25,000 to retain the ability to submit a shareholder proposal in one

[376] Any such effects will be mitigated temporarily by the transition period of the final amendments. See Section III.

[377] The costs of diversification arise from lower risk-adjusted expected return of an undiversified portfolio compared to a diversified one. See, e.g., letters from First Affirmative Financial Network, LLC dated January 24, 2020; Jantz Management LLC dated January 21, 2020; Shareholder Commons dated January 31, 2020; Wright-Ingraham Institute dated February 3, 2020.

year. In theory, such a deviation could result in a portfolio that no longer supplies the shareholder-proponent with the desired levels of risk and return. However, if the shareholder made the minimum investment for purposes of submitting the proposal, such a portfolio-oriented investment strategy would be of secondary consideration. More generally, we do not believe that the additional investment in the company needed to hold the same $2,000 of stock for three years instead of one, or to meet the revised threshold for a one-year holding period (i.e., $25,000 - $2,000 = $23,000), on its own constitutes a cost to shareholder-proponents, as this amount represents the holding or purchase of assets that will earn an expected rate of return in the form of capital gains and/or dividends. The impact of reduced diversification on portfolio risk and return that may result from increasing holdings in a particular company would depend on the size of a shareholder-proponent's asset holdings, and would be larger for shareholder-proponents with smaller portfolios. However, shareholder-proponents may be able to mitigate the costs of reduced diversification by reducing exposures to assets with similar risk characteristics.[378] Also, in theory, a shareholder-proponent might incur costs by choosing to hold shares for longer than would otherwise be efficient resulting, for example, in the borrowing of funds to meet liquidity needs or a delay in purchases of alternative assets.[379] We lack sufficient data to quantify their effects because we lack data on proponents' portfolio holdings, investment preferences and resources.

[378] For example, a shareholder-proponent might reduce the impact of acquiring additional shares of Company A on portfolio diversification by liquidating shares of other companies in the same industry.

[379] In such a case, we can express the opportunity cost of holding shares in one company while delaying the purchase of shares in another company as the difference in risk-adjusted expected returns between the shares held and the shares to be purchased.

The final amendments to the 14a-8(b) shareholder engagement component may impose the following costs on shareholder-proponents: (i) direct costs associated with disclosing the times the proponents will be available to communicate with management as well as preparing to and communicating with management and (ii) the opportunity costs associated with setting aside and spending time to communicate with management instead of engaging in other activities.[380] Certain commenters also argued that this aspect of the rule amendments could discourage shareholders from submitting proposals because some shareholder-proponents may be reluctant to engage directly with the company.[381] We expect the direct costs associated with this aspect of the rule amendments to be minimal because the information required to be disclosed is readily available, the rule does not prescribe any particular form or degree of engagement with the company, and proponents can use inexpensive means of communication with the company, such

---

[380] See, e.g., letters from Boston Trust Walden et al. dated January 27, 2020; Ceres et al. dated February 3, 2020; Interfaith Center on Corporate Responsibility dated January 27, 2020; Paul Rissman dated January 15, 2020; Segal Marco Advisors dated February 3, 2020; UAW Retiree Medical Benefits Trust dated January 30, 2020.

Some commenters argued that the requirement that a proponent should state its availability to meet with management will impose costs on companies because "companies will be hard-pressed to assemble personnel with appropriate expertise to engage substantively on the proposal, given the short notice, and schedules of both investors and companies are crowded not only with proposal-related business but also with holiday obligation." See, e.g., letters from Ceres et al. dated February 3, 2020; UAW Retiree Medical Benefits Trust dated January 30, 2020. While we acknowledge that this rule amendment may also impose costs on companies, we believe that companies will choose to engage with proponents only if they believe the benefits of the engagement outweigh the costs.

[381] See, e.g., letters from Interfaith Center on Corporate Responsibility dated January 27, 2020; Paul Rissman dated January 15, 2020.

One commenter argued that the Commission should not get involved in issues of shareholder-management engagement, and if the Commission does, it should conduct a survey of both investors' and companies' current practices. See letter from Investor Environmental Health Network dated January 31, 2020. See supra note 346 for our response to related commenter suggestions that the Commission should conduct additional analysis.

Some commenters also argued that the Commission has not identified a market failure that this aspect of the rule amendments seeks to address, especially given the increase in the number of withdrawn proposals over time, which suggests increased engagement between proponents and companies. See, e.g., letter from AFL-CIO dated February 3, 2020. We understand that proactive company engagement with shareholders has increased in recent years, and shareholders frequently withdraw their proposals as a result of company-shareholder engagement. Nevertheless, we believe that further facilitating engagement would be beneficial both to companies and to shareholders.

as teleconference calls. We also note that the rule does not prohibit representatives from participating in any meetings that take place or advising the shareholder-proponent with respect to all aspects of the engagement process.

The final rule amendment requiring certain documentation when a proponent submits a proposal through a representative may result in shareholders that submit a proposal through a representative incurring minimal costs to ensure that their practices are consistent with the final amendments.[382] To the extent that the practices of certain proponents are not consistent with the final amendments, the final amendments will also impose minimal costs on proponents to provide this additional documentation. Some commenters argued that this aspect of the rule amendments would be more burdensome for institutional investors, who always act through agents, and that it would interfere with contractual relations, such as attorney-client relations.[383] As discussed in Section II.B.3, where a shareholder-proponent is an entity and thus can act only through an agent, compliance with the amended rule will not be necessary if the agent's authority to act is apparent and self-evident such that a reasonable person would understand that the agent has authority to act. In addition, although shareholder-proponents who elect to submit a proposal through a representative will be required to provide additional information about their submissions, the rule will not prevent them from using representatives in accordance with state law. We requested, but did not receive, data on or estimates of the specific costs that representatives and proponents will incur to comply with this aspect of the rule amendments.

---

[382] Some commenters argued that the rule amendment requiring certain documentation when a proponent submits a proposal through a representative will create ambiguity that can be exploited by management to exclude beneficial proposals. See, e.g., letter from As You Sow dated February 3, 2020. We disagree with the commenter that management will be able to exploit any ambiguity to exclude beneficial proposals because management must provide its reasons for excluding a proposal to the Commission and the shareholder-proponent prior to excluding a shareholder proposal and proponents can contest exclusions of proposals that they deem to be inappropriate.

[383] See, e.g., letters from AFL-CIO dated February 3, 2020; Paul M. Neuhauser dated February 3, 2020.

Nevertheless, we believe that any costs associated with this aspect of the rule amendments will be small because the vast majority of the proponents and representatives that will be required to provide documentation under the final amendments already provide much of this documentation.

The amendments to the resubmission thresholds will impose costs on proponents to the extent they may spend more resources in preparing a proposal to seek to garner sufficient levels of support to satisfy the final amendments.[384] Any effect of the amendments to resubmission thresholds may be mitigated by the fact that companies' ability to exclude certain resubmissions will be limited to a three-year cooling-off period regardless of the level of support the proposal last received.

E. Other Potential Effects of the Amendments

Rule 14a-8 sets thresholds at which it is appropriate for a shareholder proposal to be considered for inclusion in the company's proxy materials initially, or on resubmission. For example, the thresholds for initial proposals are designed to help ensure that the interests of those who submit them are appropriately aligned with fellow shareholders, by indicating a sufficient economic stake or investment interest in the company. The thresholds for resubmissions are

---

[384] See, e.g., letters from Center for Capital Markets Competitiveness dated January 31, 2020; National Association of Manufacturers dated February 3, 2020.

One commenter disagreed with the assertion that that the resubmission thresholds will improve proposal quality because proponents already request feedback on their proposals prior to submitting them to the company. See letter from Interfaith Center on Corporate Responsibility dated January 27, 2020.

A commenter also suggested that an increase in the resubmission thresholds will provide stronger incentives to some proponents to submit proposals on certain topics with the intent of obtaining low levels of support for certain subject matters, thus rendering proposals on the same subject matter excludable for three years. See letter from Council of Institutional Investors dated January 30, 2020; see also letter in response to the Proxy Process Roundtable from the City of New York Office of the Comptroller dated January 2, 2019; Sustainable Investments Institute dated November 12, 2018. We do not agree with the commenter's concern. As the Commission has previously stated, considerations regarding the rule's application are based upon the "substantive concerns raised by a proposal rather than the specific language or actions proposed to deal with those concerns," such that "an improperly broad interpretation of the . . . rule will be avoided." See 1983 Adopting Release, supra note 2.

designed to provide a modest cooling-off period for those proposals that previously were disapproved by fellow shareholders by a large margin (i.e., 75 percent, 85 percent, or 95 percent disapproval). In neither case are the thresholds designed to or meant to judge the merits of any particular proposal. Nevertheless, commenters asserted that the amendments may have certain unintended effects. In the Proposing Release, we provided descriptive statistics on shareholder proposals by type of proposals, proponents, and companies.[385] In this section, we address the comments we received on potential effects of the rule amendments on excludable proposals by type of proposal, proponent, and company.[386] We also consider comments about economic effects of the final rule amendments on the quality of submitted proposals,[387] as well as issues raised by commenters with our use of voting support in the economic analysis included in the Proposing Release.[388]

We believe that many of the potential negative effects suggested by commenters that would result from our adoption of the proposal and discussed in this section would be mitigated if shareholder-proponents adjust their behavior in light of the amendments. For example, any negative effects related to the changes in initial submission thresholds could be mitigated to the extent that shareholder-proponents (who, again, are an extremely small percentage of total shareholders) adjust their behavior to hold at least $2,000 of shares for at most two additional years or hold higher amounts. Of course, to the extent that shareholders adjust their behavior in this way, the cost savings associated with the amendments would also be reduced. Negative

[385] See Proposing Release at 66478–66487.

[386] See infra Section V.E.1.

[387] See infra Section V.E.2.

[388] See infra Section V.E.3.

effects to shareholder-proponents related to the exclusion of proposals that may provide benefits to companies and their shareholders may be substantially mitigated to the extent that the final amendments are more likely to exclude shareholder proposals with an observable measure of low shareholder interest (i.e., low voting support among shareholders).[389] As explained above, the number of non-proponent shareholders—who must review, consider, and vote on shareholder proposals—is very large relative to shareholder-proponents; accordingly, we believe that any costs set forth below are appropriate in light of the benefits to other shareholders. In addition, the negative effects of the final rule amendments could be mitigated to the extent that companies elect to include in their proxy materials or implement otherwise excludable proposals that they believe will benefit shareholders; that eligible shareholders take up proposals that may benefit other shareholders from the proponents precluded from submitting certain proposals under the final rule amendments; or that shareholder-proponents are able to influence management and other shareholders through means other than the submission of shareholder proposals.

1. Effects of the rule amendments on excludable proposals by type of proposal, proponent, and company

As discussed above, the amendments set thresholds at which it is appropriate for a shareholder proposal to be considered for inclusion in the company's proxy materials based on

[389] Using data from proxy statements, we estimate that the average voting support for proposals that may have been excludable as a result of changes to the ownership threshold is approximately 31%, which is not statistically different from the voting support for the remaining proposals in the sample used for this analysis. See Proposing Release at 66497 for a detailed description of this analysis. Further, we estimate that approximately 5.3% of shareholder proposals used for this analysis received majority support and may have been excludable under final amendments to the ownership thresholds.

Using data on shareholder proposal resubmissions, we estimate that in 2018, none of the proposals that would have been excludable as a result of final rule amendments to the resubmission thresholds would have generated majority support. See Proposing Release at 66499 for a detailed description of this analysis.

content-neutral criteria designed to provide access to the company proxy to shareholder-proponents that have sufficient indicia of alignment with the interests of other shareholders who bear the costs associated with the inclusion of such proposals in the company's proxy statement. The amendments are not designed to include or exclude certain types of proposals or proponents.[390] However, as discussed in the Proposing Release (and raised by commenters), the rule amendments may have different effects on certain proposal types, proponents, and companies.[391]

As a first example, the final amendments to the ownership thresholds could have a greater effect on retail shareholder-proponents compared to institutional shareholder-proponents because the average holdings of retail investors are typically lower than the average holdings of institutional investors and so the final ownership thresholds are more likely to affect retail investors.[392] Again, however, shareholders holding the current threshold of $2,000 worth of

---

[390] Cf. letter from Council of Institutional Investors et al. dated July 29, 2020 (expressing concern that "the true regulatory goal of the amendments is to curtail shareholder proposals related to environmental or social topics").

[391] See Proposing Release at 66499–66502 for detailed discussion of the potentially disproportionate effects of the rule amendments.

[392] See, e.g., letters from As You Sow dated February 3, 2020; Better Markets dated February 3, 2020; Boston Trust Walden et al. dated January 27, 2020; CalPERS dated February 3, 2020; Center Political Accountability dated January 31, 2020; Council of Institutional Investors dated January 30, 2020; Council of Institutional Investors et al. dated July 29, 2020; First Affirmative Financial Network, LLC dated January 24, 2020; Patricia Hathaway dated January 31, 2020; International Brotherhood of Teamsters dated February 3, 2020; Local Authority Pension Fund Forum dated February 3, 2020; James McRitchie dated July 21, 2020; Newground Social Investment dated February 3, 2020; Maria M. Patterson, NYU Stern School of Business dated January 30, 2020; Segal Marco Advisors dated February 3, 2020; Tom Shaffner dated December 17, 2019; Robert K. Silverman dated February 3, 2020; Sisters of St. Dominic dated January 31, 2020; Trustee of Donations to the Protestant Episcopal Church dated January 31, 2020; US SIF dated January 31, 2020. See also Recommendation of the IAC, supra note 18.

Some commenters argued that the amendment related to proponents' ability to aggregate their holdings disadvantages retail investors relative to institutional investors because institutional investors can aggregate the investments of various individuals to submit a proposal, but retail investors no longer will be able to aggregate their holdings with other proponents to become eligible to submit a proposal. See, e.g., letters from AFL-CIO dated February 3, 2020; First Affirmative Financial Network, LLC dated January 24, 2020. Although institutional portfolios represent the aggregate holdings of multiple individuals, institutional investors' submission of shareholder proposals may reflect predetermined investment policies rather than the preferences of each individual investor or any subset of individual investors.

company stock could still meet the new ownership thresholds by, for example, holding that stock for three years. Generally, to the extent that such a shareholder would instead have sold that stock after one year or two years, we would not view that shareholder as having the alignment of interest with other long-term shareholders that warrants the use of the company's proxy statement.

