

**Via Electronic Mail:** Rule-Comments@sec.gov

April 30, 2020

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

**Re: Overwhelming Investor Opposition to Proposed Limitations on Shareholder Proposals and Access to Independent Proxy Research and Advice**

File S7-23-19: Procedural Requirements and Resubmission Thresholds under Exchange Act Rule 14a-8

File S7-22-19: Amendments to Exemptions from the Proxy Rules for Proxy Voting Advice

Dear Ms. Countryman:

We the undersigned are deeply involved in the proxy process because we file shareholder proposals pursuant to the Securities and Exchange Commission's ("SEC" or "Commission") Rule 14a-8 or represent member institutions or individuals who do. In our experience, shareholder proposals and proxy voting are economically important mechanisms for dispersed, small shareholders to monitor and hold corporate managements accountable to create and protect long-term value. We write to provide an assessment of the investor comments submitted in response to the above-referenced rulemakings, which would restrict shareholder resolutions and impede access to independent proxy advisors, and ask that you set them aside.

The proposed rulemakings were not economically justified when they were proposed, but they are particularly inappropriate now, given the instability of our securities markets in light of the COVID-19 pandemic. Many individual investors have lost considerable capital in recent weeks. For our markets to be resilient, investors must have confidence that they will be treated fairly and have a voice. Our federal securities laws were designed to protect minority investor rights precisely to give investors this confidence. It is the magic that makes our markets work. By casting votes on both management and shareholder resolutions, investors can communicate their priorities and concerns, both amongst each other and, as a group, with management and boards of directors. Many individual investors participate in our securities markets through investment funds and advisors; they depend on their advisors having unfettered access to cost-efficient and independent proxy research and voting services. These investor rights and protections make our markets attractive to investors. Rolling them back now will weaken investors trust precisely when we need to bolster it.

We are keenly aware that the SEC's role and mission is to be the investor's advocate, protecting the interests of investors, whether they are a small retail investor or a large pension fund. We believe investor views are clear that the Commission should not further restrict shareholders' rights to file proposals for consideration on corporate proxies or to use representatives of their choice in doing so. Nor do investors support imposing additional regulation on proxy advisors.

We recognize that a handful of corporate trade associations have engaged in an intense, multi-year lobbying campaign to press for dramatic restrictions on shareholder proposals and

proxy advisors. We believe the true, but unexamined, impact of the proposals is to accommodate these trade associations' desire to relieve corporate executives from accountability to investors, by making it more difficult for shareholders to file proxy proposals on environmental, social and governance matters and by making it riskier for proxy advisors to disagree with corporate management preferences, in particular when it comes to challenging executive pay. This is why no one is surprised – and our analysis of the comment record on the Commission's proposals confirms – that investors overwhelmingly oppose the proposals, even more broadly than at the proxy process roundtable meeting that the Commission held in 2018.

We set forth below our analysis of investor comments on the two proposed rulemakings. We hope that the comment record motivates the Commission to set aside these proposals, in the interest of investors and the public.

### **The SEC Should Not Adopt the Proposed Changes to the Shareholder Proposal Process**

Commenters opposing the new restrictions on shareholder rights include individual investors as well as large institutional investors, pension funds, investment managers, foundations, religious institutions, university endowments, and the SEC's own Investor Advisory Committee. The investor comments filed in opposition to the SEC's proposal reflect deep research, analysis and experience, and reveal serious flaws in the SEC's analysis and economic justification. These investor letters describe, among other things, the immense benefits from the numerous important ideas that originated with shareholder proposals that would not have been allowed if the SEC's new restrictions had been in effect.

