Transcript
Shareholder Proposals Panel
Proxy Roundtable
Securities and Exchange Commission
November 15, 2018

Tamara Brightwell: All right, I think we'll go ahead and get started for the afternoon. Welcome back to our afternoon session of today's round table. Our next panel will focus on shareholder engagement and the shareholder proposal process. I'll first introduce our panel quickly, go over some logistics, and then we'll jump right into our questions.

So first we have Ray Cameron from BlackRock; Ning Chiu, Davis Polk & Wardwell; Michael Garland, Office of the Comptroller, New York City; Maria Ghazal, Business Roundtable; Jonas Kron, Trillium Asset Management; Aeisha Mastagni, California State Teachers Retirement System; James McRitchie, Corpgov.Net; Tom Quaadman, US Chamber of Commerce, Capital Markets Competitiveness; Brandon Rees, American Federation of Labor and Congress of Industrial Organizations; Dannette Smith, United Health Group. We also have Chairman Clayton and commissioners Peirce, Commission Roissman here with us as well. So we'd like to welcome them back. We're very fortunate to have this distinguished panel of participants this afternoon and so we're looking for a robust dialogue.

During the panel, if you could make sure to press your button when you're ready to speak and then when you're finished, if you wouldn't mind pressing the button again to turn it off. If you'd like to respond to a question or comment by one of your fellow panelists, please turn your name tag and we will recognize you for that as well.

Finally, before we get started I know Bill Hinman gave the disclaimer this morning, but for the afternoon, I'll go ahead and give it again. The views that we express today are our own and they don't necessarily represent that of the Commission or other members of the Staff.

So I'd like to get started and Ray, I think we'll get started with you. Over the past couple of years engagement with shareholders seems to have increased and so we wanted to talk about that because one of the ways that people engage with shareholders is through shareholder proposals. So could you talk a little bit about how you engage with shareholders and how shareholder proposals affect company and shareholder engagement?

Ray Cameron: Sure. First of all I think I'd like to thank the Chairman and the Commissioners and also the staff for having me here today to represent BlackRock. This is a very timely and very important conversation.

Let me start by saying BlackRock's engagement on material governance issues, including how companies manage environmental and social aspects of their businesses does not begin or end with a vote on a shareholder proposal. Our engagement first approach, which entails year-round conversation with companies allows us to preempt issues that might be addressed in a shareholder proposal during a proxy season.

The conversations with company management allow us to tackle issues in realtime and not wait to address them at the last moment. We believe in balancing the rights of all shareholders and recognize that shareholder proposals provide an important tool for investors to express their views.

We prefer engagement as we see shareholder proposals as a tool often of last resort, an avenue for accelerated change when needed. During our direct engagements with companies we address the issues covered by many shareholders that we believe to be material to the long-term value of the company. Where management demonstrates a willingness to address the material issued raised and where we believe progress is being made, we will generally support the company and vote against the shareholder proposal.

Now sometimes shareholders will withdraw proposals from company ballots that we might have otherwise supported. Due to effective engagement or conversations or engagement with companies these engagements may result in the company voluntarily adopting additional disclosures similar to those that we saw in a shareholder proposal. We also vote against shareholder proposals that in our assessment are too prescriptive or too narrowly focused or deal with issues that we consider to be outside the purview of the board or the management team.

In addition, our carefully considered investment stewardship priorities cover most, if not all of the topics raised in shareholder proposals. Those include governance, strategy, purpose and culture, diversity and human capital. Given these priorities we are likely to discuss any topic raised in a shareholder proposal. Having said that, and in some instances BlackRock supports shareholder proposals on material, environmental, social or governance issues when we do not see demonstrated commitment to address investor concerns or the company has not made sufficient progress over a period of time.

So to be clear BlackRock never makes social decisions with clients' money. Our top priority, our number one goal is to maximize long-term value, economic value for our clients. When we consider how to vote on a shareholder proposal we do so with a lens toward the material nature of the specific issue or the specific question at hand.

Our interpretation of the gradual decline in the number of shareholder proposals and levels of self-support for proposals for the past few years is that direct engagement is building mutual understanding between companies and that long-term investors on emerging issues, particularly as it relates to

governance proposals. So in summary, BlackRock takes an engagement first approach and we find that even when we do not support shareholder proposals or some proposals, the conversations that we have with companies on related topics often lead to positive change without the use of what some might consider to be a blunt instrument.

Tamara: Okay. Sort of following up on that and maybe Dannette maybe you could kick us off on this, do you see the type and level of engagement, does it differ with respect to different types of investors or how one might approach the engagement?

Dannette Smith: How we approach the engagement wouldn't differ depending upon the type of the shareholder, but the types of engagement generally do differ based on types of shareholders. United Health Group fortunately is very heavily institutionally held, so retail, just general communications with shareholders is less of an issue for us than some of our co-companies who have real struggles with trying to get quorum for annual meeting and finding shareholders some of the obo-nobo discussions from the earlier panel.

The issue when it comes to shareholder proposals and we have had the distinct pleasure of receiving shareholder proposals probably from the vast majority of the institutional investors at this table, is that with the institutional shareholders it's much easier to engage with them on what their proposal is, what their interests are. It's much more difficult to engage with the retail shareholders. Sometimes they won't engage at all and if they will, it's typically only by email.

Tamara: One of the things Bill Hinman, in his remarks this morning, talked about technology and how it's changed and people harness technology and social media for other types of engagement. Does anyone see that that is being harnessed now and in different ways for shareholder engagement or is that something that maybe still need to look at?

Tom Quaadman: If I can just weigh in for a second on the retail shareholder piece. In our letter that we submitted earlier this week, one of the things that we had put out there and we've actually raised this going back to the 2010 concept release, is the possible use of new technology, such as client directed voting that retail shareholders could use because we've seen retail shareholder rates drop precipitously over the decades. So we think that there are some existing technologies that can be used and I think we would strongly urge the commission to look at them and I think social media is something to look at, but we also think that client directed voting might be another path to also help with that and that's some we strongly urge the commission to look at.

Tamara: Brandon, did you want to comment?

Brandon Rees: I just wanted to jump in. I know we're speaking back to the previous panel's topic, but one thing that we noticed after the e-proxy notice and access rulemaking went through is that retail investor participation voting dropped

dramatically because many retail investors are either unable or unwilling to vote electronically, which is why we felt that electronic delivery should be opt-in as opposed to opt-out, but I urge the commission to look at the reasons for why retail investing voting has gone down and there are limits to technology that we have to recognize that some investors simply prefer to vote by paper.

James McRitchie: I just wanted to jump in here, when you were talking about technology, to point out that there are, even in our audience today, there are people from say YourStake, there's another organization called Shareholder Democracy. I think one of the things that the SEC could do to promote retail shareholder voting is to publicize ... to go to the education portion of the SEC site, it's almost like consumer protection. It's really not emphasizing the shareholder's role as a shareowner in the company and their responsibilities to vote and where can they found out information on how to vote? There are 15 funds that now announce their votes in advance of meetings, but most shareholders don't know about that. If they knew about that they could see how those other shareholders are voting and that would help them assess their own votes.

Tamara: We'll go to Dannette and then Ning.