Second, to the extent that retail investors with smaller holdings and shorter holding periods are more likely to submit certain types of proposals than institutional investors, absent a change in behavior (e.g., holding for a longer period if necessary to make a proposal) the final rule amendments to the ownership thresholds could decrease the number of those types of proposals more than other types of proposals.[393] Third, the final rule amendments to the ownership thresholds could affect companies and their shareholders with smaller market capitalization more than those with larger market capitalization and those with more volatile stock prices more than those with less volatile stock prices. For firms with smaller market capitalization, shareholder-proponents' holdings are more likely to be below the amended ownership thresholds, to the extent that investors that would be expected to make proposals hold stocks proportionately to the companies' market capitalization (e.g., investors hold the market

---

Relatedly, several commenters argued, but did not provide any data, that the rule may have a disproportionate effect on women and people of color to the extent that shareholder wealth varies with gender and ethnicity, and the effect of the rule amendments will vary with the wealth of shareholders. See, e.g., letters from Jantz Management LLC dated January 21, 2020; Shareholder Commons dated January 31, 2020. We note that the mitigating factors discussed elsewhere in the release, such as the availability of other forms of shareholder communication with management and the possibility that other eligible investors may take up the topics of excludable proposals, may reduce the impact of the exclusion of proposals by all proponents, including women and people of color.

[393] See Proposing Release at 66499. Untabulated analysis shows that 86% of the proposals submitted by individual investors are governance proposals, whereas 47% of the proposals submitted by institutional investors are governance proposals. Data is retrieved from ISS Analytics for Russell 3000 companies between 2004 and 2018 and classifications are based on ISS Analytics determinations.

portfolio).[394] However, such a broad portfolio-based approach with low holdings in individual stocks may be inconsistent with the company-specific analysis that would be expected from a shareholder-proponent. The ownership holding of the proponent is more likely to fall below the ownership thresholds under Rule 14a-8 during any given period of time for volatile stocks than it is for less volatile stocks. Fourth, the final amendments to the ownership thresholds could decrease the number of proposals received by companies that have been public for fewer than three years more than the number of proposals received by seasoned companies because the average duration of investors' holdings will be, by their nature, shorter for those firms. However, shareholder proposals appear to be less likely in the case of newer public companies.[395] Fifth, to the extent the final amendments to Rule 14a-8(i)(12) result in a reduction in shareholder proposals, larger companies and their shareholders in general may be more affected than smaller companies and their shareholders because larger companies are more likely to receive shareholder proposals. Sixth, the final amendments to Rule 14a-8(i)(12) will likely have a greater effect on companies with dual-class voting shares for which insiders hold the

---

[394] See supra note 365.

See also, e.g., letters from CalPERS dated February 3, 2020; Council of Institutional Investors dated January 30, 2020; Paul Rissman dated January 15, 2020; Trillium Asset Management dated February 3, 2020 (arguing that the amended thresholds will have a larger effect on smaller companies).

[395] We note that newly listed companies currently receive proposals less frequently than seasoned companies, and thus the overall impact of the increase in the ownership thresholds might be less pronounced for newly listed companies. See CII FAQ, supra note 332. See also Roundtable Transcript, supra note 141, comments of Jonas Kron, Senior Vice President and Director of Shareholder Advocacy, Trillium Asset Management ("Less than nine percent of Russell 3000 companies that have had an IPO since 2004 have received a shareholder proposal."); Ning Chiu, Counsel, Capital Markets Group, Davis Polk & Wardwell LLP (acknowledging that "IPO companies don't always get a lot of proposals").

See also, e.g., letters from Council of Institutional Investors dated January 30, 2020; International Brotherhood of Teamsters dated February 3, 2020; US SIF dated January 31, 2020.

majority of the voting shares.[396] Seventh, as suggested by commenters, the effects of the final amendments to the ownership threshold will depend on differences in share turnover across companies and over time.

The final amendments could in theory have larger effects on companies entering or exiting an index and newly-merged firms because these companies experience a significant shift in their shareholder base and, if longer term shareholders are replaced by newer shareholders, upon initial entry into the index fewer shareholders will be eligible to submit a shareholder proposal to those companies due to shorter holding periods.[397] However, to the extent current longer-term shareholders continue to hold a sufficient investment following a company's entry into the index, this potential change in eligibility would be lower. Further, a shift into an index could increase the number of shareholders eligible to submit a proposal over time because shareholders that follow an index-based strategy hold shares in the index longer.

In addition, as share turnover increases and thus investors hold shares for a shorter period of time, the number of investors who will meet the ownership duration thresholds would be expected to decrease to the extent share turnover reflects entry and exit from a particular investment as opposed to increasing or decreasing the extent of that particular investment.[398] For

---

[396] A number of commenters expressed the view that the proposed amendment would have a more pronounced effect at companies with dual-class voting structures. See, e.g., letters from AFL-CIO dated February 3, 2020; Boston Trust Walden et al. dated January 31, 2020; CFA Institute dated February 3, 2020; Connecticut State Treasurer dated January 31, 2020; Council of Institutional Investors dated January 30, 2020; Council of Institutional Investors et al. dated July 29, 2020; Representative Bill Foster et al. dated January 31, 2020; Friends Fiduciary Corporation dated February 2, 2020; Illinois State Treasurer dated January 16, 2020; International Brotherhood of Teamsters dated February 3, 2020; International Corporate Governance Network dated December 4, 2019; Loring, Wolcott & Coolidge dated January 31, 2020; New York State Comptroller dated February 3, 2020; Shareholder Association for Research & Education dated January 30, 2020; Trillium Asset Management dated February 3, 2020.

[397] See, e.g., letter from International Brotherhood of Teamsters dated February 3, 2020.

[398] Proponents may have some discretion in how frequently they trade shares, and thus they may decide to hold shares for a longer period of time to satisfy the amended ownership duration thresholds. However, several commenters argued that the duration of stockholdings is not discretionary, although they did not provide data to

example, market-weighted index strategies require regular rebalancing of positions, which, in turn, may lead others to alter positions in anticipation or as a result of such rebalancing. Literature has documented a general upward trend in share turnover.[399] This general trend in turnover likely reflects other factors that also are unrelated to the ability or desire to submit shareholder proposals.

We are not arbiters of the type or substance of a proposal. That said, the final amendments also may have effects that vary for different types of proposals. Based on historical data, the final amendments to Rule 14a-8(i)(12) may have a greater impact on the resubmission of shareholder proposals relating to environmental and social issues compared to shareholder proposals on governance issues because: (i) shareholder proposals on environmental and social issues historically have tended to receive lower shareholder support than those on governance issues, on average; (ii) proposals on environmental and social issues are more likely to be resubmitted compared to proposals on governance issues with similar levels of shareholder support, and thus will be more likely to be affected by the changes in the resubmission thresholds; and (iii) shareholder proposals on social and environmental issues historically have tended to take longer to gain support than proposals on governance issues. Again, however, to the extent that these proposals are excludable because they have received low levels of shareholder support in the past, companies and their non-proponent shareholders may benefit from their exclusion subject to a right to resubmit after a cooling-off period. Second and

support this statement. See, e.g., letters from Interfaith Center on Corporate Responsibility dated January 27, 2020; UAW Retiree Medical Benefits Trust dated January 30, 2020.

[399] See, e.g., Tarun Chordia, Richard Roll & Avanidhar Subrahmanyam, *Recent Trends in Trading Activity and Market Quality*, 101 J. FIN. ECON. 243 (2011). Some commenters noted that considering market trends of greater diversification and lower average holding times is important for describing how the rule amendments may effect investors. See, e.g., letter from As You Sow dated February 3, 2020.

relatedly, the final amendments to the resubmission thresholds may have a greater effect on shareholder proposals submitted by non-individual proponents because these proponents have tended to submit environmental and social proposals at a higher frequency than individual investors do.

Several commenters argued that voting support may fluctuate across years for many reasons and this volatility may not be associated with the value of the shareholder proposals. In particular, voting support may fluctuate due to changes in the company performance, changes in the phrasing of the proposal, changes in shareholder base, changes in the proponent, exercise of stock options and equity awards, or changes in market circumstances.[400] To the extent that the voting support for certain types of proposals may be more volatile, companies may be more or less likely to exclude these proposals from their proxy statements as a result of the rule amendments.[401] We find that the dispersion in the change in voting support from a prior submission to a resubmission is higher for governance proposals than for environmental or social proposals.[402] In addition, we find that the dispersion in the change in voting support is higher among proposals submitted to non-S&P 500 companies than those submitted to S&P 500

[400] See, e.g., letters from Center for Political Accountability dated January 31, 2020; Council of Institutional Investors dated January 30, 2020; International Brotherhood of Teamsters dated February 3, 2020; James McRitchie dated February 2, 2020; Morningstar, Inc. dated February 3, 2020; Principles for Responsible Investment dated February 3, 2020; Segal Marco Advisors dated February 3, 2020; Teachers Insurance and Annuity Association of America (TIAA) dated February 3, 2020; UAW Retiree Medical Benefits Trust dated January 30, 2020; US SIF dated January 31, 2020. See also Recommendation of the IAC, supra note 18.

[401] See letters from As You Sow dated February 3, 2020; Interfaith Center on Corporate Responsibility dated January 27, 2020; UAW Retiree Medical Benefits Trust dated January 30, 2020.

[402] To measure how voting support fluctuates across multiple submissions of a proposal to the same company, we compute the standard deviation of the change in voting support from a prior submission to a subsequent submission. We find that the standard deviation is 10.7% for governance proposals as compared to 9.0% for environmental proposals and 7.6% for social proposals. Differences between these standard deviation estimates are statistically significant.

companies.[403] As a result, changes to the resubmission thresholds may have a different effect on proposals of different types and submitted to companies of different sizes.

2. Economic effects of final rule amendments on the quality of shareholder proposals

The rule amendments are likely to result in the exclusion of certain proposals that would have otherwise been included in the proxy statement and submitted for a vote.[404] Certain commenters have noted that, if by increasing companies' ability to exclude certain proposals the final amendments decrease shareholders' willingness to submit certain proposals,[405] the final amendments may limit information available to management about shareholder views on issues raised in shareholder proposals and inhibit communication among shareholders.[406] In a similar

---

[403] We find that the standard deviation is 9.3% for proposals submitted to S&P 500 companies and 11.5% for proposals submitted to non-S&P 500 companies. Differences between these standard deviation estimates are statistically significant.

[404] In addition to the exclusion of proposals that would have otherwise been included in the proxy statements, certain commenters have asserted that there may be a reduction in negotiated resolutions between management and proponents. See, e.g., letters from AFL-CIO dated February 3, 2020; Institute for Policy Integrity dated February 3, 2020; Lucian A. Bebchuk dated February 3, 2020. Because the rule amendments do not prevent proponents from communicating their views to management by means other than through the company's proxy materials, we believe that the rule amendments are unlikely to result in a reduction in negotiated resolutions.

[405] Companies occasionally allow proposals that do not meet the current eligibility thresholds to be voted on. At the same time, companies may expend additional time and resources to exclude proposals that are submitted despite not being eligible for submission. Hence, to the extent that the rule amendments will discourage proponents from submitting certain proposals, the rule amendments will have an effect that may be different than and incremental to the effect of companies' ability to exclude certain proposals.

[406] See supra Section V.C for discussion of factors that may mitigate any such effects.

Commenters argued that shareholder proposals are a valuable form of communication between management and shareholders as well as among shareholders because they can challenge management's group thinking, allow the introduction of outside points of view on emerging issues, raise issues that cut across various departments in a company, and provide information to management that management would otherwise pay to obtain (e.g., through the hiring of consulting firms). See, e.g., letters from As You Sow dated February 3, 2020; Lucian A. Bebchuk dated February 3, 2020; CalPERS dated February 3, 2020. See also Recommendation of the IAC, supra note 18. Commenters also noted that, through the engagement process motivated by the submission of shareholder proposals, management may provide information that is relevant to shareholders. See, e.g., letters from Center for Political Accountability dated January 31, 2020; Shareholder Rights Group dated January 6, 2020. Relatedly, commenters stated that even proposals that receive low voting support may be beneficial because the voting outcome of

vein, commenters have asserted that a potential decrease in the number of proposals may limit or slow the consideration of changes that may benefit companies and their shareholders.[407] Commenters have also noted that by potentially increasing the number of proposals companies can exclude from being put to a vote on an initial submission or a resubmission, the final amendments may prompt proponents to utilize (or utilize to a greater extent) alternative avenues of influence, such as public campaigns, litigation over the accuracy of proxy materials, "vote no" campaigns on corporate directors, or demands to inspect company documents. These and other means of engagement may be effective, but also have their own associated costs. Because of the

---

shareholder proposals may provide accurate aggregated information regarding shareholders' preferences on various topics, and this information becomes even more valuable as it is aggregated across various companies. See, e.g., letters from Council of Institutional Investors dated January 30, 2020; Interfaith Center on Corporate Responsibility dated January 27, 2020; Tom Shaffner dated December 17, 2019. Commenters also stated that shareholder proposals are a unique form of communication with management because—in contrast to other forms of communication such as social media—shareholder proposals can motivate management to engage with shareholders and the prospect of receiving shareholder proposals can incentivize management to proactively adopt certain resolutions. See, e.g., letters from Council of Institutional Investors dated January 30, 2020; Impax Asset Management dated January 20, 2020; Interfaith Center on Corporate Responsibility dated January 27, 2020. Some commenters argued that shareholder proposals are beneficial not only because they encourage communication between management and shareholders but also because they encourage both proponent and non-proponent shareholders to communicate with each other through the submission of proposals, deliberation on existing proposals, and the voting process. See, e.g., letters from Council of Institutional Investors dated January 30, 2020; Tom Shaffner dated December 17, 2019; Shareholder Rights Group dated January 6, 2020. In addition, other commenters noted that shareholder proposals may have market-wide benefits that extend beyond the companies receiving them. See, e.g., letters from Interfaith Center on Corporate Responsibility dated January 27, 2020; Pulte Institute for Global Development dated January 31, 2020; Shareholder Rights Group dated January 6, 2020. Some commenters argued that shareholder proposals may provide a valve to release tensions and avoid more costly and disruptive forms of engagement such as proxy contests, litigation, efforts related to regulatory change, books and records requests, etc. See, e.g., letters from Center for Political Accountability dated January 31, 2020; Council of Institutional Investors dated January 30, 2020; Pulte Institute for Global Development dated January 31, 2020.