More than 14,000 comment letters on the SEC's proposal to restrict shareholder resolutions have been filed and listed on the SEC's website, including from more than 31 asset managers, 7 pension funds, 73 faith-based groups, 60 prominent scholars, numerous state and local government officials, including 17 state treasurers,<sup>1</sup> 5 unions and several thousand individual investors. Numerous investor groups also filed letters opposing the SEC proposals, including:

- the Council of Institutional Investors (a nonprofit, nonpartisan association of U.S. public, corporate and union employee benefit funds, other employee benefit plans, state and local entities charged with investing public assets, and foundations and endowments with combined assets under management of approximately \$4 trillion),
- US SIF: The Forum for Sustainable and Responsible Investment (with members comprised of investment management and advisory firms, mutual fund companies, asset owners, research firms, financial planners, advisors and broker-dealers, represent more than \$3 trillion in assets under management or advisement),
- the Interfaith Center on Corporate Responsibility (a coalition of more than 300 faith-based and other institutional investors collectively representing more than \$500 billion in invested capital),

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<sup>1</sup> Letter dated January 30, 2020, available at <https://www.sec.gov/comments/s7-22-19/s72219-6796139-208393.pdf>.

- the U.N. Principles for Responsible Investing (an international network of 2,800 investor signatories that manage more than \$90 trillion in assets, including more than 500 U.S. signatories managing more than \$45 trillion in assets),
- the Shareholder Rights Group (an association of investors formed in 2016 to strengthen and support shareowners' rights to engage with public companies on governance and long-term value creation), and
- Ceres (a sustainability nonprofit organization working with the most influential investors and companies to build leadership and drive solutions throughout the economy), together with 39 institutional investors.

The UN PRI also submitted a letter on behalf of 193 global investment firms, opposing the proposed rules. More than 500 individual investors also filed their own comment letters in opposition to the proposal to limit shareholder rights under Rule 14a-8.<sup>2</sup>

Numerous academic scholars also opposed the proposal on grounds that they would harm investors and impose net economic costs for the benefit of a narrow special interest group of corporate executives. A commissioner of the Federal Election Commission also expressed concerns about the inconsistency of further restricting shareholder rights in light of the Supreme Court's holding in the Citizen's United case. Five U.S. Senators also expressed deep concerns about the proposal.<sup>3</sup> Comments were also filed by several civil society groups representing a broad range of corporate stakeholders, including Public Citizen, Green America, Oxfam, the Center for Political Accountability and the Thirty Percent Coalition.

Among the letters from individual investors is a sophisticated, 18-page analysis from an individual investor, who objected that "the proposed rule changes seem like a fundamental misreading of the data in the proposal itself, representing a solution to a problem that doesn't exist while exacerbating one that does."<sup>4</sup> Another individual investor described her personal, successful experience with the shareholder resolution process as well as, more broadly, the benefits of allowing small, retail shareholders to file proposals:

The value of our publicly traded companies is dependent on market knowledge and the recognition of things that may have a material effect on the company. Robust shareholder resolution activity by smaller investors that identifies potential problems and brings them forward in a timely way serves to enhance knowledge in the marketplace and ultimately the value of our publicly traded companies.<sup>5</sup>

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<sup>2</sup> 13,000 additional individuals weighed in through petitions and comments organized by As You Sow, Public Citizen, Friends of the Earth and the Sierra Club.

<sup>3</sup> Letter from Senators Sherrod Brown, Jack Reed, Brian Shatz and Richard J. Durbin dated March 4, 2020; Letter from Senator Tammy Duckworth dated January 30, 2020.

<sup>4</sup> Letter from Tom Shaffner, dated December 17, 2019.

<sup>5</sup> Letter from March Gallagher, dated November 21, 2019. See also the Letter from John Mixon on behalf of the Amazon Employees for Climate Justice, dated February 3, 2020, which

We have provided at Appendix A an illustrative list of statements from investor comment letters. Many commenters have also opposed the rulemakings in op-eds and other public statements. We ask the Commission to consider those statements too. A list of such statements is attached at Appendix B.