Dannette Smith: My comments now are just on my own as a retail shareholder. I think there are some platforms by brokers that make it very easy for a retail shareholder to vote. I happen to hold my shares through Fidelity and when I log into their account, I can just go to an easy click that shows me anything that I have to vote on, I can click through easily to the proxy if I want to see it or I can mark my choices right there and it's entered in and I don't need a control number, so I'm not in Darla's situation where she votes her P & G shares. It's just right there, as long as I have my login and if there's something that the commission could do to encourage more brokers to have a system that is that easy for shareholders to vote I think it would be well worth it.

Tamara: Ning.

Ning Chiu: So thank you very much for inviting me to be on the non-boring panel. I wanted to address the question you raised about the use of social media and shareholder proposals. It's challenging to do. We have seen in the past, after a notice of exempt solicitation may be filed by a proponent, the use of Twitter to then raise awareness about the proposal and get people to vote and it's very complex for a company to kind of weigh whether they want to get into a battle in the Twitter sphere, which as we all know can be not a great thing to do and so companies are kind of reluctant to engage that way, using the same social media platform that is being used by proponents. So there's a little bit of reluctance to use social media for that reason.

Tamara: So then I guess the question next would be should the Commission play a role in facilitating meaningful engagement between companies and their shareholders. On this one I think I'll turn first to Jonas and then to Maria to get your thoughts.

Jonas Kron: Thank you very much for the opportunity and also to the commissioners and the staff for being able to share Trillium Asset Management's point of view and I should say that that's a point of view that's informed by our clients, who are about 10,000 different clients, many of which are saving for their retirement and they are very much the mainstream investors that we have been talking about numerous time today and I think the Mr. and Miss 401K that we're concerned about.

I should also just say that this is also informed by the fact that I sit on the board of US SIF, the forum for sustainable and responsible investing. That's our membership association for organizations that integrate environmental, social and governance factors into the process.

In the terms of the question of should the Commission help facilitate these interactions, I think Rule 14a-8 does a really good job of facilitating those interactions. It's cost effective. It's a cost effective way to really encourage private ordering, and in some ways it almost makes us longer term investors because we don't have to just sell the company, we can invest our time and our energy to help it become a better performer, and stick around and become actually longer term investors because of that.

The rule does a really good job of helping investors communicate to the board and communicate to management, but something I think we don't want to lose sight of here is that it also really helps shareholders communicate with other shareholders and I think that's something that sometimes gets forgotten. There was actually a comment put in by MFS in the last day or so that I think really made this point well, is that the shareholder proposal process allows investors to understand what other investors are thinking and provide a feedback mechanism and data that can be really vitally important to understand the risks and the opportunities for active or passive investors as they make decisions about valuation and whether to hold the company or not.

The other piece that I think maybe gets lost in this a little bit, that really is facilitated by the rule, is I'm sure everybody here has read a shareholder proposal, but my guess is most folks have not written a shareholder proposal.

The act of writing a shareholder proposal is actually something I think that is really beneficial to the communication process. There's all these issues out there and when you sit down and write a shareholder proposal you have to decide what is the issue that we're going to focus on? Why is it relevant to this company? Then I need to explain to the board, I need to be persuasive to the board why they should agree with my position on this issue. I have to be persuasive to the management and I have to be persuasive to other shareholders as well. All the while, I have to make sure that I conform to the 13 different exclusions and make sure I don't misstep there, and do it all in 500 words or less.

That is a really rigorous and demanding process that takes what could be a real sort of cacophony that we see in Twitter, and make it something that's actually very disciplined, very clear, and very efficient in sort of communicating what the issue is and why it's important.

So I actually think that the Commission through the rule, as it stands right now, does an amazing job of facilitating that communication and doesn't really require a whole lot of change. I think it really is a very well-functioning system.

Maria Ghazal: Great. Thank you, Tamara. Thank you to the chairman and commissioners for inviting us to participate in this important discussion. So as you noted at the outset, I'm here on behalf of Business Roundtable, which is an association of chief executive officers of America's leading companies.

We believe that meaningful engagement with shareholders is a critical element of the operation of today's public company. The shareholder proposal process is an important part of this engagement and we do believe that the Commission can help facilitate meaningful engagement by ensuring that its rules and regulations promote a process that productive, focused on materiality and oriented toward long-term value creation for all shareholders and also ensure that your interpretations of the rules and regulations are consistently applied.

Shareholder proponents benefit when their proposals are included on a company's proxy statement because their proposals are then distributed to all shareholders for consideration in voting prior to the meeting. This means though that the company, and as a result, all shareholders, including those not submitting the proposal, bear the related cost, include the cost of evaluating the proposals. So we think the Commission could help facilitate more meaningful shareholder engagement by updating and reforming certain aspects of this current system.

For example, we believe the ownership thresholds for submitting proposals should be significantly raised so that all of those submitting proposals have a meaningful and measured ownership interest in the company, but we acknowledge that determining a new threshold will be difficult and we will support the SEC's efforts to do so and so, as you're making this determination possibly, ideas that could be considered include, among other things, perhaps tying the ownership to the length of the holding period and allowing reduced ownership requirements for long-term holders, tiering ownership thresholds based on the size of the company, requiring a filing fee for shareholder proposals.

Now we also believe that the current resubmission thresholds are too low, another area for improvement. They allow a small subset of shareholders or frankly a proxy advisory firm to override indefinitely the express will of a substantial majority of shareholders. You also asked about the role the Commission can play without rulemaking and we also recognize and appreciate

the tremendous work the Staff puts in to providing guidance on the shareholder proposal process, both with no-action letters and staff legal bulletins.

We do think the process could be improved with enhanced review and oversight mechanisms, including at the Commission level. We think that would provide greater consistency. We do think that all of this modifications and reforms will help facilitate more meaningful engagement between companies and their shareholders.

Tamara: Thank you. Tom.

Tom Quaadman: First I should have earlier thanked Chairman Clayton, the commissioners, Bill Hinman and the Corp Fin staff for putting this together. We appreciate it.

In 2009 the Chamber issued corporate governance principles and we had communications at the very heart of those principles. We thought and still continue to think that it is extremely important for management directors to be in continuous communication with their investor base. That is we have to remember that management, directors, shareholders are there for collaborative purpose, for the long-term value of a corporation and that the business community has been very slow in engaging those discussions.

I think that BlackRock and Vanguard have done a lot over the years to help facilitate that. I think the SEC should help facilitate that as well and we've talked a little bit about how there are different technologies that exist today that didn't exist 10 years ago or were in their infancy that can also be used to help with that. However, I also want to raise that while that relationship amongst those three is collaborative, in the context of universal ballot, which was also raised in the last panel, what we sometimes have is, at least in discussion of policy priorities, that create an adversarial relationship.

So with that, some of the issues that we have raised before with universal ballot is that it doesn't treat every shareholder equally. It can be viewed by certain courts, under their rulings, that it could be a form of coercive speech that can violate the first amendment. Additionally, it can put into place relationships with dissident directors who may not have the same view of the corporation in the long term. I raise that in that we think it should be important for the commission to follow policies that help facilitate the relationship amongst those three rather than pursuing policies that create a divisive relationship in which case communications actually become less important and more adversarial. So we think it should be done on a positive basis.

Tamara: Ning.

Ning Chiu: In terms of the question of whether the Commission should play a role. I'm sure of you are hoping that somebody will say "no," that's absolutely not your role, but it seems with the 14a-8 process the rules already kind of embed you in this already. There is definitely tremendous amount of engagement going on. You've

kind of stacked the panel with a group of people who are very good at talking to companies and who are very willing to do so. Not everyone is. I'm sure you've heard that.