[407] See, e.g., letters from Lucian A. Bebchuk dated February 3, 2020; Center for Political Accountability dated January 31, 2020; Interfaith Center on Corporate Responsibility dated January 27, 2020; Shareholder Rights Group dated January 6, 2020; US SIF dated January 31, 2020; Council of Institutional Investors et al. dated July 29, 2020 (arguing that the amendments might result in the exclusion of valuable proposals).

Commenters stated that the implementation of shareholder proposals has helped companies manage risk, enhance disclosures, limit insiders' entrenchment, and implement long-term value-enhancing changes. See, e.g., letters from Lucian A. Bebchuk dated February 3, 2020; Council of Institutional Investors dated January 30, 2020; Interfaith Center on Corporate Responsibility dated January 27, 2020; Richard A. Liroff dated January 28, 2020; Pulte Institute for Global Development dated January 31, 2020; Shareholder Rights Group dated January 6, 2020; UAW Retiree Medical Benefits Trust dated January 30, 2020.

varied number of ways shareholders can engage with management in lieu of submitting a proposal, companies may confront lesser or greater uncertainty in their interaction with shareholders, proponents in certain instances may incur lower or higher costs to engage with management, and the efficiency of management's engagement with shareholders may increase or decrease.[408] While we lack data to determine whether these other forms of engagement, in the aggregate, will be more costly and disruptive, we nonetheless believe that it is appropriate to alter the ownership thresholds to ensure greater alignment of interests in the context of shareholder proposals. To the extent companies perceive that their exclusion of shareholder proposals increases the overall costs associated with shareholder engagement, they may partially mitigate these costs by including proposals that would otherwise be excludable under the final amendments.[409]

---

[408] See, e.g., letters from AFL-CIO dated February 3, 2020; Council of Institutional Investors dated January 30, 2020; CtW Investment Group dated February 3, 2020; Oxfam dated February 3, 2020; Pulte Institute for Global Development dated January 31, 2020; UAW Retiree Medical Benefits Trust dated January 30, 2020. See also Brown (2017), supra note 320, at 24–25; letter to Jeb Hensarling, Chairman, and Maxine Waters, Ranking Member, House Financial Services Committee, from Jeffrey P. Mahoney, General Counsel, Council of Institutional Investors dated April 24, 2017, available at https://democrats-financialservices.house.gov/uploadedfiles/letter_-_cii_04.27.2017.pdf; Ceres et al., *The Business Case for the Current SEC Shareholder Proposal Process*, (2017), at 11–12, available at https://www.ussif.org/files/Public_Policy/Comment_Letters/Business%20Case%20for%2014a-8.pdf ("Ceres Business Case"), at 11; letters in response to the Proxy Process Roundtable from Council of Institutional Investors dated January 31, 2019; Los Angeles County Employees Retirement Association dated October 30, 2018; MFS Investment Management dated November 14, 2018; US SIF dated November 9, 2018.

Some commenters, however, argued that alternative methods of communication, such as social media, are not a substitute for shareholder proposals because they do not "allow aggregation of shareholder preferences or accommodate discussions about complex subjects of the type raised in shareholder proposals." See, e.g., letter from Interfaith Center on Corporate Responsibility dated January 27, 2020. Relatedly, one commenter criticized the economic analysis because it did not empirically examine the effects of technological advances on the shareholder proposal process. See letter from Council of Institutional Investors et al. dated July 29, 2020. Based on the Commission's decades-long experience with Rule 14a-8 and the various forms of outreach on the proxy process that the Commission has conducted over the years, we continue to believe that technological advances over recent years have facilitated shareholder engagement.

[409] For example, our analysis shows that, in our sample, 10 shareholder proposals submitted to nine companies were resubmitted and voted on despite being eligible for exclusion under the current resubmission thresholds. Five of these proposals were resubmitted in the year following a previous vote during 2011 to 2017. See Proposing Release, at n.200.

To the extent that some excludable shareholder proposals may, if they had been submitted, have benefited companies and their shareholders, the exclusion of those proposals could impose costs on companies and their shareholders and decrease the efficiency of the shareholder-proposal process.[410] Some commenters disagreed that the final amendments will result in the exclusion of beneficial proposals, stating instead that these amendments will be beneficial to companies and their shareholders because they will result in the exclusion of proposals that are not related to long-term shareholder value.[411] In particular, the benefits of shareholder proposals as a result of the rule amendments may increase because the average stockholdings of shareholder-proponents will likely increase as a result of the amendments to the ownership thresholds. A shareholder with a larger ownership stake in a company will bear a larger percentage of the passed-through costs associated with processing a shareholder proposal relative to a proponent with a lower ownership stake. This differential may, in theory, cause larger shareholders to be less likely to submit proposals that are unlikely to garner majority support and/or be implemented by management.[412]

Companies could also reach an agreement with the shareholder-proponent.

[410] See Proposing Release at 66494–66495 for a detailed discussion of potential benefits to companies and shareholders associated with the submission and consideration of shareholder proposals.

The potential decrease in the number of shareholder proposals also may be costly to the various providers of administrative and advisory services related to shareholder voting because the demand for the services of these providers may decrease. Examples of these service providers include proxy voting advice businesses, tabulators of voting, and proxy solicitors, and others who seek to profit from shareholder proposals (such as investment advisers who market their services as shareholder-proponent for their clients).

[411] See letters from American Securities Association dated February 3, 2020; Business Roundtable dated February 3, 2020; Center for Capital Markets Competitiveness dated January 31, 2020; Compass Lexecon dated December 23, 2019; National Association of Manufacturers dated February 3, 2020.

[412] See, e.g., letter from Center for Capital Markets Competitiveness dated January 31, 2020 (arguing that shareholders who submit proposals under the rule amendments "will have to have a little bit more skin in the game").

Relatedly, by eliminating shareholders' ability to aggregate their holdings with those of other shareholders, the final amendments will require each proponent to have a higher economic stake or investment interest in the company. As a result, we expect that shareholder-proponents that would have otherwise aggregated their shares with other shareholders in order to meet the eligibility thresholds would need to increase their holding amount or duration to submit a proposal under the final amendments. Such shareholder-proponents would bear a larger percentage of the costs of processing a shareholder proposal and therefore, also in theory, may be marginally less likely to submit proposals that are unlikely to garner majority support and/or be implemented by management.

Nevertheless, to the extent that the amendments to the ownership thresholds and the ability to aggregate will exclude proposals that may benefit companies and investors, the rule amendments will impose costs on companies and their investors. Several commenters asserted that there is no relation between proponents' level and duration of ownership and the value of submitted shareholder proposals, so the amendments to Rule 14a-8(b) would not effectively distinguish shareholder proposals on the basis of their potential benefits.[413] The rules, however, do not attempt to distinguish proposals on the basis of their potential benefits. As already discussed, an attempt to determine in advance which proposals will be beneficial would be inherently speculative and our proxy rules are not designed to do so. Rather, the proxy rules have long relied on ownership thresholds as indicia of an economic stake or investment interest

[413] See, e.g., letters from AFL-CIO dated February 3, 2020; As You Sow dated February 3, 2020; Better Markets dated February 3, 2020; Council of Institutional Investors dated January 30, 2020; Lila Holzman dated January 25, 2020; International Corporate Governance Network dated December 4, 2019; Institute for Policy Integrity dated February 3, 2020; Interfaith Center on Corporate Responsibility dated January 27, 2020; Maryknoll Sisters of St. Dominic, Inc. dated January 17, 2020; Newground Social Investment dated February 3, 2020; Segal Marco Advisors dated February 3, 2020; Shareholder Commons dated January 31, 2020; UAW Retiree Medical Benefits Trust dated January 30, 2020.

in the company to infer a reasonably sufficient alignment of interest with non-proponent shareholders such that it is appropriate to include a proposal in the company's proxy materials at the expense of other shareholders.[414] Consistent with this purpose, the amendments update those thresholds.

Relatedly, some commenters stated that certain companies may be in urgent need of reform and the increase in the holding period at the $2,000 ownership threshold may in theory delay the implementation of such reforms.[415] To the extent a company is in urgent need of reform, it may be more likely that a proposal, or a similar one, that addresses the issue will be submitted by another shareholder who meets the eligibility thresholds and, more generally, that the issues in need of urgent attention will be the subject of other forms of engagement.

The benefits of submitted proposals may also marginally increase as a result of the one-proposal-per-person requirement because proponents may prioritize the submission of proposals with higher expected benefits ahead of those with lower expected benefits for a given company.[416] On the other hand, some commenters argued that the one-proposal-per-person requirement may increase costs to companies and their shareholders because the one-proposal-per-person amendment could discourage proponents from using a representative to help craft proposals and supporting statements.[417] Further, commenters described additional costs the one-

---

[414] See 1982 Proposing Release, supra note 2; 1983 Adopting Release, supra note 2.

[415] See, e.g., letters from Segal Marco Advisors dated February 3, 2020; UAW Retiree Medical Benefits Trust dated January 30, 2020.

[416] See letter from Robeco dated January 16, 2020.

[417] See, e.g., letters from AFL-CIO dated February 3, 2020; James McRitchie dated February 2, 2020.

In addition, some commenters argued that the one-proposal amendment may impose costs on proponents associated with proponents incurring higher recordkeeping costs to comply with the requirement. We generally expect any such costs will be minimal. See, e.g., letter from AFL-CIO dated February 3, 2020.

proposal final amendment may impose, assuming that shareholders' reliance on representatives will change.[418] Commenters noted that these costs may arise from (i) companies having to deal with multiple proponents instead of dealing with few representatives, which will make engagement less efficient; (ii) companies having to submit and Commission staff having to review more no-action requests because the proposals submitted by inexperienced proponents may be less well-drafted than those submitted by experienced representatives and thus may be more likely to be sought to be excluded;[419] and (iii) less frequent and meaningful dialogue between proponents and companies because proponents may have less experience and expertise than representatives at effectively communicating with management.[420] Relatedly, several commenters argued that the one-proposal final amendment will interfere with proponents' fiduciary relationships with their investment advisers, who might act as their representatives, or other entities with whom proponents have contractual relationships.[421] As a result, the commenters asserted that the proposed amendments may impose costs on investment advisers and their clients.[422] We expect that any costs related to the one-proposal amendment will be

---

[418] See, e.g., letter from James McRitchie dated February 2, 2020. See also Recommendation of the IAC, supra note 18.

[419] See, e.g., letters from CalPERS dated February 3, 2020; Paul Rissman dated January 15, 2020.

[420] See, e.g., letters from As You Sow dated February 3, 2020; Boston Trust Walden et al. dated January 27, 2020; CalPERS dated February 3, 2020; Council of Institutional Investors dated January 30, 2020; First Affirmative Financial Network, LLC dated January 24, 2020; James McRitchie dated February 2, 2020; Paul Rissman dated January 15, 2020; Tom Shaffner dated December 17, 2019; Trillium Asset Management dated February 3, 2020; US SIF dated January 31, 2020.

[421] See, e.g., letters from As You Sow dated February 3, 2020; Council of Institutional Investors dated January 30, 2020; First Affirmative Financial Network, LLC dated January 24, 2020; Interfaith Center on Corporate Responsibility dated January 27, 2020; James McRitchie dated February 2, 2020; Trillium Asset Management dated February 3, 2020; US SIF dated January 31, 2020.

[422] Some commenters argued that this aspect of the amendments is unworkable for institutional investors who always rely on representatives to submit a proposal because they are not natural persons. In particular, for institutional investors that share an investment adviser or pension plan administrator, the amendment will impose unintended "first to file" constraints. See, e.g., letter from AFL-CIO dated February 3, 2020. Other commenters,

small, including because we estimate that the amendment to Rule 14a-8(c) will only affect a small number of proposals and proponents.[423] In addition, the amendment will restrict the representative's ability to submit a proposal on the proponent's behalf but otherwise will not limit or interfere with the representative's ability to assist the proponent with drafting a proposal, navigating the submission process, or presenting the proposal at the annual meeting, and thus any potential effects of the rule amendment will be limited.

Lastly, the final amendments to the resubmission thresholds may benefit companies and their shareholders to the extent that they change proponents' behavior in ways that result in proposals that obtain higher levels of support. In particular, due to the higher thresholds, proponents may formulate proposals that are more likely to garner sufficient levels of shareholder support to avoid future exclusion.[424] In addition, proponents may market and communicate their proposal to other shareholders to increase support for their proposal. As a result, companies and their shareholders could benefit from the submission of shareholder proposals that are more likely to receive higher levels of support and/or be implemented by management. Similarly, the amended resubmission thresholds may discourage the submission of

---

however, argued that that this aspect of the amendments will create a bias towards institutional investing because anyone whose investments are made through institutions is automatically and necessarily represented in the course of filing a shareholder proposal, but individual investors will be more limited in their ability to use a representative. See, e.g., letter from Shareholders Rights Group dated March 18, 2020.

[423] See supra tbl.1.

[424] See, e.g., letters from Center for Capital Markets Competitiveness dated January 31, 2020; National Association of Manufacturers dated February 3, 2020.

