January 30, 2020

The Hon. Jay Clayton
The Hon. Robert J. Jackson, Jr.
The Hon. Hester M. Peirce
The Hon. Elad L. Roisman
The Hon. Allison Herren Lee
U.S. Securities and Exchange Commission
100 F Street NE
Washington, DC 20549-1090

Attn: Ms. Vanessa Countryman, Secretary

Re: *Proposed Rule on Procedural Requirements and Resubmission Thresholds under Exchange Act Rule 14a-8*; File No. S7-23-19 and
Proposed Rule on Amendments to Exemptions from the Proxy Rules for Proxy Voting Advice; File No. S7-22-19

Dear Chairman Clayton and Commissioners Jackson, Peirce, Roisman and Lee,

We are state treasurers with a keen interest in maintaining a federal regulatory framework that protects investors – including by providing shareowners the tools needed to ensure transparency of and accountability for actions taken, and risks managed, by corporate management and boards of directors. We appreciate this opportunity to comment on the Securities and Exchange Commission's proposals to amend the procedural requirements and resubmission thresholds for shareholders to file proposals for inclusion in corporate proxies and to impose certain requirements on independent proxy advisors.

The Existing Federal Shareholder Proposal Process is Fair, Efficient and Working Well

The ability of shareowners to file shareholder proposals is a fundamental investor right first established by the federal government in 1942 for reasons that remain vital today.

State laws provide certain shareowner rights – including to receive certain information about company performance, to vote up or down on certain fundamental actions initiated by company management and the board of directors, and to assert claims in the aftermath of perceived wrongdoing. Nonetheless, they do not provide a tool similar to shareholder proposals by which dispersed shareowners – under federal rules on voting by proxy, without obligation to attend a shareowner meeting – can timely and efficiently raise issues impacting investments with management, the board of directors and other shareowners. It is not

practically possible for shareowners of a public company with dispersed ownership to express a collective view absent proxy voting mechanisms, importantly including the shareholder proposal rule.

In the aftermath of the Great Depression, the federal government stepped in to protect shareowners and enhance investor confidence in U.S. securities markets with the passage of the federal securities laws in the 1930s and, thereby, the creation of the Securities and Exchange Commission (SEC). The SEC adopted the first shareholder proposal rules in 1942, which made the filing of such proposals a fundamental federal shareowner right.

The SEC has since fine-tuned the rules to ensure they remain fair, efficient and effective, as validated by the essential reforms prompted by shareholder proposals in the wake of more recent corporate crises, including the Enron-era accounting scandals and the global financial crisis. These reforms have been especially beneficial to pension systems and other large, long-term investors that now represent a large share of the market and that invest through low-cost, diversified index strategies and thus cannot readily sell shares in underperforming companies.

The robust shareholder proposal process, as currently structured and administered under SEC Rule 14a-8, works well for investors, public companies and capital markets. We do not believe there is a need or justification to change it. We also believe that the proposed changes would have unintended and deleterious consequences to both institutional and individual investors, including the funds that we oversee and manage as fiduciaries for state and local workers and retirees, as well as to taxpayers.

The shareholder proposal process is fair, efficient and effective.

The SEC has a well-earned reputation for fairness in overseeing an administrative process that allows companies to exclude proposals from their proxy cards that do not meet the procedural and/or substantive hurdles contained in Rule 14a-8.

Shareholder proposals provide an orderly means to mediate differences between a company's management, board of directors and shareowners. The proposals allow shareowners to signal issues of concern in the interest of enhancing long-term company value and provide a framework for the company to respond with information about its strategy, governance and risk management approaches to the issues raised.

Advancements in U.S. corporate governance practices and regulation that we believe would not have occurred without the robust shareholder proposal process currently in place include:

- *Independent Directors* – Independent boards and fully independent audit, compensation, nominating/governance committees help to ensure that board decision-making is free of actual or perceived conflicts of interest that could compromise directors' judgment. Shareholder proposals were the impetus behind the now standard

practice – currently mandated by major U.S. stock exchanges' listing standards – that independent directors constitute at least a majority of the board, and that all the members of the aforementioned board committees are independent.

- *Annual Election of Directors* – Experience has shown that classified boards – whereby only a portion of the directors face election each year – serve to entrench and insulate the board and management from accountability. In 1987, an average of 16% of shareowners voted in favor of shareholder proposals to declassify boards of directors so that directors stand for election each year. In 2012, these proposals enjoyed an 81% level of support on average. Ten years ago, less than 40% of S&P 500 companies held annual elections for all directors, compared to more than two- thirds of these companies today.

- *Majority Voting for Election of Directors* – Board accountability is promoted by requiring majority votes for directors in uncontested elections. There should be meaningful director elections. Electing directors in uncontested elections by majority (rather than plurality) vote was considered a radical idea a decade ago when shareowners pressed for it in proposals they filed with numerous companies. Today, 90% of large-cap U.S. companies elect directors by majority vote, largely as a result of shareowner support for majority vote proposals.

- *Shareowner Access to the Proxy* – Candidates for a company's board of directors almost always are nominated by the boards themselves – often with significant say from the very management which the board is elected to oversee. As a result, shareowners historically have had no real voice in the board nomination process and little choice in voting their shares. Proxy access provides the framework by which shareowners who meet specified eligibility requirements can nominate directors on the company's ballot.

  Shareholder proposals urging companies to implement proxy access in recent years quickly received large votes, even achieving majority votes at numerous companies. As a result, the marketplace standard is now moving towards companies adopting proxy access. More than 400 companies have now adopted proxy access bylaws.