A couple of ideas. One is when it comes to a proposal being sent by a representative, the so called proposal by proxy, companies would really appreciate actually being able to speak to the beneficial owner. Ken said the votes belong to the beneficial owners. Well the proposal belongs to the beneficial owner and companies would like to hear from the beneficial owner about why they thought the proposal was a good idea, what their feelings are about the company, you know the kind of engagement you would normally do with an investor and knowing even the identity of the beneficial owner might be helpful to companies in terms of how they respond to the proposal and how they engage with other shareholders about it.

The other idea in terms of facilitating engagement without rulemaking, I believe, is if companies are trying to reach out more and more and so are the investors. So there's a lot of discussion that goes on about a shareholder proposal before a no-action letter is sent to you. So if in the context of that no-action letter there could be a discussion about the engagement that went on, we would talk to the proponent of the proposal several times, we talked about XY or whatever the company thinks and of course from the proponent's side as well, if that could be considered in your valuation of the no-action letter, at least made public in that forum, that might be useful to get the entire story about the proposal from start to finish.

Tamara: Jim.

James McRitchie: I just want to say that I thought we solved all this with 14-I with regard to these proposal by proxy. No one questions ... you know when I get a no-action letter from an outside attorney representing a company I'm not questioning are they really representing the company. I want to talk to the company, I don't want to talk to you.

I think that individual shareholders should have the same right to appoint an agent that companies that have or that anyone else has in various aspects of their life. It's news to me that this is still a concern because I have never had any of the companies ... we filed 200 proxies this year among the three of us, the mainstream investors represented here at the table. Thank you very much for inviting me, and I have never heard from any of the companies where we have filed that since that SLB that this is a problem, but yet I'm hearing today it still is.

Tamara: You know that was something that the Staff did try to put some guidance out in the Staff Legal Bulletin and so we hoped that it did help. To the extent there are still things that people have concerns about, we'd certainly be interested in hearing about those.

I want to turn to something that I think has been brought up by a couple people so far, and that is the costs and the benefits associated with shareholder proposals and the process. So maybe, Aeisha, if I could start with you to talk a little bit about what you see to be the costs and the benefits involved.

Aeisha Mastagni: Sure. Thank you and thank you to the Commission for inviting me, I really appreciate it. First off, I want to say that I think it's difficult to look or examine the cost benefit analysis of just the shareholder proposals in isolation because similar to Mr. Cameron in his discussions about engagement at CalSTRS we see the shareholder proposal process as just one tool in our tool belt and we think it's an important tool and important to preserve our right.

As an institution it does periodically submit shareholder proposals, we find to be a relatively low cost way to raise issues and honestly, there are still some companies that are not prepared to engaged with their shareholders. For example, over six years, between 2010 and 2016, we tried to engage with 492 companies about majority vote for director elections within that 492 companies only 60 proposals actually went to vote and that was mainly because of the lack of engagement on the company's side. So I think it's important to preserve that right and the private ordering that Jonas brought up.

Similarly, I wanted to say that I think that the current 14-a-8 process balances the costs and benefits. I think some of the other panelists have brought up the idea that shareholder proposals that cost is borne by all of the shareholder base and I think within 14-a-8 the substantive basis for exclusion, especially (i)-4, (i)-5 and (i)-7 ensure that these sort of narrow self -interest are not borne by the broader shareholder base. I think that the Commission's involvement in that process, in the no-action, appropriately balances that.

Tamara: Chairman Clayton.

Chairman Clayton: Well my colleagues and I have to go to another meeting, but before we do that I wanted to say thank you to all of the panelists here and I think everybody is being very nice and very candid. Appreciate that. Look, we don't bite, at least not here, so if you have specific suggestions, we'd love to hear them and thank you and hope to be back after our meeting.

Tamara: Jonas, did you want to follow up?

Jonas Kron: Yeah, I just wanted to make one point in terms of cost and to put into context a little bit about what it is that we're talking about here. You know shareholder proposals in terms of like how much energy is spent actually voting on shareholder proposals. I think LACERA put in a comment letter that said that less than around 2-3% of what they cast ballots on are shareholder proposals. I think that number has been borne out in other analysis as well. This is a very small sliver of what people need to make decisions about on a proxy ballot every year.

Tamara: Tom did you want to follow up at all on that?

Tom Quaadman: Sure. Let me zoom out a little bit and then let me talk about it in some greater detail. One is if you take a look at the tri-partite mission at the SEC of investor protection, facilitating capital formation and competition, I think if you look at it in that context, we're actually failing. We have less than half the public companies than we did 20 years ago. Our public capital markets are more inefficient today when compared to our private capital markets. Additionally, retail investors don't have the same opportunities to be able to reap some of the benefits of robust public capital markets than they did 20 years ago. So I think from that broad point we have to look at our public company system as not working.

That being said, I do think the shareholder proposal process is an important one. I think we've made some strides where I think it is better than it was, let's say, 30 years ago. I think the relationship between directors and shareholders is much more of a balanced one than where it had been in the past or certainly between shareholders and management, but I do think that there are several problems that are out there.

One, resubmission thresholds. We have a high number of, as we would call, zombie proposals or those proposals that just continually kick around though they have low and declining support. They, number one, clog up the communication channels between shareholders and their companies, but it also imposes a cost on both the companies and their investors and at a certain point in time if proposals are continually not getting the type of support or rather in the alternative, that 80-90% of shareholders are continually voting against them, at some point in time, the will of majority has to count for something, and at some point in time, I think we have to realize that's exactly why companies are no longer deciding to go public. So I think that's one set of problems that as we submitted our resubmission threshold rulemaking petition several years ago, that would address some of those issues.

I think if you take a look at the over 2400 shareholder proposals and the S&P 250 over the last 17 years, about 28% or 29% of them would be considered to be zombie proposals. Under our resubmission threshold rulemaking petition, 27% of those zombie proposals could still move forward. So the shareholder voice would still be there.

Proxy advisory firms also play a role in this as well. We've talked a lot about it, we're going to have another panel that's going to talk a lot about it, but even if you disregard the 2013 study that said Glass Lewis and ISS control 38% of the vote. If you don't agree with that one, well then there's a Manhattan Institute study that showed ISS moves 15% of the market. That is enough to keep those zombie proposals going and by the way, on average, ISS supports 80% of those shareholder proposals and they support shareholder proposals generally eight times higher than median shareholder. So it is in their pecuniary interest, self-interest, to keep those things going.

So therefore, we think SLB 20 is something that needs to be broadened. One is we think there needs to be more transparency in terms of process communications, which we've talked about before, but even just going back to the 2013 roundtable which the SEC held, a very simple conflict of interest, such as shouldn't a proxy advisory firm have to disclose, if a shareholder proponent that they're making a recommendation on, that they should have to disclose that to the public? We think that they should.

Additionally, ISS in their letter for this roundtable table talk about themselves as a fiduciary. Yet throughout the letter they then say, "Well, we're hands-off. We put that off to the investment advisor." If you take a look at the 139 supplementary filings that were made as a result of inaccuracies or mistakes, they involved 107 companies over two years. So that means that there's an error rate of somewhere 2 to 2-and-a-half percent on a very small sample size because not every company files a supplementary briefing, so therefore a fiduciary that has a 2 to 2-and-a-half percent failure rate that's probably higher, if you're a lawyer or if you dealt with trusts, you'd be in serious trouble if you ever did that and that's why we think SLB 20 needs to be looked at.