One commenter disagreed with the assertion that that the resubmission thresholds will improve proposal quality because proponents already request feedback on their proposals prior to submitting them to the company. See letter from Interfaith Center on Corporate Responsibility dated January 27, 2020.

proposals that are less likely to garner majority voting support and/or be implemented by management.[425]

Some commenters stated that the Proposing Release's economic analysis was incomplete because it did not provide a dollar estimate of the cost of excluding certain proposals as a result of the rule amendments.[426] Although some commenters suggested we should attempt to estimate the hypothetical value of excluded proposals, our analysis does not attempt to quantify whether excluded proposals would have (in the event they would have been adopted or would have been adopted sooner) resulted in benefits (or harm) to companies or their shareholders. Any such focus would both require us to opine on the merits of specific proposals and be inherently speculative. Such an exercise also would not be consistent with the intent of Rule 14a-8, which is to set thresholds at which it is appropriate for a shareholder proposal to be considered for inclusion in the company's proxy materials initially, or on resubmission, without opining on the merits of specific proposals. The thresholds for initial proposals are intended to ensure that the interests of those who submit them are appropriately aligned with fellow shareholders. The thresholds for resubmissions are designed to exclude temporarily (through a modest cooling-off period) those proposals that previously were disapproved by fellow shareholders by a large margin. In neither case are the thresholds designed to favor or disadvantage particular types of

[425] Proponents incur costs to submit proposals, which may already deter some proponents from resubmitting proposals that have a low likelihood of receiving sufficient levels of shareholder support.

[426] See letters from Lucian A. Bebchuk dated February 3, 2020; CalPERS dated February 3, 2020; John Coates and Barbara Roper dated January 30, 2020; First Affirmative Financial Network, LLC dated January 24, 2020; Interfaith Center on Corporate Responsibility dated January 27, 2020; Richard A. Liroff dated January 28, 2020; James McRitchie dated February 2, 2020; Tom Shaffner dated December 17, 2019; Shareholder Rights Group dated January 6, 2020; UAW Retiree Medical Benefits Trust dated January 30, 2020.

proposal topics. In addition, we describe additional significant methodological and empirical challenges of doing this type of analysis below.

Specifically, some commenters suggested that to estimate the costs of the rule amendments, the economic analysis should consider studies documenting a correlation between companies' ESG policies and financial performance.[427] In particular, one commenter employed this methodology to estimate the cost of the rule amendments as ranging from $223.9 million to $129.7 billion.[428] We believe that the commenter's cost estimate of the rule amendments is not instructive for the following reasons. First, we do not believe that this type of study accurately predicts the economic effects of the amendments because ESG policies could be implemented for reasons other than the submission of shareholder proposals, including shareholder engagement that does not involve the submission of shareholder proposals. In addition, the studies cited by the commenter do not provide evidence of a causal relation between governance, environmental, and social provisions and firm value. Lastly, the commenter used an estimate of 530 excludable proposals annually; however, as discussed in more detail above, we continue to

[427] See, e.g., letters from Athena Capital Advisors dated January 17, 2020; Lucian A. Bebchuk dated February 3, 2020; Betty Cawley dated January 8, 2020; Ceres et al. dated February 3, 2020; Council of Institutional Investors dated January 30, 2020; Muriel Finegold dated January 29, 2020; Impax Asset Management dated January 20, 2020; Interfaith Center on Corporate Responsibility dated January 27, 2020; Richard A. Liroff dated January 28, 2020; Newground Social Investment dated February 3, 2020; Principles for Responsible Investment dated February 3, 2020; Segal Marco Advisors dated February 3, 2020; Seventh Generation Interfaith Coalition for Responsible Investment dated January 28, 2020; Stardust dated January 29, 2020; Tides dated January 15, 2020; UAW Retiree Medical Benefits Trust dated January 30, 2020.

[428] See letter from Tom Shaffner dated December 17, 2019.

Another commenter estimated the value of shareholder engagement to be equal to $19.6 billion per year. See letter from Newground Social Investment dated February 3, 2020. We do not rely on this estimate for purposes of estimating the economic effects of the final amendments because the commenter did not estimate the cost of the rule amendments but rather the benefit of shareholder proposals in general. Further, the commenter applied an estimate of value from a proposal submitted to a single company to all companies in Russell 3000, regardless of whether those companies received a proposal. Applying the same value estimate to all Russell 3000 companies also ignores variation in the value of proposals.

expect that the upper bound estimate of the number of excludable proposals under the rule amendments will range from 58 to 524 annually and that changes in behavior by shareholder-proponents may mitigate this effect.[429]

Other commenters suggested that the economic analysis should use estimates of changes in market capitalization around events related to shareholder proposals that are provided in academic literature to estimate the cost of exclusion of certain proposals as a result of the rule amendments.[430] Using an average short-run stock price reaction of 0.06 percent around events related to shareholder proposals cited in Denes et al. (2017), one commenter estimated that rule amendments would result in a $4.3 billion reduction in annual stock market valuations.[431]

In the Proposing Release, we summarized the findings of empirical literature that examines whether proposals are economically beneficial by studying short-run abnormal stock returns[432] around key events related to shareholder proposals.[433] Several commenters criticized

---

[429] 58 = (0% minimum upper bound percentage of excludable proposals as a result of the amendments to 14a-8(b) + 2% upper bound percentage of excludable proposals as a result of the amendments to 14a-8(c) + 5% upper bound percentage of excludable proposals as a result of the amendments to 14a-8(i)(12)) x 831 (all proposals submitted to be considered at 2018 shareholders' meetings). 524 = (56% maximum upper bound percentage of excludable proposals as a result of the amendments to 14a-8(b) + 2% upper bound percentage of excludable proposals as a result of the amendments to 14a-8(c) + 5% upper bound percentage of excludable proposals as a result of the amendments to 14a-8(i)(12)) x 831 (all proposals submitted to be considered at 2018 shareholders' meetings). See supra tbl.1.

[430] See, e.g., Lucian A. Bebchuk dated February 3, 2020.

[431] See letter from AFL-CIO dated February 3, 2020. See also, Matthew R. Denes, Jonathan M. Karpoff & Victoria B. McWilliams, *Thirty Years of Shareholder Activism: A Survey of Empirical Research*, 44 J. CORP. FIN. 405 (2017) ("Denes et al. (2017)").

[432] We refer to abnormal stock returns because they are adjusted for changes in prices that are attributable to events that have market-wide implications (e.g., changes in interest rates, natural disasters, etc.) and thus only capture the effect of firm-specific information releases.

[433] See Proposing Release at 66495. The main events related to shareholder proposals studies in academic literature comprise the initial press announcement of submission of a shareholder proposal, the proxy mailing date, and the date of the shareholder meeting. See Denes et al. (2017), supra note 431.

our discussion of short-term stock price reactions studies, arguing that the economic analysis instead should look at the long-run effects of shareholder proposals.[434] We agree with commenters that there are significant limitations to using short-term market reactions to measure the benefits of shareholder proposals because these estimates: (i) may confound the benefits of shareholder proposals with the benefits of other concurrent information releases (e.g., submission of management proposals); (ii) may not capture anticipatory effects of shareholder proposals as information about the submission of a shareholder proposal may leak prior to the event date considered by the academic study; (iii) may reflect the benefits of the average shareholder proposal rather than the benefits of the excludable shareholder proposals as a result of the rule amendments; and (iv) may capture various effects such as signaling effects (e.g., the submission of a proposal may signal that the targeted company is underperforming or that the initial negotiations between proponent and company failed), market expectations regarding the voting outcome, market expectations regarding the probability of implementation of a proposal, etc.[435]

---

[434] See, e.g., letters from Impax Asset Management dated January 20, 2020; Interfaith Center on Corporate Responsibility dated January 27, 2020; Segal Marco Advisors dated February 3, 2020; Tom Shaffner dated December 17, 2019; UAW Retiree Medical Benefits Trust dated January 30, 2020.

[435] See, e.g., Stuart L. Gillan & Laura T. Starks, *Corporate Governance Proposals and Shareholder Activism: The Role of Institutional Investors*, 57 J. FIN. ECON. 275 (2000) ("Gillan & Starks (2000)"); Diane Del Guercio & Jennifer Hawkins, *The Motivation and Impact of Pension Fund Activism*, 52 J. FIN. ECON. 293 (1999).

Commenters provided additional reasons for why short-term stock market reaction may be inappropriate to assess the benefits of shareholder proposals. One commenter argued that stock price reactions around shareholder meetings may not capture the benefits of shareholder proposals because companies do not have to disclose the voting outcome until several days after the shareholder meeting. See letter from Interfaith Center on Corporate Responsibility dated January 27, 2020. Another commenter argued that stock returns may not fully capture the utility shareholders derive from proposals because investors may seek not only financial returns but also changes such as the "integration of environmental and social concerns in business decisions." See letter from Institute for Policy Integrity dated February 3, 2020. Other commenters argued that short-term stock market reactions do not capture the long-term impact of shareholder proposals on firm value. See, e.g., letters from Tom Shaffner dated December 17, 2019; UAW Retiree Medical Benefits Trust dated January 30, 2020. Finally, a commenter argued that event studies capture shareholders' expectations about the future impact of a proposal but these expectations may turn out not to be correct. See letter from UAW Retiree Medical Benefits Trust dated January 30, 2020.

We also believe that the limitations observed in short-run studies are even more pronounced in long-run studies.[436] For these reasons, we do not rely on either short-run return studies or long-run return studies to measure the benefits of excludable shareholder proposals in our economic analysis.

3. Comments regarding voting support and economic effects of the rule amendments

In the Proposing Release, we provide descriptive statistics on the voting support and the probability of obtaining majority support for all proposals, by proposal topic, and by proponent type.[437] This analysis allowed us to provide some evidence on the effects of the proposed amendments on proposals that may garner high and/or majority shareholder support, and to examine whether the proposed amendments to the resubmission thresholds may have larger effects for some types of proposals and proponents than for others.

Academic literature employs various methods to address the issues with short-window event studies discussed above. For example, some academic literature uses the date of the initial press announcement of the shareholder engagement rather than the proxy mailing date as the event date to isolate the effect of the shareholder proposals from the effect of other items on the proxy statements. See, e.g., Jonathan M. Karpoff, Paul H. Malatesta & Ralph A. Walkling, *Corporate Governance and Shareholder Initiatives: Empirical Evidence*, 42 J. FIN. ECON. 365 (1996). Other academic literature uses techniques such as regression discontinuity to isolate the anticipatory effects of voting outcomes from the benefits of implementation of certain shareholder proposals. See Vicente Cuñat, Mireia Gine & Maria Guadalupe, *The Vote Is Cast: The Effect of Corporate Governance on Shareholder Value*, 67 J. FIN. 1943 (2012). Finally, assuming semi-strong form of market efficiency, companies' short-term stock price reaction should capture investors' expectations of both the short- and long-term benefits and costs of shareholder proposals. According to the semi-strong form of market efficiency, stock prices fully reflect all publicly available information, not just information related to short-term changes. See, e.g., Eugene F. Fama, *Efficient Capital Markets: A Review of Theory and Empirical Work*, 25 J. FIN. 383 (1970) (discussing the concept of market efficiency); James M. Patell & Mark A. Wolfson, *The Intraday Speed of Adjustment of Stock Prices to Earnings and Dividend Announcements*, 13 J. FIN. ECON. 223 (1984) (testing the efficient market hypothesis).

[436] See, e.g., Gillan & Starks (2000), supra note 435.

[437] See Proposing Release at 66483–66487.

Several commenters suggested that shareholder voting support may not be the best or only metric to assess the economic effects of the rule amendments because it does not account for:

- the effects of withdrawn proposals that resulted in a company's implementation of beneficial measures;[438]
- the effects of changes implemented without the passage of a shareholder proposal but following the passage of similar proposals at many other companies;[439]
- the effects of proposals that received low levels of support but resulted in a company's implementation of beneficial measures;[440] and
- the effects of company-shareholder engagement without the submission of a formal shareholder proposal but against the background of the company's expectation that a proposal might be submitted if the company does not agree to make satisfactory changes.[441]

---

[438] See, e.g., letters from Lucian A. Bebchuk dated February 3, 2020; CalPERS dated February 3, 2020; Center for Political Accountability dated January 31, 2020; Institute for Policy Integrity dated February 3, 2020; Interfaith Center on Corporate Responsibility dated January 27, 2020; UAW Retiree Medical Benefits Trust dated January 30, 2020.

[439] See, e.g., letter from Lucian A. Bebchuk dated February 3, 2020.

[440] See, e.g., letters from Lucian A. Bebchuk dated February 3, 2020; CalPERS dated February 3, 2020; John Coates and Barbara Roper dated January 30, 2020; Council of Institutional Investors dated January 30, 2020; Institute for Policy Integrity dated February 3, 2020; Interfaith Center on Corporate Responsibility dated January 27, 2020; James McRitchie dated February 2, 2020; UAW Retiree Medical Benefits Trust dated January 30, 2020; US SIF dated January 31, 2020.

Relatedly, commenters have argued that voting support is not a relevant metric for assessing the amendments' economic effects because proposals are almost never binding and just learning about the voting outcome may be valuable information to a company. See, e.g., letter from Council of Institutional Investors dated January 30, 2020.

[441] See, e.g., letters from Lucian A. Bebchuk dated February 3, 2020; Center for Political Accountability dated January 31, 2020; Interfaith Center on Corporate Responsibility dated January 27, 2020.

Commenters also suggested that voting support is becoming a less informative metric with the increase in uninformed voting by passive investors that frequently side with management.[442] A few commenters argued that voting support may be an unreliable measure of actual shareholder support for a proposal because of proxy voting advice businesses' influence of voting outcomes.[443] In addition, two commenters stated that voting outcomes are unreliable because of issues with the counting of votes.[444] While we acknowledge the views of commenters, we continue to believe that voting support is a useful and relevant metric for purposes of our economic analysis because that is the established metric for shareholder voting generally and most likely to result in implementation of a shareholder proposal. Further, substituting other subjective views or metrics could have the effect of raising the views of others over the views of shareholders. Our economic analysis acknowledges and seeks to account for the fact that the rule amendments may affect not only voted proposals but also omitted and withdrawn proposals by applying the percentage of excludable proposals estimated over the sample of voted proposals to all submitted proposals.[445] Relatedly, some commenters argued that the economic analysis should examine the effect of resubmission thresholds on implemented proposals rather than proposals that received majority support. According to these commenters, certain resubmitted proposals are withdrawn because management expects that these proposals are likely to garner majority support, which results in proposal implementation without going to

---

[442] See, e.g., letter from Tom Shaffner dated December 17, 2020.

