

SUPPORTING STATEMENT FOR PROPOSED RULES UNDER THE SECURITIES EXCHANGE ACT OF 1934

This is a submission pursuant to the Paperwork Reduction Act of 1995, 44 U.S.C. §3501, et seq.

A. JUSTIFICATION

1. CIRCUMSTANCES MAKING THE COLLECTION OF INFORMATION NECESSARY

On November 5, 2019, the Securities and Exchange Commission (the “Commission”) proposed amendments to its rules that currently require companies subject to the federal proxy rules to include shareholder proposals in their proxy statements.¹ The existing rules governing shareholder proposals permit a company to exclude a shareholder proposal from its proxy statement if the proposal fails to meet any of several specified substantive or procedural requirements, or if the shareholder-proponent does not satisfy certain eligibility or procedural requirements. The proposed amendments would update certain eligibility criteria, including the ownership requirements that a shareholder must satisfy to be eligible to require a company to include a proposal in its proxy statement. Specifically, the proposed amendments would disallow aggregation of holdings for purposes of satisfying the ownership requirements, require shareholder-proponents to provide written documentation regarding their ability to meet with the company and, if applicable, documentation relating to the appointment of a designated representative submitting proposals on behalf of a shareholder-proponent. The proposed amendments would also clarify that a person may submit no more than one shareholder proposal for the same shareholders meeting, whether the person submits a proposal as a shareholder or as a representative of a shareholder. In addition, the proposed amendments would update the levels of shareholder support a proposal must receive to be eligible for resubmission at the same company’s future shareholder meetings.

The Paperwork Reduction Act burdens associated with the following collections of information will be affected by the proposed amendments:

“Regulation 14A and Schedule 14A” (OMB Control No. 3235-0059)

¹ See *Procedural Requirements and Resubmission Thresholds under Exchange Act Rule 14a-8*, Release No. 34-87458 (November 5, 2019) [84 FR 66458 (Dec. 4, 2019)] (“Proposing Release”).

Regulation 14A,² which includes Schedule 14A, sets forth the disclosure and other requirements for proxy statements, as well as the exemptions therefrom, filed by registrants and other soliciting persons to help investors make informed voting decisions.³

If adopted, the proposed amendments are expected to reduce the annual number of shareholder proposals, resulting in an overall reduction in the average paperwork burden for respondents. The estimated decrease in annual submissions is anticipated to be a consequence, in large part, of proposed changes to the minimum ownership holding period and market value of shares that eligible shareholders must satisfy in order to submit a proposal.⁴ In addition, the Commission proposed various other amendments to the substantive and procedural requirements for shareholder proposals, the net effect of which is expected to further reduce the overall annual paperwork burden associated with the shareholder proposal rule contained in Rule 14a-8.

A detailed description of the proposed amendments, including the need for the information and its proposed use, as well as a description of the likely respondents, can be found in Section II of the Proposing Release, and a discussion of the expected economic effects of the proposed amendments can be found in Section IV of the Proposing Release.

A copy of the Proposing Release is attached.

2. PURPOSE AND USE OF THE INFORMATION COLLECTION

By giving shareholder-proponents the ability to have their proposals included alongside management's in the company's proxy statement, Rule 14a-8 enables 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. The rule thus facilitates shareholders' traditional ability under state law to present their own proposals for consideration at a company's annual or special meeting, and it facilitates the ability of all shareholders to consider and vote on such proposals.

However, this mechanism for shareholders 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 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

² 17 CFR 240.14a-1 *et seq.*

³ The paperwork burden estimate for Regulation 14A includes the burdens imposed by the Commission's 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.

⁴ *See* Rule 14a-8 [17 CFR 240.14a-8].

proposal included alongside management’s in the company’s proxy materials—and thus to draw upon company resources and to command the time and attention of other shareholders—is not excessively or inappropriately used.

The Commission has proposed to establish enhanced requirements under Rule 14a-8 to more appropriately balance the interests of shareholders who seek to use the company’s proxy statement to advance their own proposals, on the one hand, with the interests of companies and other shareholders who bear the burdens associated with the inclusion of such proposals, on the other hand.

3. CONSIDERATION GIVEN TO INFORMATION TECHNOLOGY

The collection of information requirements of the amendments are set forth in the affected rules. The affected filings are provided electronically to the Commission using the Commission’s Electronic Data Gathering, Analysis and Retrieval (“EDGAR”) system.

4. DUPLICATION OF INFORMATION

The amendments do not duplicate, overlap, or conflict with other federal rules.