Several large investment funds echoed and further supported the value of shareholder resolutions. For example, in its comment letter, MFS Investment Management explained the beneficial role that proposals from small shareholders play in the broader capital markets:

As an active investment advisor, we believe that it is to our clients' benefit to understand the views of other shareholders, as the information can augment our understanding of the risks and opportunities inherent in the companies we own. As such, we would view the Rule 14a-8 proposal as an action to limit shareholders' ability to fully consider all risks and opportunities of their investment.<sup>6</sup>

Neuberger Berman Investment Advisors LLC expressed the same view, and questioned the Commission's economic justification for restricting shareholder proposals:

We believe the potential costs pointed out by issuers are small compared to the high value of work by shareholder rights advocates who push companies towards more effective management of material risks. The fact that many proposals earn majority support, the history of early identification of many issues that become material issues, and the signal value to both companies and investors from the trends in support of those proposals, justify opposing the application of new burdens in the proxy process.

\* \* \*

We strongly believe minority shareholders deserve a voice, and that it is not only appropriate but advisable that companies balance perspectives from across their shareholder base. In our view, all shareholders are capable of bringing forward good ideas for all shareholders benefit. That is especially important when considering that small investors may collectively own more shares than institutional investors, and nearly always own more shares than management. Additionally, we strongly oppose any elements of ownership duration being a part of the process. While we are long-term investors, we think structures that provide an advantage to so called 'universal shareholders' are not only discriminatory but also impede the efficiency of price discovery and capital markets.<sup>7</sup>

Legal & General, TIAA, and Baillie Gifford & Co. similarly opposed changing Rule 14a-8.

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explains how shareholders invested in the stock of their employers would be harmed by both of the SEC's proposals.

<sup>6</sup> See Letter from Heidi Hardin, dated February 3, 2020.

<sup>7</sup> Letter from Joseph V. Amato, President and Chief Investment Officer – Equities of Neuberger Berman Investment Advisors LLC, dated January 27, 2020.

Notably, the proposed changes also failed to gain the support of the world's largest asset manager, BlackRock, which need not rely on the shareholder proposal process or even the support of other shareholders to make its voice heard. Its neutral position speaks volumes. Moreover, as with the investment funds quoted above, it recognized that "[s]hareholder proposals can be a valuable part of an investment stewardship process," even though "the costs of these proposals are borne by all shareholders." That is, given the size of BlackRock's assets under management, it is essentially BlackRock's holdings that bear the cost of including shareholder proposals on the proxy, yet BlackRock did not advocate for the proposed restrictions on shareholder proposals.<sup>8</sup>

A small number of other investment companies submitted comments in support of some restrictions on shareholder proposals, including Fidelity, which candidly wrote from the perspective of a securities issuer that is on the *receiving* end of Rule 14a-8 proposals and asked for special accommodations for mutual funds that do not hold annual meetings.<sup>9</sup> Vanguard also expressed support, particularly for the three year holding requirement. Notably, though, even the trade association for the investment company industry, the Investment Company Institute, expressed only partial support for the proposed changes to Rule 14a-8. It supported the proposed changes to the eligibility and resubmission standards but objected to the proposed momentum requirement as going too far in the direction of unfairness to shareholders.<sup>10</sup>

We also noted the low number of letters filed by individual companies, with the exception of forceful advocacy by Exxon Mobil, FedEx, Ecolab Inc., and Southwest Energy Co. The major comment letters representing corporate management perspectives came from trade associations such as the U.S. Chamber of Commerce, the Business Roundtable, the National Association of Manufacturers, the Society for Corporate Governance, the Energy and Infrastructure Council, Nasdaq, and the American Securities Association, who have long advocated that the SEC adopt the restrictions that it proposed but, after public notice and comment, rejected in 1998.

We ask the SEC to listen to and support the investor community. Since the 1940s, shareholder proposals have been a critical tool for investors to raise issues of concern at annual shareholders meetings and hold corporate CEOs and boards accountable to their owners. It should be no surprise that corporate managers would prefer to weaken this mechanism, but that

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<sup>8</sup> Letter from Barbara Novick, Vice Chair of BlackRock, dated February 3, 2020. It is also significant that BlackRock explicitly acknowledged the inherent tensions in its roles as "a fiduciary for its clients," "a public company that issues a proxy statement each year and solicits its shareholders to vote at its annual meeting" and as an investment company, yet it did not advocate for restricting shareholder rights.