[443] See, e.g., letters from Business Roundtable dated February 3, 2020; Exxon Mobil Corporation dated February 3, 2020; Society for Corporate Governance dated February 3, 2020.

[444] See, e.g., letters from AFL-CIO dated February 3, 2020; Council of Institutional Investors dated January 30, 2020. See also Recommendation of the IAC, supra note 18.

[445] See, e.g., supra notes 347 and 348.

a vote, and ignoring those withdrawn proposals in the economic analysis misestimates the effects of the rule amendments on the likelihood of receiving broad or majority support upon a resubmission.[446] More generally, commenters argued that companies implement proposals even when those proposals do not receive majority support.[447] While we agree with commenters that companies may implement proposals (in whole or in part, or in an alternative form) even when they do not receive majority support, we lack data to reliably identify resubmitted proposals that were implemented by management. Finally, the probability that a shareholder proposal will be implemented is higher for proposals that receive majority support, and thus we believe that our statistics on proposals that receive majority support are a good approximation of statistics for implemented proposals.[448]

Some commenters also argued that using a majority-support threshold in the economic analysis is not appropriate because majority approval has no legal significance and there is a positive relation between voting support and the probability of implementation of shareholder proposals in general, even when voting support falls short of the majority of shares.[449] In addition, several commenters cited academic research that suggests that the passing rate of shareholder proposals may in some cases be impacted by management expending resources to influence results for proposals that are close to a majority threshold.[450] In the Proposing Release,

---

[446] See, e.g., letters from AFL-CIO dated February 3, 2020; Institute for Policy Integrity dated February 3, 2020.

[447] See, e.g., letter from Institute for Policy Integrity dated February 3, 2020.

[448] See infra note 451.

[449] See, e.g., letters from AFL-CIO dated February 3, 2020; John Coates and Barbara Roper dated January 30, 2020; Council of Institutional Investors dated January 30, 2020; Impax Asset Management dated January 20, 2020; Institute for Policy Integrity dated February 3, 2020; Interfaith Center on Corporate Responsibility dated January 27, 2020; Tom Shaffner dated December 17, 2019. See also Recommendation of the IAC, supra note18.

[450] See, e.g., letters from Council of Institutional Investors dated January 30, 2020; Impax Asset Management dated January 20, 2020; Interfaith Center on Corporate Responsibility dated January 27, 2020; New York City

we examined the percentage of proposals that received majority support as opposed to some other voting threshold because studies show that the probability of implementation of a shareholder proposal increases significantly once the proposal receives majority support.[451]

F. Reasonable alternatives

We have considered the relative costs and benefits of reasonable alternatives to the final amendments. The discussion below is limited to reasonable alternatives within the scope of Rule 14a-8.

1. Alternative amendments to Rule 14a-8(b) and Rule 14a-8(c)

i. Alternative ownership thresholds

We considered a number of alternative approaches to the ownership thresholds. First, we considered whether to increase the $2,000 / one-year threshold in the current requirement to a $25,000 / one-year threshold without providing additional eligibility options. Using proponents' exact ownership information from the proxy statements and assuming no change in proponents' ability to aggregate their holdings to submit a joint proposal, such an increase would have

---

Comptroller dated February 3, 2020 (citing Laurent Bach & Daniel Metzger, *How Close Are Close Shareholder Votes?*, 32 REV. FIN. STUD. 3183 (2019) ("Bach & Metzger (2019)")); Tom Shaffner dated December 17, 2019. Bach & Metzger (2019) provide evidence consistent with the idea that management attempts to influence voting outcomes by encouraging the participation of retail shareholders, who are more likely to vote with management, and exercising option packages to obtain additional votes.

[451] See Proposing Release at 66485. For example, a 2010 study by Ertimur et al. shows that "proposals that won at least one majority vote in the past are more likely to be implemented (34.2% versus 22.9%)." See Yonca Ertimur, Fabrizio Ferri & Stephen R. Stubben, *Board of Directors' Responsiveness to Shareholders: Evidence from Shareholder Proposals*, 16 J. CORP. FIN. 53 (2010) ("Ertimur et al. (2010)"). Similarly, a 2017 study by Bach and Metzger showed that "when the 50%-threshold is passed, there is a very sizeable jump of about 20% of the implementation likelihood." See Laurent Bach & Daniel Metzger, *How Do Shareholder Proposals Create Value?* (Working Paper, Mar. 2017) ("Bach & Metzger (2017)"). However, only crossing the management-defined majority threshold (as opposed to the simple majority threshold defined as the ratio of "for" votes divided by the sum of "for" and "against" votes) has a positive effect on the probability that the proposal is implemented. Id. The management-defined majority threshold may differ from a simple majority threshold. Id. In 43% of their sample, the management threshold is the same as the simple majority threshold. See id. In our analysis, we define majority support as the simple majority threshold because we lack data on the management-defined majority threshold.

resulted in the excludability of an upper bound estimate of 56 percent of the proposals with exact proponents' account ownership information to be considered at 2018 shareholder meetings.[452] The advantage of increasing only the dollar amount in the current threshold is that the rule would be less costly for shareholder-proponents and companies to implement and monitor. The disadvantage of such an approach would be that shareholders would not have the flexibility to become eligible to submit shareholder proposals by either increasing their holdings or holding the shares of a company for a longer period of time as under the adopted approach.

Alternatively, we considered using a tiered approach, but with different combinations of minimum dollar amounts and holding periods. For example, we considered (i) $2,000 for five years, $15,000 for three years, and $25,000 for one year or (ii) $2,000 for three years, $10,000 for two years, and $50,000 for one year. We are unable to estimate the incremental effects of the first alternative relative to the effects of the final amendments discussed in Section V.D above because we lack data on proponents' ownership duration. Regarding the effects of the second

[452] Companies have discretion in the type of information they must include in the proxy statements regarding proponents' ownership (see Rule 14a-8(l)). In particular, the company's proxy statement must include either proponents' share ownership or a statement that this information will be provided to shareholders upon request. Whenever the company discloses proponents' ownership information, the company may disclose the actual dollar value, the actual number of shares, a minimum dollar value, or a minimum number of shares held by the proponent. In addition, whenever the company discloses proponents' ownership information, the company may disclose ownership information for a subset of the proponents submitting a proposal, and the company may disclose actual holdings information for some of the proponents and minimum holdings information for the rest of the proponents submitting the same proposal. The type of ownership information the company discloses (i.e., actual holdings versus minimum holdings and dollar value versus number of shares) frequently depends on the type of information provided in the proof-of-ownership letter furnished by the proponent. In particular, proponents also have discretion in the type of information they must provide in the proof-of-ownership letters (see Rule 14a-8(b)(2)). Proponents may disclose the exact duration and level of their holdings or they may confirm that they meet the minimum ownership thresholds. Hence, there is available data in the proxy statements regarding proponents' exact ownership for only a subset of the proponents, and data regarding proponents' minimum ownership for the remaining proponents. More specifically, there were 447 unique voted proposals for shareholder meetings held in 2018. Out of the 447 proposals, 287, or 64 percent, contained information on proponents' actual and/or minimum holdings, whereas the remaining 160, or 36 percent, did not contain information on proponents' ownership. Further, in our sample of proxy statements, there were 198 proponents that submitted 150 unique proposals for which the proxy statements mentioned the proponents' actual holdings, and 159 proponents that submitted 139 unique proposals for which the proxy statements mentioned the proponents' minimum holdings.

alternative, assuming all proponents held the shares for only one year, the increase in the dollar ownership thresholds from $2,000 to $50,000 (i.e., third tier of the alternative ownership threshold) could result in the exclusion of 65 percent of the proposals based on the ownership information of proponents at 2018 shareholder meetings.[453] On the other hand, assuming all proponents held the shares for at least three years, the ownership thresholds of the second alternative would not result in a change in the number of excludable proposals relative to the current thresholds.

We also considered whether to index the adopted ownership thresholds for inflation or to maintain a single ownership threshold but index it to inflation, as recommended by several commenters.[454] The benefit of such an approach would be that the thresholds would adjust over time without the need for additional rulemaking. The disadvantage of such an approach would be that compliance with the rule could be more cumbersome as companies and shareholder-proponents would have to monitor periodically adjusted ownership thresholds.

---

[453] 65% = 97 (excludable proposals under a $50,000/one-year threshold) / 150 (proposals with exact proponents' ownership information in proxy statements, see supra note 452). This estimate assumes that proponents do not own any shares of company stock outside of the account used to prove ownership. In the case of institutional shareholders, in particular, this assumption is overinclusive and our estimate should be viewed as an upper bound. This estimate assumes that proponents will not be permitted to aggregate their holdings to meet the ownership threshold. See Proposing Release at 66506.

[454] See, e.g., letters from Council of Institutional Investors dated January 30, 2020; First Affirmative Financial Network, LLC dated January 24, 2020; Society for Corporate Governance dated February 3, 2020.

As of February 2020, the $2,000 threshold as adopted in May 1998 would be equal to $3,178 after adjusting for inflation (see supra note 58) and it would be equal to $7,470 after adjusting for the growth in Russell 3000 index (see supra note 59).

One commenter argued that adjusting the $2,000 threshold for inflation would result in excessive ownership thresholds because "the original increase from $1,000 to $2,000 already included a future inflationary adjustment." The same commenter argued that adjusting the ownership thresholds using the growth in the Russell 3000 "only makes sense for investors who have been in the market during this entire time; new entrants to the market would not have benefitted from market growth and as such the Russell Index comparison simply doesn't make sense." See letter from Tom Shaffner dated December 17, 2019.

Different thresholds could result in the exclusion of more or fewer proposals, depending on the particular thresholds. Any set of ownership thresholds has various tradeoffs associated with any given choice along the range of potential alternatives, the magnitude of which can vary based on a shareholder's actual holdings. The final rules attempt to address the interests of shareholders who seek to use the company's proxy statement to advance their own proposals at little or no cost to themselves, while recognizing that other shareholders and companies bear the burdens associated with the inclusion of such proposals and thus have an interest in ensuring that the interests of proponents are sufficiently aligned with those of other shareholders.

ii. Percent-of-ownership threshold

We considered whether to instead adopt an ownership requirement based solely on the percentage of shares owned. For example, we considered eliminating the dollar ownership threshold and retaining the one-percent ownership threshold. Using proponents' exact ownership information from the proxy statements and assuming no change in proponents' ability to aggregate their holdings to submit a joint proposal, we estimate that using a one-percent ownership threshold and removing the $2,000/one-year threshold would have resulted in an upper bound estimate of 149 proposals, or 99 percent of the proposals to be considered in 2018 shareholder meetings that provide exact proponents' ownership information, being excludable under the final amendments, again assuming no change in proponent behavior.[455]

[455] 99% = 149 (number of excludable proposals under a 1% threshold) / 150 (proposals with exact proponents' ownership information in proxy statements). For proposals that are submitted by more than one proponent, these estimates assume that the proposals will still be submitted if the aggregate ownership of the co-proponents met the alternative percent-of-ownership threshold. For proposals that are submitted by multiple proponents, some of which provide exact and others provide minimum holdings information, we assume that the ownership of the proponents with minimum holdings information is equal to the lowest end of the ownership range. See Proposing Release at 66507.

The advantage of a percentage-of-ownership threshold is that it would permit shareholders owning the same proportion of a larger company as of a smaller company to submit a proposal, and so the rule would have similar effects on smaller and larger companies.[456] The percentage-of-ownership threshold, however, may be somewhat harder to implement because of changes in companies' capital structure over time. We also believe that a percentage-of-ownership threshold of one percent would prevent the vast majority of shareholders from submitting proposals,[457] which, in turn, could have a chilling effect on shareholder engagement. In addition, the types of investors that hold more than one percent of a company's shares are generally large institutional investors and commenters noted that these types of investors are more likely to be able to communicate directly with management, and thus do not typically use shareholder proposals.[458]

iii. Eligibility thresholds based on the size of a shareholder's total investment portfolio

Some commenters argued that the eligibility thresholds should be a function of investors' wealth, not an absolute dollar amount.[459] Setting the eligibility thresholds to be a function of

---

[456] See supra note 394 and accompanying text.

[457] See supra note 9.

[458] See, e.g., letters from James McRitchie dated February 2, 2020; Tom Shaffner dated December 17, 2019; Shareholder Rights Group dated January 6, 2020; Trillium Asset Management dated February 3, 2020; see also letters in response to the Proxy Process Roundtable from MFS Investment Management dated November 14, 2018; Pax World Funds dated November 9, 2018; Shareholders Right Group dated December 4, 2018; see also Ceres Business Case, supra note 408, at 9; Eugene Soltes, Suraj Srinivasan, & Rajesh Vijayaraghavan, *What Else do Shareholders Want? Shareholder Proposals Contested by Firm Management* (Harvard Bus. Sch. Accounting & Mgmt. Unit, Working Paper, 2017) ("Soltes et al. (2017)").

On the other hand, one commenter argued against the assertion that large institutional investors have certain privileges when attempting to engage with companies and noted difficulties that large investors also experience. See letter from CalPERS dated February 3, 2020.

[459] See, e.g., letters from First Affirmative Financial Network, LLC dated January 24, 2020; Interfaith Center on Corporate Responsibility dated January 27, 2020.

investors' wealth would ensure that all shareholders, regardless of their wealth, are able to submit proposals. Nevertheless, imposing such requirements would increase complexity because measuring and proving one's own wealth would be complex and time consuming, potentially adding significant costs to the shareholder-proposal process.