5. REDUCING THE BURDEN ON SMALL ENTITIES

The proposed 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. In the Proposing Release, the Commission estimated that there are approximately 881 issuers that are subject to the federal proxy rules, other than investment companies, that may be considered small entities.⁵

If adopted, the proposed amendments would 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, this would likely reduce the costs to such issuers of complying with Rule 14a-8.

In addition, the proposed amendments, if adopted, may also reduce the number of proposals that shareholder-proponents that are small entities would be permitted to submit to issuers for inclusion in the issuers’ proxy statements. As a result, these small entities may experience an increase in shareholder engagement costs to the extent such small entities elect to increase their investment to meet the adjusted eligibility criteria or pursue alternatives methods of engagement, such as conducting their own proxy solicitation. The proposed amendments that would require shareholder-proponents to provide written documentation regarding their ability to meet with the issuer and relating to the appointment of a representative would slightly increase the compliance burden for

⁵ In the Proposing Release, the Commission requested comment on the number of potential shareholder-proponents that may be considered small entities, as it was unable to provide an estimate of the number.

shareholder-proponents, including those that are small entities.

Rule 14a-8 generally does not impose different standards or requirements based on the size of the issuer or shareholder-proponent. Nor does the Commission believe that establishing different compliance or reporting obligations in conjunction with the proposed amendments or exempting small entities from all or part of the requirements is necessary. The Commission believes the proposed amendments are equally appropriate for shareholder-proponents of all sizes seeking to engage with issuers through the Rule 14a-8 process. While the Commission does anticipate a moderate increase in burden for shareholder-proponents, it does not believe that imposing different standards or requirements based on the size of the shareholder-proponent will accomplish the purposes of the proposed amendments,

6. CONSEQUENCES OF NOT CONDUCTING COLLECTION

The proposed amendments relate to Regulation 14A. This regulation and its associated schedules govern proxy solicitations and set forth the disclosure requirements for proxy and information statements. Less frequent collection would deprive investors of access to information that is important to their voting decisions.

7. SPECIAL CIRCUMSTANCES

There are no special circumstances in connection with these amendments.

8. CONSULTATIONS WITH PERSONS OUTSIDE THE AGENCY

In the Proposing Release, the Commission solicited public comment on the new “collection of information” requirements and the associated paperwork burdens.⁶ Comments on Commission releases are generally received from registrants, investors, and other market participants. In addition, the Commission and staff participate in ongoing dialogue with representatives of various market participants through public conferences, roundtables and meetings. All comments received on the proposal are available at <https://www.sec.gov/comments/s7-23-19/s72319.htm>. As of March 11, 2020, we have received four comments on the burden estimate.⁷ Three commenters indicated that there is not an adequate basis for the \$150,000 per proposal cost estimate upon which the Commission relies in calculating the burden estimate.⁸ Another commenter stated that the burden estimate does not adequately account for the additional

⁶ See note 1 *supra*.

⁷ 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.

⁸ See letters from Interfaith Center on Corporation Responsibility dated January 27, 2020; Segal Marco Advisors dated February 3, 2020; UAW Retiree Medical Benefits Trust dated January 30, 2020.

paperwork burdens on shareholders associated with the proposed ownership thresholds.⁹ The Commission will consider all comments received prior to publishing the final rules, as required by 5 CFR 1320.11(f).

9. PAYMENT OR GIFT TO RESPONDENTS

No payment or gift to respondents.

10. CONFIDENTIALITY

All documents submitted to the Commission are available to the public.

11. SENSITIVE QUESTIONS

No information of a sensitive nature will be required under the following collections of information in connection with these rulemaking amendments: Regulation 14A and Schedule 14A. The information collection collects basic personally identifiable information (PII) that may include a name and job title. However, the agency has determined that these information collections do not constitute a system of record for purposes of the Privacy Act. Information is not retrieved by a personal identifier. In accordance with Section 208 of the E-Government Act of 2002, the agency has conducted a Privacy Impact Assessment (PIA) of the EDGAR system, in connection with this collection of information. The EDGAR PIA, published on February 5, 2020, is provided as a supplemental document and is also available at <https://www.sec.gov/privacy>.

12. and 13. ESTIMATES OF HOUR AND COST BURDENS

The Commission anticipates that the proposed amendments, if adopted, would reduce the annual number of shareholder proposals, resulting in an overall reduction in the average paperwork burden for respondents in connection with the collection of information for Regulation 14A. 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 proposed amendments and then multiplying by the estimated amount of time, on average, each of these parties would devote in response to the proposed amendments.

The following Table 1 summarizes the estimated effects of the proposed amendments on the paperwork burdens associated with Regulation 14A.

⁹ See letter from AFL-CIO dated February 3, 2020.