<sup>9</sup> See Letter from Cynthia Lo Bessette, Chief Legal Officer of Fidelity Management & Research LLC, dated February 3, 2020, writing in support of the proposal to amend Rule 14a-8 and suggested additional changes "that would make it easier for mutual funds to make beneficial changes or to obtain shareholder votes more efficiently," given that "Fidelity is in receipt of a meaningful number of shareholder proposals for funds that have not needed to convene a shareholder meeting for several years." Fidelity's CLO's letter only once referenced Fidelity's voting of shares held on behalf of clients, and that was merely to assert that she did not believe the resubmission thresholds would have any effect on proposals that Fidelity either receives or votes on.

<sup>10</sup> Letter from Paul Schott Stevens, President and CEO, Investment Company Institute, dated February 3, 2020.

would weaken our markets as well. Over the last 50-plus years, shareholder resolutions have spurred numerous, beneficial and value-enhancing changes in corporate governance, policy and disclosure, and made our securities markets important engines of economic growth.

### **The SEC Should Also Withdraw its Proposal on Proxy Advisors**

Investors also oppose the SEC's proposal to require independent proxy advisors to clear their advice with the subject companies before providing it to their investor clients. We are concerned that corporate involvement in proxy advice will jeopardize the independence and reliability of a critical resource for investors to hold corporate management accountable for delivering long-term shareholder value.

Investors have overcome significant market challenges to establish a well-functioning and competitive market for independent proxy research and analysis to help them evaluate potential votes on management proposals, including manager compensation plans. The fact that proxy advisors have gotten the attention of corporate managers, and that some of those managers would prefer that investors not have access to expert, independent research and analysis, is a sign that the analysis is independent and effective to help investors be heard. If investors do not like or trust the advice, they need not purchase it and can take their business elsewhere (as in the case of Proxy Governance, which many believe failed to gain market acceptance because it was funded by the Business Roundtable) or encourage a new entrant (as in the case of Glass Lewis, which entered the market to provide investors an alternative to Institutional Shareholder Services).

As described in numerous investor comment letters, we believe the SEC's proposal would weaken proxy advisors' independence by putting them in fear of being sued by companies for their "opinions" and "beliefs" and forcing them to become mouthpieces for management. The SEC's proposal would also serve as a significant barrier to new entrants, limiting investors' ability to choose and signal preferences for research and analysis that is most reliable and responsive to their needs. The proposal does not consider the economic cost of depriving investors of this important signaling opportunity, but it is a significant harm that should have been evaluated.

Institutional investors that use independent proxy research and analysis uniformly have objected to the SEC's proposal.<sup>11</sup> In addition, a group of more than 60 legal and economic scholars urged the SEC against the proposal. Two officials from the Department of Justice similarly expressed concerns about the negative impact the proposal could have on competition.

Last month, SEC Commissioner Roisman signaled in a speech at the annual spring conference of the Council of Institutional Investors that the SEC may reconsider its proposal and, in particular, abandon the idea of requiring proxy advisors to afford companies an opportunity to review advice before it is provided to clients. We applaud this development, but we remain concerned about other aspects of the original proposal as well as the Commissioner's suggestion of other measures that he personally is considering but that have not been vetted publicly and do not appear to be a logical outgrowth of the original proposal. We believe that any new

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<sup>11</sup> See, e.g., Letter from Paul Schott Stevens, President and CEO, Investment Company Institute, dated February 3, 2020 ("[w]e do not support the proxy advice proposal's set of provisions that would grant companies the right to review and comment on proxy advisory firms' draft advice before fund complexes and other clients receive it.").

approach should be justified economically in a proposal deliberated by the full Commission and be made available for public comment, before the SEC considers adopting any final rule.

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We urge the Commission to carefully reflect on the lessons embedded in the investor comments submitted and to withdraw its proposals.

Thank you for your consideration of these concerns. Should the Commission have any questions or desire clarification, please do not hesitate to contact any of the undersigned.