2. Alternative amendments to Rule 14a-8(i)(12)

i. Alternative resubmission thresholds

We estimate that the new resubmission thresholds contained in the final amendments of 5/15/25 percent would result in an additional five percent of proposals being excludable relative to current thresholds. We considered proposing different resubmission thresholds, including raising the thresholds to 5/10/15 percent, 6/15/30 percent, or 10/25/50 percent. All three alternative threshold levels would increase the number of proposals eligible for exclusion relative to the baseline, with the first expected to have smaller effects relative to the final amendments and the second and third expected to have larger effects relative to the final amendments. Under these three alternative thresholds, we estimate that two percent, eight percent, and 20 percent of proposals, respectively, would be excludable relative to the baseline 3/6/10 percent thresholds.[460]

In addition, we considered whether the rule should remove resubmission thresholds for the first two submissions and, instead, allow for exclusion if a matter fails to receive majority support by the third submission. Under this alternative, no proposal would be eligible for exclusion on its first two submissions, allowing shareholder proposals at least two years to gain traction. We estimate that 15 percent of proposals would be excludable relative to the

[460] See Proposing Release at 66490 for a detailed description of the data on resubmitted proposals.

baseline.[461] We decided against adopting these alternative resubmission thresholds because we believe that the final amended resubmission thresholds appropriately reduce the costs to companies and their shareholders of responding to proposals that do not garner significant shareholder support and may be unlikely to do so in the near future, while at the same time preserving shareholders' ability to engage with a company and other shareholders through the shareholder-proposal process and, through the modest cooling-off period, providing for resubmission in the future based on the initial submission criteria.

ii. Different vote-counting methodologies

We considered whether to change how votes are counted for purposes of applying the resubmission thresholds. For example, we considered whether votes by insiders should be excluded from the calculation of the percentage of votes that a proposal received. We also considered whether to apply a different vote-counting methodology for companies with dual-class voting structures. Several commenters highlighted how the presence of a subset of shareholders with special voting rights could make the voting threshold requirement difficult to satisfy.[462] Applying different vote-counting methodologies for votes by insiders and for companies with dual-class shares would make it easier for shareholder proposals to meet the resubmission thresholds and thus potentially could allow for the submission of a greater number of proposals that would benefit companies and their shareholders.[463] However, because this

[461] This estimate is an upper bound of the number of excludable proposals under this alternative because it will allow all proposals following first and second submissions to be resubmitted. We cannot identify all proposals that would have been resubmitted but were not because they were eligible for exclusion under the current resubmission thresholds for first and second submissions.

[462] See supra note 203. See also letter in response to the Proxy Process Roundtable from City of New York Office of the Comptroller dated January 2, 2019.

[463] See Section V.C.3.ii.d for detailed discussion on this topic.

approach may still require companies and their shareholders to continue to incur costs associated with processing proposals that are less likely to garner majority support based on all votes cast and that are less likely to be implemented by management, we believe that the adopted approach is more appropriate. In addition, applying different vote-counting methodologies for votes by insiders and for companies with dual-class shares could increase the rule's complexity and thus could increase the costs of rule implementation to the detriment of shareholders.

iii. Exception to the rule if circumstances change

Several commenters pointed out the possibility of an initially unpopular proposal gaining popularity in subsequent years following changes in company circumstances or other market developments.[464] We acknowledge that changes in circumstances could change a proposal's voting support across years. For this reason, we considered whether to provide an exception to the final rule amendments that would allow an otherwise excludable proposal to be resubmitted if there were material developments that suggest a resubmitted proposal may garner significantly more votes than when it was previously voted on. We expect that such an exception would lower the number of proposals eligible for exclusion under the final amendments, but the magnitude of the decrease would depend on what types of developments qualify for the exception and how many companies experience these particular types of developments. Shareholders could benefit from the lower number of proposals eligible for exclusion to the extent that the submitted proposals would result in changes that would benefit companies and their shareholders. However, such an exception may impose significant costs on companies associated with determining whether changes in circumstances qualify for the exception. In

[464] See supra notes 203 and 400. See also letters in response to the Proxy Process Roundtable from the City of New York Office of the Comptroller dated January 2, 2019; Shareholder Rights Group dated December 4, 2018; Teachers Insurance and Annuity Association of America (TIAA) dated June 10, 2019.

addition, as noted above, there are various alternative means for shareholder engagement, including with regard to recent developments, and the amendments provide shareholder-proponents with the ability to resubmit initially unpopular proposals after a modest cooling-off period. Hence, we decided against adopting this alternative.

iv. Momentum Requirement

In the Proposing Release we considered a Momentum Requirement that would allow companies to exclude proposals previously voted on by shareholders three or more times in the preceding five calendar years if: (i) the most recent vote occurred within the preceding three calendar years; (ii) at the time of the most recent shareholder vote, the proposal did not receive a majority of the votes cast; and (iii) support declined by 10 percent or more compared to the immediately preceding shareholder vote on the same subject matter.

We indicated, and a number of commenters agreed, that the main benefit of the proposed Momentum Requirement would be that it would decrease the number of proposals that companies and their shareholders would consider, and thus companies and their shareholders could experience cost savings.[465] Relatedly, the proposed Momentum Requirement would exclude proposals that have historically garnered low levels of support and thus would allow shareholders to focus on the processing of proposals that may garner higher levels of voting support and may be more likely to be implemented by management. In the Proposing Release, we estimated that the Momentum Requirement would have resulted in an additional 57 (4 percent) excludable resubmitted proposals over the 2011–2018 sample period.[466] We considered

[465] See, e.g., National Association of Manufacturers, dated February 3, 2020.

[466] See Proposing Release at 66500. We estimate that the Momentum Requirement would have resulted in an additional 7 excludable resubmitted proposals in 2018 alone.

the costs of the proposed Momentum Requirement in the Proposing Release and recognized costs the proposed Momentum Requirement would have likely imposed on shareholder-proponents and companies. We considered how the Momentum Requirement would have imposed costs on shareholder-proponents and companies because it would have made the determination of shareholder proposal eligibility more complex. We also acknowledged that the requirement's potential effects, including the costs associated with the exclusion of beneficial proposals, could vary across different types of companies, proposals, and share-class structures. Several commenters argued that a 10 percent decrease in voting support does not necessarily imply a persistent waning of voting support, and so the proposed Momentum Requirement could result in the exclusion of proposals that would meet resubmission thresholds.[467] As a response to those commenters, we examined the subset of resubmitted proposals that had not garnered majority support in prior rounds of voting and experienced a 10 percent or greater decline in voting support relative to the immediately prior submission, but were still eligible to be resubmitted in the subsequent year under the current resubmissions thresholds. We found 264 such resubmissions, 139 (53 percent) of which were actually subsequently resubmitted. Among these 139 proposal resubmissions, 56 proposals (40 percent) experienced a further decline in support, while 33 (24 percent) saw an increase in support lower than ten percent and 50 (36 percent) saw an increase in support greater than ten percent.[468]

[467] See, e.g., letters from Interfaith Center on Corporate Responsibility dated January 27, 2020; Principles for Responsible Investment dated February 3, 2020.

[468] We find that 2 (1%) shareholder proposals received majority support in a resubmission, which followed a 10% drop in support. Among the 56 proposals that experienced a further decline in support, the average decline was 16%. Among the 83 proposals that experienced an increase in support, the average increase was 35%.

Relatedly, some commenters argued that there are various factors that might create volatility in voting support across years (e.g., changes in company performance, changes in the phrasing of the proposal, changes in shareholder base, changes in the proponent, market developments, etc.), and so relying on year-over-year changes in voting support to decide whether a proposal may be resubmitted likely is inappropriate.[469] Some commenters also argued that the Momentum Requirement is problematic because it would allow proposals with lower levels of support that have not lost momentum to be resubmitted while excluding proposals with higher levels of support.[470] Other commenters argued that the proposed Momentum Requirement is unclear[471] and that it would increase the complexity of the shareholder proposal eligibility requirements.[472] In addition, some commenters argued that the Momentum Requirement relies on voting outcomes and those numbers are unreliable because of issues with the counting of votes.[473] Finally, some commenters argued that the Momentum Requirement would impose costs because it would require more detailed vote counts.[474]

---

[469] See supra note 400.

Some commenters also suggested that the economic analysis should analyze which proposals have higher volatility in voting support and thus would be more likely to be affected by the momentum requirement. See, e.g., letters from As You Sow dated February 3, 2020; Interfaith Center on Corporate Responsibility dated January 27, 2020; Segal Marco Advisors dated February 3, 2020; UAW Retiree Medical Benefits Trust dated January 30, 2020. See supra Section V.C.2.iii for this analysis.

[470] See, e.g., letter from AFL-CIO dated February 3, 2020.

[471] See, e.g., letters from Council of Institutional Investors dated January 30, 2020; James McRitchie dated February 2, 2020.

[472] See also letter from CalPERS dated February 3, 2020.

[473] See supra note 444.

[474] See letter from CalPERS dated February 3, 2020.

Based on our additional analysis and the comments received, we are not adopting the proposed Momentum Requirement.

VI. PAPERWORK REDUCTION ACT

A. Background

Certain provisions of our rules and schedules that would be affected by the amendments contain "collection of information" requirements within the meaning of the Paperwork Reduction Act of 1995 ("PRA").[475] We published a notice requesting comment on changes to these collection of information requirements in the Proposing Release and have submitted these requirements to the Office of Management and Budget ("OMB") for review in accordance with the PRA.[476] The hours and costs associated with preparing, filing, and sending the schedules, including preparing documentation required by the shareholder-proposal process, constitute paperwork burdens imposed by the collection of information. An agency may not conduct or sponsor, and a person is not required to comply with, a collection of information unless it displays a currently valid OMB control number. Compliance with the information collection is mandatory. Responses to the information collections are not kept confidential and there is no mandatory retention period for the information disclosed. The title for the affected collection of information is:

"Regulation 14A (Commission Rules 14a-1 through 14a-21 and Schedule 14A)" (OMB Control No. 3235-0059).

We adopted the existing regulations and schedule pursuant to the Exchange Act. The regulations and schedules set forth the disclosure and other requirements for proxy statements

[475] 44 U.S.C. 3501 et seq.

[476] 44 U.S.C. 3507(d); 5 CFR 1320.11.

filed by issuers and other soliciting parties.

B. Summary of Comment Letters and Revisions to PRA Estimates

In the Proposing Release, we requested comment on the PRA burden hour and cost estimates and the analysis used to derive such estimates. We received four comment letters that directly addressed the PRA analysis of the proposed amendments.[477] Three of those comment letters addressed one of the cost estimates used in informing our PRA estimates, and one comment letter addressed several other aspects of the PRA analysis. None of those commenters provided additional data for consideration. We also received comment letters that, while not specifically referencing the PRA analysis, did address the cost estimates per proposal cited in both the PRA and the Economic Analysis sections of the Proposing Release. We address both types of comments below, starting with comments about the numeric estimates.

The Proposing Release used a range of available cost estimates for purposes of developing the PRA burden hours and cost estimates, including estimates associated with a company's receipt of a shareholder proposal of approximately $50,000, $87,000, more than $100,000, and approximately $150,000.[478] As discussed in Section V above, while not in direct response to the PRA analysis, a number of commenters provided estimates associated with a company's receipt of a shareholder proposal.[479] Many of these estimates were within the range of estimates that were used in developing our PRA estimates, and we received additional

---

[477] See letters from AFL-CIO dated February 3, 2020; Interfaith Center on Corporate Responsibility dated January 27, 2020; Segal Marco Advisors dated February 3, 2020; UAW Retiree Medical Benefits Trust dated January 30, 2020.

[478] See infra note 490.

[479] See supra note 332.

estimates from commenters of $18,982 and $20,000.[480] We have taken these comments into account for purposes of developing the PRA burden hours and cost estimates. Additionally, a few commenters indicated that there was not an adequate basis for relying on an estimated cost per proposal of $150,000 in calculating the PRA burden estimate.[481] Other commenters, however, noted that a cost range of $87,000 to $150,000 was "directionally accurate."[482] Overall, we believe that looking to a range of estimates, rather than relying on a single figure, is appropriate for purposes of informing the PRA burden hours and cost estimates and yields a more comprehensive estimation. For this reason, we believe it is appropriate to use the $150,000 cost estimate as one data point for purposes of the PRA.

Another commenter stated that the burden estimate does not adequately account for additional paperwork burdens on shareholders associated with the proposed ownership thresholds, one-proposal limit, and Momentum Requirement.[483] This commenter also stated that "certain shareholders will respond to the proposed amendments to Rule 14a-8 by increasing their use of independent proxy solicitations in order to avoid the more restrictive requirements of the amended shareholder proposal rule," and that the burden estimate should consider the attendant paperwork costs.[484]

---

[480] See letters from CalPERS dated February 3, 2020 (stating that the marginal cost of submitting a no-action request is less than $20,000); John Coates and Barbara Roper dated January 30, 2020 (stating that the cost estimate of $18,982 to print and mail a shareholder proposal "is a relevant datum for estimating cost savings").

[481] See letters from Interfaith Center on Corporate Responsibility dated January 27, 2020; Segal Marco Advisors dated February 3, 2020; UAW Retiree Medical Benefits Trust dated January 30, 2020.

[482] See letter from General Motors Company dated February 25, 2020. See also letter from Center for Capital Markets Competitiveness dated January 31, 2020.

[483] See letter from AFL-CIO dated February 3, 2020.

[484] Id.

We are not revising our estimate in response to the commenter's suggestion to account for recordkeeping requirements related to the revised ownership requirements, one-proposal limit under Rule 14a-8(c), and Momentum Requirement. The commenter suggested that there would be an increased burden associated with the revised ownership requirements because "shareholders' recordkeeping requirements under Rule 14a-8(b)(1)(i) will triple from one year to three years to determine whether they meet the $2,000 stock ownership requirement." We do not believe that the revised ownership requirements will result in this type of additional paperwork burden because Commission rules currently require a shareholder's broker to retain these records for a period that exceeds three years.[485] Thus, there should not be an additional burden for a shareholder-proponent associated with obtaining a broker letter verifying ownership for a two- or three-year period compared to a one-year period.

We also are not revising our assessment in response to the commenter's suggestion related to the one-proposal rule. The commenter stated that shareholders would "have additional recordkeeping requirements to keep track of . . . their use of representatives under the proposed Rule 14a-8(c)."[486] The commenter did not explain the basis for this statement, but we do not believe that there will be any additional paperwork burdens associated with keeping track of a shareholder-proponent's use of representatives. As explained in Section II.D, the amended rule will not unduly restrict a shareholder-proponent's options in selecting a representative because, while in some cases shareholder-proponents may need to submit a proposal on their own, they can otherwise enjoy all of the benefits of being represented by a representative of their choosing. Moreover, to the extent shareholder-proponents prepare and/or maintain paperwork in

[485] See 17 CFR 240.17a-3 and 17a-4.