Table 1. Estimated Paperwork Burden Effects of the Proposed Amendments

Proposed Amendments	Estimated Effect
<p>Rule 14a-8(b)(1)(i)</p> <ul style="list-style-type: none"> • 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: <ul style="list-style-type: none"> ○ ≥\$2K to <\$15K for at least 3 years; ○ ≥\$15K to <\$25K for at least 2 years; or ○ ≥\$25K for at least 1 year. 	<p>28% decrease in the number of shareholder proposal submissions, resulting in a reduction in the average burden per response of 5.08 hours.</p>
<p>Rule 14a-8(b)(1)(iii)</p> <ul style="list-style-type: none"> • 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. 	<p>Increase in the average burden per response of 0.04 hours.</p>
<p>Rule 14a-8(b)(1)(iv)</p> <ul style="list-style-type: none"> • 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. 	<p>Increase in the average burden per response of 0.01 hours.</p>
<p>Rule 14a-8(b)(1)(v)</p> <ul style="list-style-type: none"> • Disallow aggregation of holdings for purposes of satisfying the ownership requirements. 	<p>0.2% decrease in the number of shareholder proposal submissions, resulting in a reduction in the average burden per response of 0.04 hours.</p>
<p>Rule 14a-8(c)</p> <ul style="list-style-type: none"> • Provide that shareholders and other persons cannot submit, directly or indirectly, more than one proposal for the same shareholders’ meeting. 	<p>2% decrease in the number of shareholder proposal submissions, resulting in a reduction in the average burden per response of 0.36 hours.</p>
<p>Rule 14a-8(i)(12)</p> <ul style="list-style-type: none"> • 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: <ul style="list-style-type: none"> ○ less than 5% of the votes cast if previously voted on once; ○ less than 15% of the votes cast if previously voted on twice; or ○ less than 25% of the votes cast if previously voted on three or more times. <p>Permit exclusion of proposals that addresses substantially the same subject matter as proposals that have been previously</p>	<p>7% reduction in the number of shareholder proposals by reducing the number of resubmissions, resulting in a reduction in the average burden per response of 1.26 hours.</p>

voted on three or more times in the last five years, notwithstanding having received at least 25% of the votes cast on the most recent submission, if the most recently voted on proposal (i) received less than 50% of the votes cast and (ii) experienced a decline in shareholder support of 10% or more of the votes cast compared to the immediately preceding vote.	
Total:	Net decrease in the average burden per response of 6.69 hours. ¹⁰

Table 2 below illustrates the incremental change to the total annual compliance burden in hours and in costs as a result of the proposed amendments. The table sets forth the percentage estimates the Commission typically uses for the burden allocation for each response.¹¹

Table 2. Calculation of the Incremental Change in Burden Estimates of Current Responses Resulting from the Proposed Amendments

Number of Estimated Responses (A) ¹²	Burden Hour Reduction per Response (B)	Reduction in Burden Hours for Responses (C) = (A) x (B) ¹³	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	6.69	37,370	28,027	9,343	\$3,737,200

(continued on next page)

¹⁰ $(5.08 + 0.04 + 0.36 + 1.26) - (0.04 + 0.01) = 6.69$ hours decrease in average burden per response.

¹¹ The Commission's estimates assume that 75% of the burden is borne by the company and 25% is borne by outside counsel at \$400 per hour. The Commission recognizes that the costs of retaining outside professionals may vary depending on the nature of the professional services, but for purposes of its paperwork burden analysis, it estimated that such costs would be an average of \$400 per hour. This estimate was based on consultations with several registrants, law firms, and other persons who regularly assist registrants in preparing and filing reports with the Commission.

¹² 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 proposed amendments will materially change the number of responses in the current OMB PRA filing inventory.

¹³ The estimated reductions in Columns (C), (D) and (E) are rounded to the nearest whole number.

Finally, Table 3 that follows summarizes the requested paperwork burden, including the estimated total reporting burdens and costs, under the proposed amendments.

Table 3. Requested Paperwork Burden under the Proposed Amendments

Current Burden			Program Change			Requested Change in Burden		
Current Annual Responses (A)	Current Burden Hours (B)	Current Cost Burden (C)	Number of Affected Responses (D)	Reduction in Internal Hours (E) ¹⁴	Reduction in Professional Costs (F) ¹⁵	Annual Responses (G) = (A)	Burden Hours (H) = (B) - (E)	Cost Burden (I) = (C) - (F)
5,586	551,101	\$73,480,012	5,586	(28,027)	(\$3,737,200)	5,586	523,074	\$69,742,812

14. COSTS TO FEDERAL GOVERNMENT

The annual cost of reviewing and processing disclosure documents, including registration statements, post-effective amendments, proxy statements, annual reports and other filings of operating companies amounted to approximately \$103,479,690 in fiscal year 2019, based on the Commission’s computation of the value of staff time devoted to this activity and related overhead.