- *Advisory Vote on Executive Compensation* – Shareowners use the advisory vote on executive compensation to communicate their views on how well the board is handling its responsibility in setting compensation for senior management. Boards of directors use this feedback to refine pay practices as they find appropriate. Shareholder proposals built the momentum behind "say-on-pay" – the now required advisory vote on executive compensation.

As the Commission's release points out, in recent years the overall number of proposals has decreased, whereas the average percentage support for those considered has increased. This is evidence that shareholders have learned to be both effective and efficient in using the process. It does not support changes that would further restrict shareholders' eligibility and ability to

bring valid proposals forward. The Commission's release cites some administrative costs that companies could save if there were fewer proposals. We do not believe the small amount of these savings would justify changes that could unintentionally but significantly jeopardize the ability of dispersed shareholders to communicate in a meaningful way with each other and with the company. We must remember that investor confidence is fragile. As the Nation learned after the Great Crash, and saw again after the Enron-era scandals and the recent financial crisis, the costs of a loss of confidence significantly outweigh small compliance burdens of the order cited in the Commission's release.

The Commission Should Champion the Independence of Proxy Advisors from Corporate Management

Independent proxy advisors have been an important part of the fabric of investor protection since their advent in the 1980s. They enable large, institutional investors, including public funds like ours, to obtain research on important governance trends and problems and develop and implement voting policies to address those trends and problems for the long-term benefit of their funds.

Independent proxy advice has helped investors hold companies accountable for good governance in many different ways, including for example:

- *Linking Executive Pay to Performance* – Through their independent research and analysis, proxy advisors facilitate investors' ability to provide a reality check on executive pay practices and incentives, which at times can be detrimental to shareholder value.

- *Holding Boards Accountable for Managing Value-destroying Risks* – Independent proxy advisors evaluate how well corporate board members oversee risk management – from sales and marketing practices, to foreign business dealings, to cybersecurity and more – giving investors valuable information on which to judge whether to reappoint such members or not. When investors can effectively hold corporate boards accountable, government resources on enforcement and bailouts are spared.

We support the Commission's desire for full disclosure of any conflicts of interest that proxy advisors face, but we believe the current framework is working well to serve this goal. We do not support other changes the Commission has proposed, however. In particular, we believe that allowing companies two rounds of review and comment on draft proxy advice and encouraging private actions by corporations to hold proxy advisors accountable will have a significant impact on proxy advisors' ability to maintain an independent mindset and form independent methodologies and opinions. Indeed, the value of independent proxy advisors is to help investors hold companies accountable, in order that government regulation and enforcement is needed less. The Commission should not outsource oversight of proxy advice to the very company managers who are the subject of the advice, and who at times may have views on their own tenure and compensation that conflict with best advice.

Proxy advisory firms' role is less central than it was a decade ago. Direct engagement by investors with management and with boards of portfolio companies has stepped up substantially since the global financial crisis. Asset managers, pension funds and other investors have taken greater interest in proxy voting, and have strengthened in-house expertise to address proxy-related issues. Nevertheless, independent research supporting investors' ability to stay on top of trends, developments and risks is as important as ever. If investors were to lose confidence in the independence of proxy advisors' work, the costs in terms of lost efficiencies, lost effectiveness – and lost trust in the fairness of our markets – would be significant.

* * *

U.S. corporate governance must continue to evolve and advance. Filing shareholder proposals is one particularly effective tool – provided to investors at the federal level – to voice concerns and to propose reforms, in order to protect our long-term investments and encourage sustainable, robust corporate practices at publicly-traded companies. Independent proxy advisors also help investors maintain thoughtful and comprehensive voting policies to hold companies accountable for delivering long-term, sustainable shareholder value. On an ongoing basis, shareholder proposals and the use of independent proxy advisors address current and emerging issues that have the potential to impact our investments for the good of our beneficiaries and the taxpayers that stand behind them.

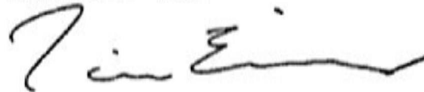
We believe that shareholder proposals and independent proxy advisors are essential tools to maintain corporate transparency and accountability and that they must be protected in their current forms.

Signed,

Henry Beck
Maine State Treasurer

Zack Conine
Nevada State Treasurer

Colleen C. Davis
Delaware State Treasurer



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New Mexico State Treasurer

Michael L. Fitzgerald
Iowa State Treasurer

Michael W. Frerichs
Illinois State Treasurer

Sarah A. Godlewski
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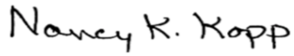
Massachusetts State Treasurer



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Maryland State Treasurer

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California State Treasurer

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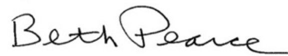
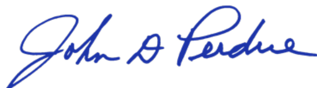
Rhode Island State Treasurer



Beth Pearce
Vermont State Treasurer

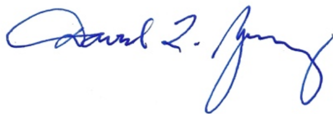


John D. Perdue
West Virginia State Treasurer

Tobias J. Read
Oregon State Treasurer

Joseph M. Torsella
Pennsylvania State Treasurer

Shawn T. Wooden
Connecticut State Treasurer



David L. Young
Colorado State Treasurer