Lastly, we do think ... we issued proposals earlier this year on various shareholder proposal reforms. Obviously resubmission threshold is one, but we believe that the reversal of the Whole Foods decision is something that needs to be looked at. I think we've gotten some mixed results of that, but we think over the course of time the SEC should look at that and see if there are other tweaks that should be made. We think that if a shareholder issues a proposal, there needs to be transparency around that as to ensure that they actually own the share that they say they own and that they actually should also declare the interest of what they're trying to accomplish and whether or not they're doing it on behalf of another party.

We think that the relevancy rules should be strengthened. There should also be other rules strengthened regarding personal grievance or misleading statements as well. So we think if you make those changes the system comes back into balance, shareholders still have a very strong voice and if shareholders see a problem, management and directors should be able to defend the company and their vision, and if they can't then they should be able to lose, but that has to happen in a balanced system and the imbalance that we've had over the last 15-20 years has made it an inhospitable atmosphere for a company to go public.

Tamara: Thank you. We will come back later on in the panel to the topic of resubmission thresholds, but I want to hear quickly from Brandon, Jim, and Jonas and then we'll move onto ownership thresholds.

Brandon Rees: Thank you for the opportunity to respond to Tom. He put a lot out on the table and I thought we needed to clear the air a little bit with a fact-based approach to our corporate governance system and the role of shareholder proposals.

The facts are that the average publicly listed company in the United States can expect to receive a shareholder proposal once every 7.7 years and the median number of proposals received is 1. The idea that companies are not going public because of the burdens of shareholder proposals is preposterous and frankly goes against the Chamber of Commerce and Business Roundtable's position that they took in suing the SEC to block proxy access in which you effectively endorse the use of the shareholder proposal process for private ordering around corporate governance matters. We've seen tremendous benefits over the decades from the shareholder proposals resulting in a private ordering of companies along such things as proxy access, annual director elections, independent directors, as well as social and environmental issues, climate change disclosure, adoption of international human rights standards.

These have all come through the private ordering process. That is a humongous advantage of the American corporate governance system that it enfranchises small investors, mainstream investors, retail investors to be able to bring issues. The marketplace for good ideas is not limited to large institutional investors. The current system has worked well going back to World War II in this country for shareholders to be able to bring proposals forward on corporate proxies and it's hard for me to imagine how any rulemaking in this area [could meet] a cost benefit analysis, if it's going to result in disenfranchising investors from being able to bring shareholder proposals.

James McRitchie: Yeah, I just wanted to respond to Tom's comment to request to look back SLB 14-A which addressed the I9, the decisions around Whole Foods where they put forward a proposal in opposition in mind, a proposal that could never be met and now so he wants to plug that hole. I'd like to plug a hole too and that is ratification.

This past year in the no-action on AES basically said a company can ... we submit a proposal to change a threshold, to change anything basically. The company can come in and say, "Oh, well instead of having your proposal on there, we'll put our proposal and our proposal will ratify our existing procedures, process, thresholds, whatever. I mean that AES decision could virtually wipe out all proxy proposals. So I would like the SEC to take a re-look at that.

Jonas Kron: Just a couple more statistics to just put in perspective what it is that we're talking about here with shareholder proposals. Again, to reiterate, shareholder proposals make up less than 2% of the total number of ballot items. Less than 4% of shareholder proposals were filed to companies with under one billion dollars in market capitalization, less than 9% of roughly 3000 companies that have had an IPO since 2004 have received a shareholder proposal. This is a very well functioning system. The attention is going where it needs to go. The notion that it's being clogged up, that there are these zombies wandering around out there. Zombies don't really exist, in real life or in shareholder work.

Tamara: Finish up with Maria.

Maria Ghazal: Thank you. So just to follow up on many of the comments, including Jonas's last that the system is working very well. I just like to raise the issue that as you think about all of this, hopefully the staff realizes that there is an important lack of deference that proxy advisory firms have indicated that they may give to this process. Glass Lewis has announced that in 2019 it may recommend a vote against members of a company's governance committee if the company actually uses the process and excludes shareholder proposals through a valid use of no-action letter process. So that's something to just keep in mind as we say that everything is working well.

Tamara: Jim.

James McRitchie: I just want to say and that's for that ratification thing that could do away with all shareholder proposals. So thank god for Glass Lewis.

Matt McNair: So we've already been able to, as talking about engagement touch on a couple of areas for potential reform in 14a-8and the first area that we'd like to talk about today is the ownership thresholds. As you know for a shareholder to be eligible to submit a proposal and have that proposal included in a company's proxy materials, the shareholder must own $2000 or 1% of the company's securities that entitles that shareholder to vote on the matter.

As we've already sort of heard and talked about, one of the issues that has been discussed is whether that $2000 threshold appropriate balances on the one hand, shareholders ability to submit a proposal and have it included in the company's proxy for shareholders to consider on the one hand, and on the other hand the costs that are incurred, both by companies and other shareholders who did not submit the proposal.

So with that in mind, the sort of first question that we'd like to tee up is, if the commission were to undertake to review the ownership threshold, what things should the commission keep in mind, what things should it consider and are there any guiding principles that should be adhered to and Ning, we'll start off with you.

Ning Chiu: Thanks. Several thoughts on this. Given that the time that has gone by since the $2000 threshold was first adopted, there seems to be at least some consensus that should be reexamined. The trouble is that nobody knows exactly what the right number is. I can acknowledge that. There are a lot of ideas. One issue is that it's actually very hard to come up with a dataset around which you can baste a number of some kind of right threshold, balancing what Matt just said is important to balance.

CII did a great paper on resubmission thresholds where you were able to see if it was this resubmission threshold, modest doubling and all those things and it would knock out these proposals. So having that dataset and the information on which to base an analysis was very helpful. We don't quite have that dataset of ownership thresholds because people don't have to tell companies exactly how

much they own, just that they own at least $2000. If there was a way to figure out exactly how much they own we could do an impact analysis the same way and that would be very helpful.

The second is in terms of IPO companies, one thought is to lengthen the time period for ownership to indicate long-term interest so that's it's like a three year holding period and not only to show that it's a long-term shareholder, but it would give IPO companies a little bit of break. When you run through what it takes for a private company to be a public company with an IPO company and you explain some of the requirements and what's regulated and what they would have to do in terms of resourcing up and prepare for, a lot of makes sense. You're now going to be taking in public shareholder money, so you need to tell them quarterly how you're doing. If you need to tell them what your earnings are, you need to tell them what your business strategy has changed, you need to tell them you've sold the business, all those things make sense. The annual meeting makes sense, electing your director.

When talking to them a little bit about shareholder proposals, it actually is a little bit of a hard thing to explain because the first reaction is, "Wait, a bunch of shareholders get to vote on how I run my business?" While most of the time you can say, "No, that's not exactly on a day-to-day basis," there are proposals that, for example, say hire a banker to do an analysis of selling your strategic businesses that do get through and yes, that could be on your proxy statements. So yes, there are some proposals that do kind of look like they tell you how to run your business. So there is a little bit of a pause in terms of explaining that to a private company that's kind of overwhelmed.

So having a longer ownership period, not just to show that these are long-term shareholders, but also to give IPO companies a little bit of a break may be useful, recognizing that IPO companies don't always get a lot of proposals, but just at least in the context of that would be useful.