Respectfully submitted,



**Timothy Smith**  
Director, ESG Shareowner Engagement  
Boston Trust Walden



**Josh Zinner**  
Chief Executive Officer  
Interfaith Center on Corporate Responsibility



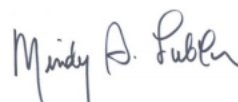
**Lisa Woll**  
Chief Executive Officer  
US SIF: The Forum for Sustainable  
and Responsible Investment



**Sanford Lewis**  
Director  
Shareholder Rights Group



**Brandon Rees**  
Deputy Director, Corporations & Capital Markets  
AFL-CIO



**Mindy S. Lubber**  
CEO and President  
Ceres

**Appendix 1 – Illustrative Comments from Investors**

**Appendix 2 – Op-eds for the Comment Record**

cc: The Honorable **Jay Clayton**, Chairman  
The Honorable **Hester M. Peirce**, Commissioner  
The Honorable **Elad L. Roisman**, Commissioner  
The Honorable **Allison Herren Lee**, Commissioner

## Appendix 1 – Illustrative Comments from Investors

The quotes below are from a diverse sample of the range of comments the SEC received, as well as related public statements—from investment firms, financial advisors, pension fund managers, faith-based groups, unions, trade associations, civil society organizations, and individual investors.

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*“The provisions of the rulemaking proposals, separately and together, are a mix of the ill-advised and unlawful, involve impractical micromanagement of relationships between clients, advisors, shareholders and companies, and in undermining shareholder rights would have significant unintended consequences on investor protection, the public interest, efficiency and competition.”*

–Sanford Lewis, Director, Shareholder Rights Group

*“Our conclusion is that the SEC has not provided sufficient data or a compelling argument about how these changes would improve the proxy process. Nor has the SEC convinced us that such changes would help protect investors, one of the three goals of the SEC.”*

–Lisa Woll, CEO, US SIF

*“The shareholder proposal process has worked for investors for more than half a century and should remain untouched,” said **Mindy Lubber, CEO and President of Ceres**. “Given the instability of our markets right now, it is even more important to ensure investors have a reliable, effective process to engage with companies on a host of systemic issues, whether it be the current pandemic or the ongoing climate crisis. Now is not the time to limit investors’ ability to have critical dialogue and information that helps them mitigate such economic and financial-related risks.”*

–Mindy Lubber, CEO and President, Ceres

*“The narrow self-interest of corporate CEOs who oppose the shareholder proposal process should not come before the value for investors that shareholder proposals create.”*

–Brandon Rees, Deputy Director, Corporations and Capital Markets, AFL-CIO

*“This Release represents a radical and dramatic departure from established, vetted, and well-functioning norms. It would impose capricious and arbitrary new rules that interfere with critical shareholder rights, hobble the existing Rule, and dim its high purpose and investor-focused intent. It would limit company share owners – especially smaller Main Street investors – from the free exercise of fundamental rights that should rightly attach to their share ownership.”*

–Bruce Herbert, Chief Executive, Newground Social Investment

*“The SEC’s mandate is to protect investors, but these proposed rules, which have no evidentiary basis, are a giveaway to inward-facing CEOs that will undermine shareholder rights and, ultimately, threaten shareholder value.”*

– Josh Zinner, CEO, Interfaith Center on Corporate Responsibility



*"The only thing [the proposed rule] achieves is to strengthen the hand of corporate managers in their efforts to escape the discipline and rigor of the marketplace of shareholder oversight."*

–Jonas Kron, Senior Vice President, Trillium Asset Management

*"We have seen a widespread outpouring of opposition to the SEC's proposals coming from a cross-section of investors. The message from these comments is clear: the SEC – in its role as the Investors' Advocate – should set aside these restrictive proposals that reflect a disturbing anti-investor bias."*

–Timothy Smith, Director of ESG Shareowner Engagement, Boston Trust  
Walden

*"The SEC's failure to implement appropriate controls to ensure the staff and Commissioners are not exposed to false, misleading, or even fraudulent comments and other submissions fatally compromises its work on these proposed amendments to date."*