15. REASON FOR CHANGE IN BURDEN

The proposed amendments in Release No. 34-87458 would update the criteria, including the ownership requirements that a shareholder must satisfy to be eligible to require a company to include a proposal in its proxy statement.

In particular, the proposed amendments to Rule 14a-8 would:

- Update the current minimum ownership requirement for shareholder-proponents;
- Require additional documentation from shareholder-proponents who have authorized a representative to act on their behalf;
- Require each shareholder-proponent to provide contact information to the company and confirm that he or she is able to meet with the company as specified by the rule.
- Apply the one-proposal rule to “each person” rather than “each shareholder” who submits a proposal;
- Modernize the current thresholds for shareholder proposal resubmissions; and

¹⁴ From Column (D) in PRA Table 2.

¹⁵ From Column (F) in PRA Table 2.

- Add a new provision that would allow for exclusion of certain proposal that have been previously voted on three or more times in the last five years, depending on the level of shareholder support received for the proposal.

The Commission anticipates that, if adopted, the amendments would have the overall effect of reducing the number of shareholder proposal submissions, thus reducing the aggregate burdens and costs of affected parties complying with the relevant shareholder proposal requirements of Regulation 14A.

(For further detail see the Regulation 14A and Schedule 14A short statement beginning on page 11)

16. INFORMATION COLLECTION PLANNED FOR STATISTICAL PURPOSES

The information collection does not planned for statistical methods.

17. APPROVAL TO OMIT OMB EXPIRATION DATE

We request authorization to omit the expiration date on the electronic version of the form. Including the expiration date on the electronic version of the form will result in increased costs because the need to make changes to the form may not follow the application's scheduled version release dates. The OMB control number will be displayed.

18. EXCEPTIONS TO CERTIFICATION FOR PAPERWORK REDUCTION ACT SUBMISSIONS

There are no exceptions to certification for the Paperwork Reduction Act submissions.

B. STATISTICAL METHODS

The information collection does not employ statistical methods.

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REGULATION 14A AND SCHEDULE 14A SHORT STATEMENT

The proposed amendments in Release No. 34-87458 would update the criteria, including the ownership requirements that a shareholder must satisfy to be eligible to require a company to include a proposal in its proxy statement. The Commission anticipates that, if adopted, the amendments would reduce the aggregate burdens and costs of affected parties complying with the relevant shareholder proposal requirements of Regulation 14A.

In particular, the proposed amendments to Rule 14a-8(b) would:

- Update the current requirement that a shareholder-proponent hold at least \$2,000 or 1 percent of a company's securities for at least one year to be eligible to submit a proposal. In addition to eliminating the 1 percent threshold, the proposal would amend the rule with the following three alternative thresholds, any one of which a shareholder could satisfy to be eligible to submit a proposal:
 - continuous ownership of at least \$2,000 of the company's securities for at least three years;
 - continuous ownership of at least \$15,000 of the company's securities for at least two years; or
 - continuous ownership of at least \$25,000 of the company's securities for at least one year.
- Require that a shareholder-proponent who elects to use a representative for the purpose of submitting a shareholder proposal provide documentation to make clear that the representative is authorized to act on the shareholder-proponent's behalf and to 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; and
- Require that each shareholder-proponent state that he or she is able to meet with the company, either in person or via teleconference, no less than 10 calendar days, nor more than 30 calendar days, after submission of the shareholder proposal, and provide contact information as well as business days and specific times that the shareholder-proponent is available to discuss the proposal with the company.

The proposed amendment to Rule 14a-8(c) would:

- Apply the one-proposal rule to "each person" rather than "each shareholder" who submits a proposal, such that a shareholder-proponent would 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 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.

The proposed amendments to Rule 14a-8(i)(12) would:

- Modernize the current resubmission thresholds of 3 percent, 6 percent and 10 percent for matters voted on once, twice or three or more times in the last five years, respectively, with thresholds of 5 percent, 15 percent and 25 percent, respectively; and
- Add a new provision that would allow for exclusion of a proposal that has been previously voted on three or more times in the last five years, notwithstanding having received at least 25 percent of the votes cast on its most recent submission, if the proposal (i) received less than 50 percent of the votes cast and (ii) experienced a decline in shareholder support of 10 percent or more compared to the immediately preceding vote.

For purposes of its Paper Reduction Act analysis, the Commission estimates that the proposed amendments to Regulation 14A would result in a net deduction of 28,027 burden hours and a net reduction \$3,737,200 in outside professional costs.