The third thing is we talked a little bit about proposal by proxy and not so much about whether it's legitimate, but about facilitating dialogue and engagement with the person whose shares are being used to send you this proposal. Companies want to talk to the shareholder who's sending you the proposal. Sometimes companies find out that the shareholder sending you the proposal has an entirely different area of interest in mind than the actual topic of the proposal. So that is something that companies are interested in learning about from the shareholder whose shares are being used for the proposal.

So a couple of thoughts on that. An ownership threshold. First of all you're doing proposal by proxy, you're stepping in the shoes of the shareholder, so limit it one per proposal by proxy representative. One per company just like a shareholder would have to and perhaps a higher ownership threshold if you're going to use proposal by proxy.

Then the last idea in terms of ownership threshold, company-filers. Co-filers may be able to aggregate to a higher ownership threshold if that is one or an idea of having higher ownership threshold if you are going to use co-filers because presumably that already means that many shares are bundling together.

So those are some of the considerations. There's many things you can do in this area. The data is quite limited in terms of trying to figure out the analysis.

Matt McNair: Dannette and then Brandon.

Dannette Smith: I agree what Ning said. I wanted to just offer a couple of extra data points. I think as the Commission is considering this one thing that they should think about is what is the purpose of the shareholder proposal rules and if it is to give shareholders a voice to suggest change that furthers the long-term of the health of the companies in which they are invested in, then that's a very valid purpose and there should be a very meaningful role. I think most of the people on this panel wholeheartedly have that as their purpose.

If it is to allow a shareholder who has no interest in the company to advocate for social change, that's a different purpose and in many instances that's what the shareholder proposal process has turned into. If you look at the threshold today, $2000 or 1%, we have 962 million shares outstanding. One percent is 9. ... who knows if I do my math right, but 9.6 million shares but $2000 is eight shares. So that's a complete dichotomy, the 1% is meaningless. I'm not here advocating that 1% should be the threshold, but eight doesn't sound like you really have a long-term interest in the company and what will happen when we get shareholder proposals, when we get them from shareholders like New York City, or AFL-CIO, we have very meaningful discussions and our board takes them very seriously.

When we get shareholder proposals when the proponent will not engage with us and the person who shows up at the meeting asks for shareholders to vote for the cumulative voting and can't pronounce what they're looking for, don't know what they're supposed to do, it's an entirely different thing and the board doesn't understand why they are being forced to spend time on these issues.

Brandon Rees: Thank you. If I could respond. I don't believe that there is a consensus that any rulemaking is needed regarding the ownership requirements. The rule has always been accessible to small retail, Main Street investors since its origin in the 1940s. The SEC adopted a $1000 ownership threshold in the 1980s. In 1997 when the SEC looked at this issue, they explicitly rejected substantially increasing the ownership threshold, recognizing that the purpose of the rule is to provide an avenue of communication for small investors and so they only increased it to $2000 based on inflation. If you increased it for inflation since 1998 to today, it would be approximately $3000.

Large institutional investors, the Black Rocks, and State Streets and Vanguards of the world do not need the shareholder proposal rule process to get the attention management or directors. There's not a corporate secretary or investor relations department in the country that would not return their call within 24 hours. The purpose of the shareholder proposal rule is to democratize the governance process so that even small investors can bring forward issues.

Regarding the goal of encouraging long-term-ism, that's obviously commendable. However the shareholder proposal rule is not the place to do it. The ownership rule currently requires that shares be held for one year prior to submitting a proposal and continue to be held through the annual meeting. If anything in recent years, with increased portfolio turnover by active investors, the ownership requirement should be shortened not lengthened. You don't want to empower only passive index investors to be able to use the shareholder proposal rule. This is a rule that works well for all investors. Our shareholder democracy depends on it, having the free flow exchange of ideas between small investors, not just between management and the investor base, but between shareholders themselves, so that they can identify emerging issues.

To get at the concerns Dannette was raising about it being used for social purposes, well mainstream investors are increasingly recognizing that environmental and social issues are important drivers of value creation in that you've seen a dramatic increase in shareholder support for proposals on environmental and social issues because they matter to company performance, increasingly so. So to say that we're going to dismiss the proponents of these proposals because we disagree with them is just not in the interest of our democratic system for shareholders. Thank you.

Matt McNair: Jonas, Jim and then Tom.

Jonas Kron: So just a couple brief points. I think first that part of the beauty of shareholder democracy is that the quality of one's idea doesn't depend on the size of one's ownership and I think that's really captured in making this accessible to smaller shareholders where sometimes some of the best ideas can come from.

I think it's important to also remember that there's two different things that are happening here. There's the ability to file shareholder proposal and then there's getting shareholder proposal in the proxy. To actually file a shareholder proposal, I only have to hold one share and I have to hold it about three or four months before the annual meeting. So Verizon, for example, if I wanted to just file a shareholder proposal, I could buy a share on February 1st, 2019 and file a shareholder proposal the next day. The question is whether you can get onto the proxy ballot.

Now if anything the amount of time should be less because as a shareholder state law recognizes that I have an important contribution to make in the corporate governance process the moment I own those shares and if I own those shares on the record date I get a vote, but having to wait a year before

filing is actually burdensome. It actually adds quite a bit. Now I realize we have to make accommodations, we have to be reasonable, we have to sort of find that balance point that we're talking about and maybe one year is that balance point.

The last point I guess I would just make is that I think the former head of Corp Fin sort of maybe put it most succinctly in trying to decide ... Keith Higgins ... what the dollar amount of the whole thing should be and he said, "Really it's just going to be a fool's errand trying to figure it out and it's going to seem arbitrary and result driven no matter what you do," and that's why it's intended to just be at a low level. It's supposed to demonstrate some skin in the game and to be honest, for some shareholders, $2000 is skin in the game. We all know the value of compounding interest and if bought $3000 worth of shares and you're 25 years old, you're going to be a long-term investor, that's going to grow and grow, but at the beginning you're going to have a very small ownership.

James McRitchie: I just wanted to point out that this complaint of the low threshold I guess goes back a long ways. Back in ... there didn't used to be any threshold and a study of 286 shareholder proposals submitted between 1944 and 1951 found that 48% were submitted by the Gilbert brothers. So back then they were gadfly investors with small shareholdings and if it wasn't for them, we wouldn't have the right to file proxy proposals, we wouldn't a vote on auditors, we wouldn't have disclosure of executive pay, we'd have even fewer women on boards … we have may small ownership in companies but typically near 50 proposals of ours that didn't make it to the proxy last year, more than half of those we reached agreements with companies.

Of the 150 that did go to proxy, we got fairly high votes. Like we got 64% on average on super majority provisions, which is one that we will be pushing again this year, 40% on special meeting proposals, 42% on written consent. So we get fairly high votes, just wanted to point that out.

Tom Quaadman: Jim, I didn't realize you weren't the only gadfly.

We think that retail shareholders should have a voice. What I mentioned earlier when I discussed universal ballot and I said there was an inequality of how shareholders are treated under universal ballot, it's because retail shareholders are not given access to the universal ballot or may not have to be given access to the universal ballot.

So we can quibble about the $2000 threshold. Maybe it should be indexed for inflation, we should look at that. There should be some form of a period of holding time so that we know that retail shareholders are in it for the long-term value of the company, they're just not trying to use the company's shareholder process as a hobbyhorse.