–Dieter Waizenegger, Executive Director, CtW Investment Group

*"These proposed rules fly in the face of the SEC's mission by harming investors rather than protecting them."*

–Jeff Davis, Executive Director, and Jason Malinowski,  
CIO, Seattle City Employees' Retirement System

*"A shareowner proposal is meant to allow an owner to propose an idea to other owners for a vote. Shareowner proposals are about more than communicating with management or company representatives; they allow shareowners to communicate with each other."*

–Ash Williams, Executive Director & CIO, Florida State Board of Administration

*"If finalized, the SEC's proposed rules on shareholder proposals and proxy advisers would introduce major impediments to environmental, social and governance (ESG) integration, which has traditionally depended on dedicated investors engaging with management and access to independent and efficient proxy voting advice."*

–Fiona Reynolds, Chief Executive Officer, Principles for Responsible Investment

*"It is also possible to get an impression of what shareholders think from the news media, and perhaps as well as from social media. But none of these methods allows a company to accurately learn the views of its shareholders as a whole. Shareholder proposals provide a useful solution and a relief valve far short of a proxy fight."*

–Kenneth A. Bertsch, Executive Director, and Jeffrey P. Mahoney, General Counsel,  
Council of Institutional Investors

*"There is no democracy for shareholders in America unless they have a right to engage in meaningful shareholder advocacy and to be heard. The SEC is contemplating locking many shareholders out of the process. Many of the major advances of recent corporate history -- going back to the rejection of racist apartheid South Africa and as recently as action on climate change -- owe their success to shareholder advocacy. Today we are fighting for democracy and against a world that is run even more than it is today by corporations that can ignore the public."*

–Fran Teplitz, Executive Co-director, Green America

*"In addition to voting, stock ownership also comes with the right to submit shareholder proposals, which allow shareholders, even very small investors, the ability to communicate concerns to public companies and ask for a collective vote from the broad shareholder base. CalSTRS believes that shareholder proposals have made a significant and positive impact on corporate policies and practices on a wide range of issues."*

— Aisha Mastagni, Portfolio Manager, Sustainable Investment and Stewardship Strategies, California State Teachers Retirement System

*"It is our informed belief, based on years of experience working with proxy advisory firms as both an issuer and an institutional investor, that proxy advisors do not need oversight by issuers in order to provide accurate research reports. The Commission should base its rulemaking on clear evidence of the existence or likelihood of a market failure, and not solely on the concerns expressed by some market participants. The Commission should also carefully consider that it is not the investor clients of proxy advisory firms calling for reform, but the corporate issuers who are held accountable to shareholders through the proxy voting process."*

—William J. Stromberg, President and CEO, T. Rowe Price

*"The Shareholder Proposal Rule, individually and in combination with Release No. 34- 87457, Amendments to Exemptions From the Proxy Rules for Proxy Voting Advice (the "Proxy Advisor Rule"), seeks to remedy non-existent problems with draconian solutions that only further strengthen company management's already strong hand at the expense of shareholders."*

—Scott Stringer, Comptroller of the City of New York

*"OPERS is concerned that the Commission's proposal will adversely impact the objectivity and independence, cost-effectiveness, and timeliness of the research and recommendations we receive from our proxy advisory firm . . . .*

*Moreover, we wonder if a private right of action for Rule 14a-9 liability might be used to threaten or pressure proxy advisory firms to incorporate issuer feedback or accept revisions to their voting advice."*

— Karen Carraher, Executive Director, and Patti Brammer, Corporate Governance Officer, Ohio Public Employee Retirement System

*"Not only, therefore, does the Proposed Rulemaking appear to be a quintessential 'solution in search of a problem,' but we are respectfully disquieted by the Commission's release of the Proposed Rulemaking while investors' appeal for Commission action to modernize the proxy plumbing system remains unresolved.*