[486] See letter from AFL-CIO dated February 3, 2020.

connection with their use of a representative, we believe the burden will be the same under the amendment as under the current rule.

We also are not revising our assessment in response to the commenter's suggestion related to the Momentum Requirement because we are not adopting that requirement. We have revised the estimate of the per-hour burden of the resubmission thresholds to reflect that the final amendments do not include the Momentum Requirement.

Finally, we are not revising our estimate in response to the commenter's suggestion that "certain shareholders will respond to the proposed amendments to Rule 14a-8 by increasing their use of independent proxy solicitations in order to avoid the more restrictive requirements of the amended shareholder proposal rule."[487] We are not aware and this commenter did not provide evidence of this type of response to other amendments to Rule 14a-8. In addition, we believe that shareholders who are unable to use Rule 14a-8 as a result of the amendments will be more likely to engage with companies through alternative avenues rather than conduct their own proxy solicitation in light of the costs involved in conducting a non-exempt proxy solicitation. In addition, to the extent shareholders elect to engage in activities that do not require compliance with Commission rules or regulations "in order to avoid the more restrictive requirements of the amended shareholder proposal rule," we note that those activities would not constitute a burden for purposes of the PRA.[488]

We have modified the overall burden estimates to reflect the most current collections of information data from OMB and updated estimates on the effects of the amendments.

---

[487] See letter from AFL-CIO dated February 3, 2020.

[488] See 44 U.S.C. 3502(2); 5 CFR 1320.3(b).

C. Summary of the Amendments' Impact on Collections of Information

In this section, we summarize the amendments and their general impact on the paperwork burden associated with Regulation 14A.

PRA Table 1. Estimated Paperwork Burden Effects of the Final Amendments

Final Amendments	Estimated Effect
Rule 14a-8(b)(1)(i) • Revise the ownership requirements that shareholders must satisfy to be eligible to submit proposals to be included in an issuer's Schedule 14A proxy statement to the following levels: o ≥$2K to <$15K for at least 3 years;	28% decrease in the number of shareholder proposal submissions,[489] resulting in a reduction in the average burden per response of 5.08 hours.[490]

[489] See supra note 322. We estimate that the decrease in the number of shareholder proposals could range from 0 to 56%, depending on proponents' holding periods. For purposes of the PRA, we assume an estimated decrease of 28%. The estimated decrease in the number of shareholder proposals takes into account the limitation on aggregation for purposes of satisfying the ownership thresholds.

[490] See Proposing Release at 66510 n.312. See also letters from Business Roundtable dated February 3, 2020 (noting that several member companies "reported costs ranging from $50,000 to $100,000 or more per proposal" and that "costs for first-time proposals are generally higher than those incurred for resubmitted proposals"); CalPERS dated February 3, 2020 (stating that the marginal cost of submitting a no-action request is less than $20,000); Center for Capital Markets Competitiveness dated January 31, 2020 (stating that its members reported that $87,000 to $150,000 per proposal is a fair cost estimate, with some exceeding the high end of the range); John Coates and Barbara Roper dated January 30, 2020 (stating that the cost estimate of $18,982 to print and mail a shareholder proposal "is a relevant datum for estimating cost savings"); Exxon Mobil Corporation dated February 3, 2020 (estimating the direct cost of each shareholder proposal included in its proxy statement to be "at least $100,000"); General Motors Company dated February 25, 2020 (stating that a cost estimate of $87,000 to $150,000 is "directionally accurate").

At an estimated hourly cost of $400 per hour, these estimated costs would correspond to the following estimated burden hours: 47.5 hours ($18,982 / $400 = 47.5), 50 hours ($20,000 / $400 = 50), 125 hours ($50,000 / $400 = 125), 218 hours ($87,000 / $400 = 218), 250 hours ($100,000 / $400 = 250), and 375 hours ($150,000 / $400 = 375).

As in the Proposing Release, we continue to estimate that the burden hours for a company associated with considering and printing and mailing a shareholder proposal (not including burdens associated with the no-action process) would be 100 hours (80 hours associated with activities unrelated to printing and mailing, and 20 hours associated with printing and mailing). In addition, we estimate that the burden hours associated with seeking no-action relief would be 50 hours. See Proposing Release at 66510 n.312. In arriving at these estimates, we took into consideration the hourly burdens corresponding to the cost estimates provided by commenters, noted above, as well as data provided in response to a July 2009 survey of Business Roundtable companies. See 2009 BRT Letter, supra note 332. We believe it is useful to consider the Business Roundtable survey in estimating the burden hours for a company associated with considering and printing and mailing a shareholder proposal because it provides specific burden hour and cost estimates with respect to preparing a no-action request and printing and mailing a single shareholder proposal.

In the Proposing Release, we estimated that 40% of proposals are included in the proxy statement without seeking no-action relief, 16% are included after seeking no-action relief, 15% are excluded after seeking no-action relief, and 29% are withdrawn. See Proposing Release at 66510 n.312. No commenters provided alternative estimates on this

○ ≥$15K to <$25K for at least 2 years; or ○ ≥$25K for at least 1 year.	
Rule 14a-8(b)(1)(iii) • Require shareholders to provide the company with a written statement that they 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 submission of the shareholder proposal, and to provide contact information as well as business days and specific times that they are available to discuss the proposal with the company.	Increase in the average burden per response of 0.04 hours.[491]
Rule 14a-8(b)(1)(iv) • Require shareholders to provide certain written documentation to companies if the shareholder appoints a representative to act on its behalf in submitting a proposal under the rule.	Increase in the average burden per response of 0.01 hours.[492]
Rule 14a-8(b)(1)(vi)	

point or expressed disagreement with these percentage estimates. Thus, for purposes of this PRA analysis, we estimate 107 burden hours associated with a company's receipt of a shareholder proposal, calculated as follows:

100 hours for 40% of proposals (i.e., proposals that are included in the proxy statement without seeking no-action relief);
150 hours for 16% of proposals (i.e., proposals that are included in the proxy statement after seeking no-action relief);
130 hours for 15% of proposals (i.e., proposals that are excluded from the proxy statement after seeking no-action relief); and
80 hours for 29% of proposals (i.e., proposals that are withdrawn).

The reduction in the average burden per response of 5.08 hours is calculated by multiplying the expected reduction in proposals (28%) by the average number of proposals received between 1997 and 2018 (946) for a reduction in the total number of proposals of 265. This reduction in the number of proposals (265) is then multiplied by the estimated burden hours per proposal (107) for a total of 28,355 burden hours. This total number of burden hours (28,355) is then divided by the total number of responses (5,586) for a reduction in the average burden per response of 5.08 hours.

[491] The increase in the average burden per response of 0.04 hours is calculated by multiplying the expected amount of time to provide this information (20 minutes) by the expected average number of expected proposals after taking account of the total reduction in proposals submitted as a result of the proposed amendments (644) for a total increase of 215 hours. This increase in burden hours (215 hours) is then divided by the total number of responses (5,586) for an increase in the average burden per response of 0.04 hours.

[492] The increase in the average burden per response of 0.01 hours is calculated by multiplying the expected amount of time to provide this information (20 minutes) by the expected number of proposals submitted by a representative that would be subject to the amendment. We estimate that approximately 14% of proposals are submitted by such representatives; thus, we multiply the average number of expected proposals after taking into account the reduction in proposals as a result of the proposed amendments (644) by 14% for a total of 90 proposals submitted by such representatives. The number of proposals (90) is multiplied by the estimated amount of time to provide this information (20 minutes) for a total of 30 hours. This increase in burden hours (30 hours) is then divided by the total number of responses (5,586) for an increase in the average burden per response of 0.01 hours.

• Disallow aggregation of holdings for purposes of satisfying the ownership requirements.	No change in the number of shareholder proposal submissions,[493] resulting in no change in the average burden per response.
Rule 14a-8(c) • Provide that shareholders and other persons cannot submit, directly or indirectly, more than one proposal for the same shareholders' meeting.	2% decrease in the number of shareholder proposal submissions,[494] resulting in a reduction in the average burden per response of 0.36 hours.[495]
Rule 14a-8(i)(12) • Increase the prior vote thresholds for resubmission of a proposal that addresses substantially the same subject matter as a proposal previously included in company's proxy materials within the preceding 5 calendar years if the most recent vote occurred within the preceding 3 calendar years to: o less than 5% of the votes cast if previously voted on once; o less than 15% of the votes cast if previously voted on twice; or o less than 25% of the votes cast if previously voted on three or more times.	5% reduction in the number of shareholder proposals by reducing the number of resubmissions,[496] resulting in a reduction in the average burden per response of 0.90 hours.[497]
Total:	Net decrease in the average burden per response of 6.29 hours.[498]

[493] See supra note 322. The effect of this amendment is accounted for in the above entry for Rule 14a-8(b)(1)(i).

[494] See Proposing Release at 66497 and supra tbl.1.

[495] The reduction in the average burden per response of 0.36 hours is calculated by multiplying the expected reduction in proposals (2%) by the average number of proposals received between 1997 and 2018 (946) for a reduction in the total number of proposals of 19. This reduction in the number of proposals (19) is then multiplied by the estimated burden hours per proposal (107) for a total of 2,033 burden hours. This total number of burden hours (2,033) is then divided by the total number of responses (5,586) for a reduction in the average burden per response of 0.36 hours.

[496] See supra tbl.1 for a discussion regarding the estimated decrease in resubmitted proposals. The estimated 5% reduction in the number of resubmissions is lower than the estimated reduction in the Proposing Release because the proposed Momentum Requirement is not being adopted.

[497] The reduction in the average burden per response of 0.90 hours is calculated by multiplying the expected reduction in proposals (5%) by the average number of proposals received between 1997 and 2018 (946) for a reduction in the total number of proposals of 47. This reduction in the number of proposals (47) is then multiplied by the estimated burden hours per proposal (107) for a total of 5,029 burden hours. This total number of burden hours (5,029) is then divided by the total number of responses (5,586) for a reduction in the average burden per response of 0.90 hours.

[498] (5.08 + 0.00 + 0.36 + 0.90) – (0.04 + 0.01) = 6.29 hours decrease in average burden per response.

D. Incremental and Aggregate Burden and Cost Estimates for the Final Amendments

The paperwork burden estimate for Regulation 14A includes the burdens imposed by our rules that may be incurred by all parties involved in the proxy process leading up to and associated with the filing of a Schedule 14A. This would include both the time that a shareholder-proponent spends to prepare its proposals for inclusion in a company's proxy statement, as well as the time that the company spends to respond to such proposals. Our incremental and aggregate reductions in paperwork burden as a result of the proposed amendments represent the average burden for all respondents, including shareholder-proponents and large and small registrants. In deriving our estimates, we recognize that the burdens would likely vary among individual proponents and registrants based on a number of factors, including the propensity of a particular shareholder-proponent to submit proposals, or the number of shareholder proposals received by a particular company, which may be related to its line of business or industry or other factors.

As shown in PRA Table 1, the burden estimates were calculated by estimating the number of parties expected to expend time, effort, and/or financial resources to generate, maintain, retain, disclose, or provide information required by the amendments and then multiplying by the estimated amount of time, on average, each of these parties would devote in response to the amendments. For purposes of the PRA, the burden is to be allocated between internal burden hours and outside professional costs. For Regulation 14A we estimate that 75% of the burden is carried by the company or the shareholder-proponent internally and that 25% of the burden of preparation is carried by outside professionals retained by the company or the

shareholder-proponent at an average cost of $400 per hour.[499]

PRA Table 2. Calculation of the Incremental Change in Burden Estimates of Current Responses Resulting from the Final Amendments

Number of Estimated Responses (A)[500]	Burden Hour Reduction per Response (B)	Reduction in Burden Hours for Responses (C) = (A) x (B)[501]	Reduction in Internal Hours for Responses (D) = (C) x 0.75	Reduction in Professional Hours for Responses (E) = (C) x 0.25	Reduction in Professional Costs for Responses (F) = (E) x $400
5,586	6.29	35,136	26,352	8,784	$3,513,600

The following table summarizes the requested paperwork burden, including the estimated total reporting burdens and costs, under the final amendments.

PRA Table 3. Requested Paperwork Burden under the Final Amendments

Current Burden			Program Change			Revised Burden		
Current Annual Responses (A)	Current Burden Hours (B)	Current Cost Burden (C)	Number of Affected Responses (D)	Reduction in Internal Hours (E)[502]	Reduction in Professional Costs (F)[503]	Annual Responses (G) = (A)	Burden Hours (H) = (B) - (E)	Cost Burden (I) = (C) - (F)
5,586	551,101	$73,480,012	5,586	26,352	$3,513,600	5,586	524,749	$69,966,412

[499] We recognize that the costs of retaining outside professionals may vary depending on the nature of the professional services, but for purposes of this PRA analysis, we estimate that such costs would be an average of $400 per hour. This estimate is based on consultations with several issuers, law firms, and other persons who regularly assist issuers in preparing and filing reports with the Commission.

[500] The number of estimated affected responses is based on the number of responses in the Commission's current OMB PRA filing inventory. The OMB PRA filing inventory represents a three-year average. We do not expect that the final amendments will materially change the number of responses in the current OMB PRA filing inventory.

[501] The estimated reductions in Columns (C), (D), and (E) are rounded to the nearest whole number.

[502] From Column (D) in PRA Table 2.

[503] From Column (F) in PRA Table 2.

VII. FINAL REGULATORY FLEXIBILITY ACT ANALYSIS

This Final Regulatory Flexibility Act ("FRFA") has been prepared in accordance with the Regulatory Flexibility Act ("RFA").[504] It relates to amendments to Rule 14a-8. An Initial Regulatory Flexibility Analysis ("IRFA") was prepared in accordance with the RFA and was included in the Proposing Release.