As I mentioned earlier, we also believe that the Commission should move forward with the rule that would also have that shareholder transparently

disclose what their ownership stake is and that it be verified. Also, what the interest is that they're looking to accomplish, which gets to Dannette's point of they have to be able to articulate exactly what they're looking to accomplish and then also if they're doing this on their own or on somebody's else's behalf.

The other thing I would just say too about the issue about social proposals, they're not making up about 50% of shareholder proposals that are issued and they never pass, so think that's something too where we need to look at it, where that system can also come out of balance. I think if we strike a balance, then yeah, retail shareholders should have that voice and should be able to articulate it on issues of importance to the company, but if the shareholder process is just going to be another form of political speech, then I think that's something we need to look at much, much more closely in a much different way.

Tamara: Tom, on the point that you were making about the transparency, about the ownership stake and the purpose, is the intent that that would be disclosure to the company or would that be disclosure within the company's proxy statement as well?

Tom Quaadman: We would open to exploring it both ways because we think that's something that other shareholders may want to know and I think for consistency purposes if we're calling for more transparency around proxy advisory firms, as we are, there needs to be more transparency around shareholder process as well and that if retail shareholders are going to issue proposals, there should be transparency so that people know exactly what they're dealing with.

Tamara: Maria, did you want to add something?

Maria Ghazal: Just that the Business Roundtable agrees and that's in our comments as well.

Jonas Kron: Just one quick comment. What's actually sort of interesting is that the companies right now aren't required to include the name of the filer in the proxy and many of them don't. So if there's a demand for transparency, the companies are fully within their power to do this, but they're not doing it. They just put the proposal up there and make no mention of who it is that's filing it. If there's really a demand for that I would expect that they would all be doing that.

Tamara: Dannette.

Dannette Smith: I agree the name of the shareholder proponent should be in the filing and sometimes it's not that easy to figure out who it is or how they should be portrayed, so having some clear instructions around who the proponent is, how many shares that they hold, and having both of those in the proxy, I think is good for all parties.

Tamara: Okay, so that was a good discussion, so we'll turn to our next topic, which I'm not sure is gonna be any easier than that one, but it's the resubmission thresholds and the current rules allow a company to exclude a proposal that deals with substantially the same subject matter as a proposal that was previously included in the proxy statement if certain thresholds are met and thresholds currently are 3%, 6% and 10% if they're voted on once, twice or three times or more within the proceeding five years.

There's been a lot of discussion whether those are the right percentages and whether they should be increased or changed. So I wanted to start off just asking the group and Mike maybe you can kick us off. Should those resubmission thresholds be revisited and what would be the potential advantages or not of doing that?

Michael Garland: No. I want to thank the commissioners and Corp Fin staff and Dr. Hinman for inviting me. The New York City pension funds are strongly supportive of the process. We vote for about 80% of shareholder proposals. We have a very large and broad portfolio. We have also probably filed ... I believe filed more shareholder proposals over the last 30 years than any other institutional investor in the world.

I think our experience is instructive for this discussion. We have two signature initiatives that I think we're very proud of. The most recent is fresh in people's mind and that's proxy access. The predecessor to that was sexual nondiscrimination proposals. Each of these got off the ground after an unfavorable no-action decision from the SEC, the Whole Foods decision. Today we have over 540 companies in the US that are proxy access, over 70% of the S&P 500. Had the Whole Foods decision not been reversed that would not have happened today and the SEC's own staff has found that those proposals added value to the market and to those companies that received the proposal.

The other proposal on sexual nondiscrimination, in the early 1990s Cracker Barrel fired some employees specifically because they were gay. New York City filed a proposal to prohibit workplace discrimination based on sexual orientation and at that time sexual orientation has subsequently morphed into gender identity as well. The SEC excluded that proposal as ordinary business. The NYCERS one of our five funds, sued the SEC in federal court and it wouldn't be the first time we've gone into court to defend our rights, including on this proposal. We prevailed in lower court. It was ultimately overturned, I believe, on appeal by the SEC. So that proposal, the company did allow it to go to vote in 1993 when it received roughly 14% of the vote.

Ten years later votes were still under 10% on average on that proposal. Five years later we were no-actioned at Apache corporation and went into state court to challenge that no-action decision. Flash forward to 2011, that proposal received over 50% support at KBR and today, similar to proxy access, it's essentially a market standard that we believe has served the companies and their shareholders well.

It's also the kind of proposal that's been attacked as being disconnected from shareholder value. People talk about social and political proposals. We think all companies should cast a wide net for the best and the brightest. I would note that one of our largest portfolio companies, by far, one of the most valuable corporations in the world is led by an out-gay man and that I don't think any of our portfolio, as Apple, should be denied the opportunity to hire, retain and promote the next Tim Cook.

A couple other quick comments about this process. I think it's important to understand that this process is very issuer friendly. Issuers get unlimited space in the proxy statement to oppose proposals. They also get access to preliminary vote tallies. They actually get to put their finger on the scale. If the vote is not going the way they would like it, they can expend additional resources to solicit more votes and proponents have no window into those numbers. I would encourage the SEC to required disclosure of the preliminary vote tallies. This is something that the Investor Advisory Committee has also recommended I believe.

Tamara: And so-

Michael Garland: I'm sorry. The point being that ... my point with section 9 discrimination, it takes a while for investors to socialize issues. It's a matter of investor education. Things get easier as more and more companies adopt. It's easier to make the case to additional companies. The objective is not of a proposal, it's an invitation to engage. The objective is not to go to a vote, the objective is ultimately to withdraw the proposal.

Tamara: Jonas did you want to followup?

Jonas Kron: Yeah, it seems like now is probably a good time to dig into the zombie question. There's this notion that theoretically under the rule that a shareholder proposal could live on for decades and the fact of the matter is that two-thirds of shareholder proposals just don't even come back for a second year, and those shareholder proposals that do sort of linger in the teens, for example, you can pretty much count on one hand and a foot, unless you're a zombie, in which case you have no fingers and no foot.

Those that linger in the 20s it's maybe, if you count environment, social and governance factors, all that, it's probably about three dozen over the last eight years or so actually qualify in that regard. Then there's sort of a little hand waving that goes on here. The question is well what are those shareholder proposals about? Like what is it that's so terrible about having these issues on the ballot? Are they some little narrow little political interest that nobody's taking interest in or isn't important.

I can only think of two examples of shareholder proposals that lived on for a decade on the ballot. One of them was at Exxon and that was actually LGBT nondiscrimination proposal that was filed … .by New York City filed it for a

while, Trillium filed it for a while and New York State filed it for a while and that was on there for a decade and as Exxon sat there, year after year, with shareholder proposals getting up into the 30s, sometimes they'd drop down to the 20s, but it sort of moved in that range, all the companies around them started adopting LGBT nondiscrimination policies and eventually Exxon did it and they reason they did and the reason all these companies did is because we know that companies that are LGBT friendly and inclusive, they actually outperform their peers that aren't. It's good business at that point.

The other example that I can think of is actually at Home Depot, which was a EEO1proposal, focused on gender and racial discrimination, Trillium was also a filer of that for a period of time as well. That proposal actually came out of discrimination lawsuits that were filed against Home Depot quite a long time ago and that proposal, yes, it did sit there on the ballot for many years, asking the company to disclose ... it's not actually a very big deal, it's simply asking them to disclose what is their employment breakdown by gender, race and ethnicity. That proposal this past year, it took a long time, but it just got 48% of the vote. I'm hazarding a guess though when it comes back next year it's actually going to get a majority vote. These things do take time and these are not fringe issues. If it's a fringe issue, like Aeisha was saying, i4, i5, i7, those will keep it out and most proposals that really are fringe also aren't going to get over even 3, 6, or 10.

Tamara: Tom and then Jim.

Tom Quaadman: I would say "yes" we do support it. Surprise. Look, I think let's take a look at the rule. Rule was imposed in 1954, right? So 1954 is a significant year, number one is that was the year of the New York Central Railroad proxy fight. So that was the first time you had a very serious proxy fight in what we would recognize. If you look at where we are today, it's a much different world. We have many different shareholder proposals per company, we have ... I mean some proposals were mentioned, but there are companies who are members that have had proposals kicking for 11, 9, 18 years, et cetera.

The other thing about 1954 is, is that the investor base of a public company is the exact opposite of what it is today. The percentages that we had for institutional investor were retail investors back in 1954 and shareholder proposals were used exceedingly in a very rare way. So I think we need to look at how those proposals are being used today, which is very often. We do have proposals that are kicking around for a very long time, they take up a lot of time and effort from companies.

The other two issues are A) that if a significant portion super majority of investors are continually voting against a proposal, there comes a certain point why not just take a timeout because even if you do take a timeout and you're talking about an issue that is sort of growing, it'll continue to grow. So it's not as if a shareholder is going to lose their right to talk about that issue for all time. So I think that's something that we really need to take a very close eye on.

Additionally, as I mentioned, even if you take at a minimum the 15% bump with ISS and ISS supporting 80% of these zombie proposals, that means they're going to be kicking around, they're going to be above that 10% rate. So if we think about it in those terms there are mechanisms that'll keep those proposals going because again, for a proxy advisory firm to have to make a recommendation on proposal every year and for their consulting service to have to consult to the company on that proposal every year, they're going to make money off of it, it is in their pecuniary self interest to do so.

Let's also let's think about it in this way and it goes back to facts that we have less than half of the public companies than we did 20 years ago, right? That directors today are being forced to deal with these issues year after year, they're dealing with shareholder proposals in ways that they haven't before, they're dealing with, dependent on the industry, they're becoming regulatory compliance officers to some degree, depending what the industry is. Yet look at what's facing companies. Disruptive change on a basis that we haven't seen since the investor revolution, yet they're not allowed to deal with the long-term strategies of companies.

So if we want to have them deal with shareholder proposals, okay, but shouldn't they be dealing with the long-term strategy of a company, knowing that this disruption is coming? Or furthermore, they would see the reordering of the world, economic order on a scale we haven't seen since the end of World War II, why shouldn't American companies be planning for their competitiveness in that new changing order? But if they're having to deal with these issues, year-in and year-out, guess what? We're not creating shareholder value and if they can't deal with those issues in a strategic way, they're not going to be around and that's why companies are deciding they would rather stay private, because they can deal with those issues and that transformative change in a much more logical way for the benefit of the company.

Tamara: Brandon.

Brandon Rees: Thank you. Well I can respond to Tom. Tom said it's a different world and it is a different world in many ways. Most newly publicly listed companies, IPO companies in this country have adopted dual class stock as a voting structure that gives company insiders control disproportionate to their ownership of the company. What that means is that shareholder proposals at those companies are much less likely to be able to clear the 3%, 6%, and 10% hurdle.

So if the SEC raises the resubmission threshold you're depriving Class A holders, the public investors in these companies, of the opportunity to use the shareholder proposal rule to encourage corporate governance improvements. Again, I have to rebut Tom's assertion that the decline in publicly listed companies in this country has anything to do with the shareholder proposal process. I think that's simply a preposterous notion.

The reason why there are fewer publicly listed companies today is because of the growth of private equity, combined with increased M&A activity, so companies that would have gone public a decade or two decades ago, now have been acquired by other larger rivals….. It's a red herring to raise up the fact that there are fewer publicly traded companies today has anything to do with the shareholder proposal rule and if you look at the total public company market valuation in the United States as a percentage of GDP, it's never been higher.

Our public markets are working exceptionally well to allocate capital and for shareholders it's important for them to also participate in the discussion of the company strategy and that's where the shareholder proposal rule comes into place, by allowing them to address environmental, social and governance issues that have an impact on long-term shareholder value.

Tamara: Jim.

James McRitchie: Almost the only time a company drops out of my portfolio is when it gets bought out by another company and that's what's happening, and that's why we have fewer companies.

I wanted to point out that going off of Brandon's discussion, especially with regard to these companies where founders have 10 times the votes of others. We, John Chevedden and I have partnered with NorthStar at Facebook and Google and perhaps some other companies for several years asking to address that 10 to 1 vote ratio and although we get votes, say around 20%, that has a danger of being kicked off if John gets his way here, but 20% represents 80% of Main Street investor and institutional investors who believe that this disproportionate vote is really a concern.

We are learning. We don't have everything straight. We'll evolve this proposal. So this year because of the work of the Council of Institutional Investors will submit a proposal that asks them to phase it out over seven years. So I think it's very important that we maintain the thresholds as they are. We can certainly see through LGBT rights that this was a very small fractional portion of the population that supported any rights at all for those people, but now, everyone supports it. So it just takes a long time to gather and then all of a sudden it happens.

Tamara: Aeisha.

Aeisha Mastagni: Thank you. I just wanted to go back to sort the beginning about why we even are having this panel today. You know we're talking about the eligibility requirements, we're talking about the ownership thresholds, but are we trying to create a solution to a problem that doesn't exist? I think Jonas brought it up that for institutional investors we vote on maybe 2-3% of the things we vote on is shareholder proposals and this idea that there's all these proposals that sort of linger in this 15-20% range, maybe there's a couple of examples, but the facts just don't bear the case on that.

So I just want to propose that this is a system that works. There are appropriate balances for both the issuers and the investors and I also want to acknowledge that I think that the SEC and the commission itself and staff have a finite number of resources and do we want to spend those resources on an issue like the shareholder proposal process, or should we be spending it on what was the last panel was about, which is about sort of insuring that proxy plumbing process? So I just want to propose that.

Tamara: Maria and then Ning.

Maria Ghazal: Thank you. To answer the question, we do believe that at a minimum the threshold should be increased to 6, 15, 30. In my initial remarks I talked about how the current thresholds allow a small subset of shareholders to override indefinitely the expressed will of the substantial majority. We do think it's a concern, our members think it's a concern and we do think this is something that should be looked at.

Ning Chiu: A few things. We're talking about resubmission thresholds, which are timeout. There are decade old proposals, not common, but I'm aware of one that's been around for 17 years on the same proxy statement and they've always met the resubmission threshold obviously. So the resubmission threshold for proposals that get low votes, whatever low votes mean, is what we're trying to figure out, that's one, but there could also be a timeout for a proposal that's lingered on for an X number years. Seventeen years does seem like a long time without getting majority support. So there can be two kinds of resubmission thresholds.

As the data shows, even at the highest resubmission threshold that's being considered, it would only have kicked out 475 proposals over a seven year period of 3000 plus proposals. Whether or not that's a significant number, doesn't seem significant to me. I'm sure other people can debate that. In terms of some mention about the process works, there's no process that can't be improved. I would say that companies do spend a lot of time and money on this and there's some cost in some of the comment letters that you've received about the estimates, they range, frankly, depending on how seriously the companies want to take the process.