A. Need for, and Objectives of, the Final Amendments

Rule 14a-8 facilitates the proxy process for shareholders seeking to have proposals considered at a company's annual or special meeting; however, the burdens associated with this process are primarily borne by issuers and their shareholders. The amendments are intended to appropriately consider shareholders' ability to submit proposals as well as the attendant burdens for companies and other shareholders associated with the inclusion of such proposals in a company's proxy statement. The reasons for, and objectives of, the final amendments are discussed in more detail in Sections I and II above.

B. Significant Issues Raised by Public Comments

In the Proposing Release, we requested comment on any aspect of the IRFA, including how the proposed amendments can achieve their objective while lowering the burden on small entities, the number of small entities that would be affected by the proposed amendments, the existence or nature of the potential effects of the proposed amendments on small entities discussed in the analysis, and how to quantify the effects of the proposed amendments. We also requested comment on the number of shareholder-proponents that may be considered small entities.

---

[504] 5 U.S.C. 601 et seq.

One commenter stated that the amendments will raise costs on smaller shareholders.[505] Another commenter stated that the Commission should exempt small entities from the amended ownership requirements of $25,000 for one year or $15,000 for two years because, in the commenter's view, "the existing $2,000 requirement for one year is appropriate given that small entities by definition have small investment portfolios of less than $5 million."[506]

C. Small Entities Subject to the Final Amendments

The amendments would affect some small entities that are either: (i) shareholder-proponents that submit Rule 14a-8 proposals, or (ii) issuers subject to the federal proxy rules that receive Rule 14a-8 proposals. The RFA defines "small entity" to mean "small business," "small organization" or "small governmental jurisdiction."[507] The definition of "small entity" does not include individuals. For purposes of the RFA, under our rules, an issuer of securities or a person, other than an investment company, is a "small business" or "small organization" if it had total assets of $5 million or less on the last day of its 2018 fiscal year.[508] We estimate that there are approximately 835 issuers that are subject to the federal proxy rules, other than investment companies, that may be considered small entities. We are unable to estimate the number of potential shareholder-proponents that may be considered small entities.[509]

---

[505] See letter from Council of Institutional Investors dated January 30, 2020.

[506] See letter from AFL-CIO dated February 3, 2020.

[507] 5 U.S.C. 601(6).

[508] 17 CFR 240.0-10(a).

[509] For the purposes of our Economic Analysis, we estimate that there were 22.2 million retail accounts that held shares of U.S. public companies during calendar year 2017. There were 170 unique proponents that submitted proposals that were included in a company's proxy statement as lead proponent or co-proponent during calendar year 2018. Out of these 170 unique proponents, 38 were individuals and 132 were non-individuals. See supra Section V.B.3. Thus, no more than 132 of these unique proponents would be considered small entities.

D. Projected Reporting, Recordkeeping, and Other Compliance Requirements

As noted above, the primary purpose of the amendments is to appropriately consider shareholders' ability to submit proposals as well as the attendant burdens for companies and other shareholders associated with the inclusion of such proposals. The amendments will likely reduce the number of proposals required to be included in the proxy statements of issuers subject to the federal proxy rules, including small entities. In turn, the amendments will likely reduce the costs to these issuers of complying with Rule 14a-8. The proposed amendments may reduce the number of proposals that shareholder-proponents that are small entities will be permitted to submit to issuers for inclusion in their proxy statements. In turn, these small entities may experience an increase in shareholder-engagement costs to the extent these small entities elect to increase their investment to meet the eligibility criteria or pursue alternative methods of engagement, such as conducting their own proxy solicitation. We are not exempting shareholders that are small entities from the amended ownership requirements of $25,000/one-year and $15,000/two-years, as suggested by one commenter. The amended rule will continue to allow shareholders holding at least $2,000 of a company's securities to submit a proposal as long as they have held their shares for at least three years. In addition, we are adopting a transition provision that will exempt certain existing shareholders from the new ownership thresholds, which is expected to help with compliance burdens for those shareholders.

The amendments that will require shareholder-proponents to provide written documentation regarding their ability to meet with the issuer and relating to the appointment of a representative will slightly increase the compliance burden for shareholder-proponents, including those that are small entities. Compliance with the amendments may require the use of professional skills, including legal skills. The amendments are discussed in detail in Section II,

above. We discuss the economic impact, including the estimated costs and benefits, of the amendments to all affected entities, including small entities, in Section V and Section VI, above.

E. Agency Action to Minimize Effect on Small Entities

The Regulatory Flexibility Act directs us to consider alternatives that would accomplish our stated objectives, while minimizing any significant adverse impact on small entities. In connection with the proposed amendments, we considered the following alternatives:

- Establishing different compliance or reporting requirements that take into account the resources available to small entities;
- Clarifying, consolidating, or simplifying compliance and reporting requirements under the rules for small entities;
- Using performance rather than design standards; and
- Exempting small entities from all or part of the requirements.

Rule 14a-8 generally does not impose different standards or requirements based on the size of the issuer or shareholder-proponent. We do not believe that establishing different compliance or reporting obligations in conjunction with the amendments or exempting small entities from all or part of the requirements is necessary. While we note that one commenter suggested that the Commission provide regulatory relief from the proposed amendments by, for example, exempting small entities from the amended ownership requirements of $25,000 for one year or $15,000 for two years, we do not believe that such an exemption is necessary because the amended rule will continue to allow shareholders holding at least $2,000 of a company's securities to submit a proposal as long as they have held their shares for at least three years and we do not believe that holding $2,000 of a company's securities for up to an additional two years in order to submit a proposal will have a significant effect on small entities. We believe the

amendments are equally appropriate for shareholder-proponents of all sizes seeking to engage with issuers through the Rule 14a-8 process. While we do anticipate a moderate increase in burden for some shareholder-proponents, we do not believe that imposing different standards or requirements based on the size of the shareholder-proponent will accomplish the purposes of the proposed amendments, and may result in additional costs associated with ascertaining whether a particular shareholder-proponent may avail itself of such different standards. For issuers, the amendments will not impose any significant new compliance obligations. To the contrary, they will reduce the compliance costs of affected issuers, including small entities, by decreasing the number of shareholder proposals that may be submitted. For these reasons, we are not adopting differing compliance or reporting requirements or timetables for issuers that are small entities, or an exception for small entities.

We believe that the amendments do not need further clarification, consolidation, or simplification for small entities. The amendments generally use design standards rather than performance standards in order to promote uniform submission requirements for all shareholder-proponents, and we do not believe that there are aspects of the amendments for which performance standards would be appropriate.

VIII. STATUTORY AUTHORITY

The final amendments contained in this release are being adopted under the authority set forth in Sections 3(b), 14, and 23(a) of the Exchange Act, as amended.

List of Subjects in 17 CFR Part 240

Brokers, Confidential business information, Fraud, Reporting and recordkeeping requirements, Securities.

TEXT OF THE FINAL AMENDMENTS

In accordance with the foregoing, we are amending title 17, chapter II, of the Code of Federal Regulations as follows:

PART 240 – GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for part 240 continues to read, in part, as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z-2, 77z-3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78c-3, 78c-5, 78d, 78e, 78f, 78g, 78i, 78j, 78j-1, 78k, 78k-1, 78*l*, 78m, 78n, 78n-1, 78*o*, 78*o*-4, 78*o*-10, 78p, 78q, 78q-1, 78s, 78u-5, 78w, 78x, 78dd, 78*ll*, 78mm, 80a-20, 80a-23, 80a-29, 80a-37, 80b-3, 80b-4, 80b-11, and 7201 et seq., and 8302; 7 U.S.C. 2(c)(2)(E); 12 U.S.C. 5221(e)(3); 18 U.S.C. 1350; Pub. L. 111-203, 939A, 124 Stat. 1376 (2010); and Pub. L. No. 112-106, sec. 503 and 602, 126 Stat. 326 (2012), unless otherwise noted.

* * * * *

2. Amend § 240.14a-8 by:

a. Revising paragraphs (b)(1) and (2);

b. Effective [INSERT DATE 60 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER], through January 1, 2023, adding paragraph (b)(3);

c. Revising paragraph (c); and

d. Revising paragraph (i)(12).

The revisions and addition read as follows:

§ 240.14a-8. Shareholder proposals.

* * * * *

(b) * * *

(1) To be eligible to submit a proposal, you must satisfy the following requirements:

(i) You must have continuously held:

(A) At least $2,000 in market value of the company's securities entitled to vote on the proposal for at least three years; or

(B) At least $15,000 in market value of the company's securities entitled to vote on the proposal for at least two years; or

(C) At least $25,000 in market value of the company's securities entitled to vote on the proposal for at least one year; or

(D) The amounts specified in paragraph (b)(3) of this section. This paragraph (b)(1)(i)(D) will expire on the same date that § 240.14a-8(b)(3) expires; and

(ii) You must provide the company with a written statement that you intend to continue to hold the requisite amount of securities, determined in accordance with paragraph (b)(1)(i)(A) through (C) of this section, through the date of the shareholders' meeting for which the proposal is submitted; and

(iii) You 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 submission of the shareholder proposal. You must include your contact information as well as business days and specific times that you are available to discuss the proposal with the company. You must identify times that are within the regular business hours of the company's principal executive offices. If these hours are not disclosed in the company's proxy statement for the prior year's annual meeting, you must identify times that are between 9 a.m. and 5:30 p.m. in the time zone of the company's principal executive offices. If you elect to co-file a proposal, all co-filers must either:

(A) Agree to the same dates and times of availability, or

(B) Identify a single lead filer who will provide dates and times of the lead filer's availability to engage on behalf of all co-filers; and

(iv) If you use a representative to submit a shareholder proposal on your behalf, you must provide the company with written documentation that:

(A) Identifies the company to which the proposal is directed;

(B) Identifies the annual or special meeting for which the proposal is submitted;

(C) Identifies you as the proponent and identifies the person acting on your behalf as your representative;

(D) Includes your statement authorizing the designated representative to submit the proposal and otherwise act on your behalf;

(E) Identifies the specific topic of the proposal to be submitted;

(F) Includes your statement supporting the proposal; and

(G) Is signed and dated by you.

(v) The requirements of paragraph (b)(1)(iv) of this section shall not apply to shareholders that are entities so long as the representative's authority to act on the shareholder's behalf is apparent and self-evident such that a reasonable person would understand that the agent has authority to submit the proposal and otherwise act on the shareholder's behalf.

(vi) For purposes of paragraph (b)(1)(i) of this section, you may not aggregate your holdings with those of another shareholder or group of shareholders to meet the requisite amount of securities necessary to be eligible to submit a proposal.

(2) One of the following methods must be used to demonstrate your eligibility to submit a proposal:

(i) If you are the registered holder of your securities, which means that your name appears in the company's records as a shareholder, the company can verify your eligibility on its own, although you will still have to provide the company with a written statement that you intend to continue to hold the requisite amount of securities, determined in accordance with paragraph (b)(1)(i)(A) through (C) of this section, through the date of the meeting of shareholders.

(ii) If, like many shareholders, you are not a registered holder, the company likely does not know that you are a shareholder, or how many shares you own. In this case, at the time you submit your proposal, you must prove your eligibility to the company in one of two ways:

(A) The first way is to submit to the company a written statement from the "record" holder of your securities (usually a broker or bank) verifying that, at the time you submitted your proposal, you continuously held at least $2,000, $15,000, or $25,000 in market value of the company's securities entitled to vote on the proposal for at least three years, two years, or one year, respectively. You must also include your own written statement that you intend to continue to hold the requisite amount of securities, determined in accordance with paragraph (b)(1)(i)(A) through (C) of this section, through the date of the shareholders' meeting for which the proposal is submitted; or

(B) The second way to prove ownership applies only if you were required to file, and filed, a Schedule 13D (§ 240.13d-101), Schedule 13G (§ 240.13d-102), Form 3 (§ 249.103 of this chapter), Form 4 (§ 249.104 of this chapter), and/or Form 5 (§ 249.105 of this chapter), or amendments to those documents or updated forms, demonstrating that you meet at least one of the share ownership requirements under paragraph (b)(1)(i)(A) through (C) of this section. If

you have filed one or more of these documents with the SEC, you may demonstrate your eligibility to submit a proposal by submitting to the company:

(*1*) A copy of the schedule(s) and/or form(s), and any subsequent amendments reporting a change in your ownership level;

(*2*) Your written statement that you continuously held at least $2,000, $15,000, or $25,000 in market value of the company's securities entitled to vote on the proposal for at least three years, two years, or one year, respectively; and

(*3*) Your written statement that you intend to continue to hold the requisite amount of securities, determined in accordance with paragraph (b)(1)(i)(A) through (C) of this section, through the date of the company's annual or special meeting.

(3) If you continuously held at least $2,000 of a company's securities entitled to vote on the proposal for at least one year as of [INSERT DATE 60 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER], and you have continuously maintained a minimum investment of at least $2,000 of such securities from [INSERT DATE 60 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER] through the date the proposal is submitted to the company, you will be eligible to submit a proposal to such company for an annual or special meeting to be held prior to January 1, 2023. If you rely on this provision, you must provide the company with your written statement that you intend to continue to hold at least $2,000 of such securities through the date of the shareholders' meeting for which the proposal is submitted. You must also follow the procedures set forth in paragraph (b)(2) of this section to demonstrate that:

(i) You continuously held at least $2,000 of the company's securities entitled to vote on the proposal for at least one year as of [INSERT DATE 60 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]; and

(ii) You have continuously maintained a minimum investment of at least $2,000 of such securities from [INSERT DATE 60 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER] through the date the proposal is submitted to the company.

(iii) This paragraph (b)(3) will expire on January 1, 2023.

(c) *Question 3:* How many proposals may I submit? 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.

* * * * *

(i) * * *

(12) *Resubmissions*. If the proposal addresses substantially the same subject matter as a proposal, or proposals, previously included in the company's proxy materials within the preceding five calendar years if the most recent vote occurred within the preceding three

calendar years and the most recent vote was:

(i) Less than 5 percent of the votes cast if previously voted on once;

(ii) Less than 15 percent of the votes cast if previously voted on twice; or

(iii) Less than 25 percent of the votes cast if previously voted on three or more times.

* * * * *

By the Commission.

September 23, 2020

Vanessa A. Countryman
Secretary