The more serious companies who would like to hear from their shareholders who want to take this process seriously, who want to engage their boards, who want to engage their governance committee early, it's gonna to cost more. It's only gonna cost less if the company says, "Oh, I don't ... well just ... it doesn't matter. We don't need to talk to them. We don't need to engage with them. We'll just let people vote."

Tamara: Mike.

Michael Garland: I just want to respond to Ning's point. I would argue that if the companies that want to try the hardest to deflect the proposal where it's most costly, the costs are involved in the no-action process. Those are entirely voluntary costs that

companies elect to absorb in order to do their best to keep the proposal out of proxy statement.

Tamara: Dannette.

Dannette Smith: I think we've got the wrong definition of cost. The answer that Mike just gave was about out-of-pocket costs. That's not the main cost of the shareholder proposal. The main cost of a shareholder proposal is the time and research and energy that the company puts into looking into the proposal, putting it on the board agenda, having the board discuss it, having the time for the discussion away from something else. Those are not out-of-pocket costs, but they are still real costs and I don't think anybody on this panel is disagreeing that it's an appropriate resource and that should be maintained, but to say that it's working well and that there's no room for improvement, I think is an overstatement.

Tamara: Just to follow up on that, when companies are considering these proposals, they go into the proxy statement, a vote is taken on them. Is there a point at which when the votes come in, is there a level of shareholder interest whereas you look at it and say, "Oh, maybe we need to go back and think about this again," and sort of what might that be? Is there ... Do you ... sort of ideas or thresholds about what that is in terms of when management and the board get back together and say, "Well, maybe we need to think more about this one?"

Dannette Smith: I'll start with that and there's a whole variety of answers that you can give to that, so I'm going to give you an entire variety and it depends upon if what you mean is at what point should there be negative consequences to a company for failing to adopt or should somebody understand?

I'll start with we had a 95% say-on-pay vote. Everyone would say that's overwhelming support, right? So there were there ... we found out from the NPX vote there were three of our larger shareholders who voted against say-on-pay. We're actively trying to find out why each one of them cast their "no" vote. I know for one, I have a meeting scheduled for the second and the third I can't find anybody to talk to at. So that's one issue, but that's not going to be a proxy statement discussion in my next years proxy.

I think if you're looking for at what point in time should companies have negative repercussions for failing to implement some version of the proposal, I would say that should be more than a majority because we now have something that went to a vote, all the shareholders got to consider it and if more than a majority don't support it, then more than the majority of them don't support it. That's not to say that the company shouldn't understand what the folks who did vote in favor of it wanted and I think people should, but I don't think that that's something where negative repercussions should come.

Tamara: Jonas.

Jonas Kron: Just in my own experience I've seen a lot of companies sort of respond in different ways to different votes, but before I give a couple examples I think it's important to remember that these are precatory proposals, they can get 99.9% of the vote and it doesn't force anything to happen and so important to think of these not ... these aren't mandatory bylaw changes. This is an opportunity for the company to get the feedback from investor on this particular issue, it's an opportunity for investors to understand what other investors think about, this is a useful information exchange that provides data in I think a very cost effective way for everybody.

I've seen some companies get votes in the 80s, 75%-80% of a governance issue and they are dead set against it. This one company I have in mind, Cumulative Classified Boards, year after year they'll get 75-80% vote, they will not budge and they do not change anything and there's nothing to force that, at least in terms of shareholder proposal.

Another example and this sort of comes back to the dual class structure issue, we had a shareholder proposal that we filed at Facebook asking them to have a risk oversight committee. That proposal, because of the dual class structure got about 11%, but that 11%, if you look at it by pulling out all of the insider shares, that was actually a 45% vote and the company did respond and they have made a change and they've turned their audit committee to an audit and risk oversight committee. Early previous vote at Facebook actually on an independent board chair, got a 12% vote, which actually translates to about 52% of outsiders.

So some companies respond in the teens, some companies respond in the 20s, some companies respond in the 30s. If you think of it this way, and you're not thinking it so much in terms of like did you get 50% plus one, but if a third of your investors feel strongly about an issue or even if 15% of your investors feel strongly about an issue, that they're voting in favor of proposal, that's worthy of consideration and again it's not forcing anything, it's giving them positive, useful data and information.

Matt McNair: So we're gonna switch gears a little bit. We have just a few minutes left of this panel. We want to give the next panel enough time to group and give folks a quick break, but we've talked now on a couple of topics of reform that would really involve rulemaking. We want to just touch on a few things that the staff could do and the first thing that I'd like to mention is one of the things that has become important to us over the last year or so is hearing from the board you saw us issue a staff legal bulletin at the beginning of last proxy season and another one just a couple weeks ago where we're looking for input from the board when companies are making arguments under either the ordinary business exclusion or the economic relevance exception.

In the most recent Staff Legal Bulletin we included a number of substantive factors that we found useful in looking at no-action requests last proxy season that included a board discussion and we're curious if there are other factors and

other things that boards look at when they are evaluating a proposal's significance that we should be aware of. So Maria, we'll start with you.

Maria Ghazal: Thank you, Matt. We certainly appreciated the additional guidance that the staff provided regarding the application of the ordinary business exclusion and then the list of factors that you listed in 14J was a very good first step to helping companies understand the aspects of board analysis that have been important to you as a staff during the no-action letter review.

One issue that has arisen in the no-action letter process is the relative weight given to past votes on the same or similar proposals as compared to what Jonas was talking about, the ongoing current discussion with investors and what the investors' interest, what they're expressing in the company during shareholder engagement. So one of the reasons why we're particular interested in the weight given to past votes is, especially because of the influence of proxy advisory firms that Tom and others have talked about and that influence as far as the voting outcome. So that's just one area that we think is important to better understand.

Michael Garland: I just wanted to make a point, not specific to the no-action process, but with respect to proposals. We've been involved in a number of situations whereby we've had a very productive negotiation with management and management has been unable to get the attention of its board. We think we're close to an agreement and there's been a wink and a nod whereby go ahead and file the proposal and that will their job internally easier to raise an issue that they've trying to put in front of the board so I agree boards should look at the issues. I don't know if there's a corporate secretary here who would agree, but I think there are times where the process has served our negotiating partners.

Jonas Kron: Tegarding the staff legal bulletins I deeply appreciate the opportunity to get additional insight into what the staff is thinking about and looking at. We all can benefit from having a more efficient process where we understand where the proposals are being analyzed. Staff legal bulletins can offer that. This last staff legal bulletin still does leave me with questions and is I guess a couple of thoughts along those lines. If we can get more information from no action letter decisions so that we can understand what it is in particular that was running afoul of the rule that would be really helpful. One of the things that we run into in terms of the cost of the process is we don't always know that what worked and what didn't work, and so we end up with companies trying a bunch of different arguments to see what sticks, and we have shareholders try writing the shareholder proposal different ways to see what works. It seems like that the staff legal bulletin as well as the annual stakeholder meeting every summer to have that exchange of information in terms of things that can be done in the staff legal bulletin no action letter process there certainly

are opportunities to provide greater clarity and therefore greater efficiencies.

Matt McNair: Thank you. We hear that quite often panel. and it is helpful to hear it again. We will do our best. That concludes this panel.