*LACERA considers it crucial that all investment-related research be free of undue influence from the companies that are subjects of the research. . . . The risk of undue influence is heightened by the Commission's August 2019 guidance interpreting proxy research as 'solicitation' (and the Proposed Rulemaking's proposed codification of the guidance). Such an interpretation creates a legal hazard by which companies might threaten legal recourse to exert influence and alter the substance of research prior to its release to paying clients."*

— Jonathan Grabel, Chief Investment Officer, LACERA

*"In brief, we believe these proposals advance the interests of corporations rather than investors... We also believe some of the specific metrics in the rules are cynically crafted to benefit a few corporate interest groups, notably the U.S. Chamber of Commerce, where shareholder activism has threatened to shed light on its corporate funders."*

– Bartlett Naylor, Financial Policy Advocate, Public Citizen

*"We strongly believe minority shareholders deserve a voice, and that it is not only appropriate but advisable that companies balance perspectives from across their shareholder base. In our view, all shareholders are capable of bringing forward good ideas for all shareholders benefit. That is especially important when considering that small investors may collectively own more shares than institutional investors, and nearly always own more shares than management."*

–Joseph V. Amato, President & CIO-Equities, Neuberger Berman

*"The proposed steep increase in minimum shareholding thresholds for filing of proposals seems to be aimed squarely at shutting out smaller investors such as our foundation, preventing us from engaging directly with the companies which we own, and tilting heavily in favor of larger investors."*

–Jonathan A. Scott, President & Treasurer, the Singing Field Foundation

*"Rule 14a-8 best represents the fundamental bargain struck between corporations and shareholders — in exchange for capital, shareholders have the right to bring important issues to the attention of management and all other shareholders. This trade off is critical to efficient functioning of the equity market itself."*

–W. Andrew Mims, Trustee and Partner, Loring, Wolcott & Coolidge

*"The push for reforms [related to proxy advisors] is not from investors who are obtaining the advice (like CalPERS), but instead is from the companies that are subjects of the advice sought. The Release is facially not an effort to protect shareholders but is instead a clear effort to protect company executives from shareholders."*

— Marcie Frost, CEO of CalPERS

*"We agree with the Shareholder Rights Group and the Investor Advisory Committee's recommendation that due process was not followed. Given this the Commission should reject the rulemaking proposals, conduct a baseline and balanced economic and policy analysis, and revise and re-notice the proposal?"*

– Lauren Compere, Managing Director, Boston Common Asset Management

*"The SEC's existing shareholder proposal process has benefited corporations. It serves as an early warning system for management and as a pressure relief valve. It provides companies an opportunity to meaningfully respond to public concerns on issues that transcend the daily operating demands on companies but are finding expression in our national political debate. It also acts to spur companies to address serious issues affecting their bottom line."*

– Bruce Freed, President of the Center for Political Accountability

*"[W]e are concerned that the SEC has not fully evaluated the necessity and implications of their proposed amendments, and that substantive support for such rulemaking is demonstrably lacking from the market participants such rules are intended to protect – investors. Specifically, we are concerned with the proposed codification of the Commission's interpretation that proxy advisory services qualify as "solicitation" [subjecting them to liability to the companies they analyze] and that the Commission proposes feedback mechanisms that would introduce undue influence into otherwise objective research*

*and analysis on which investors rely in order to submit informed votes on ballot proposals concerning the companies in which they share ownership.”*

— Ron Baker, Executive Director, Colorado Public Employees’ Retirement Association

*“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.”*

— signed by 17 State Treasurers through the Democratic Treasurers Association

*“Despite our small shareholdings, our Climate Change Plan Resolution was able to garner over 30% of votes cast in favor of our resolution that asked Amazon to report publicly on how it plans to reduce its reliance on fossil fuels and manage the risks posed by climate change, given the increasing material, regulatory, and reputational risks associated with it. This is similar to what Larry Fink, CEO of Blackrock, has asked all companies to do, stating, “Where we feel companies and boards are not producing effective sustainability disclosures or implementing frameworks for managing these issues, we will hold board members accountable.” As small employee-investors who lack Blackrock’s clout, we depended on the shareholder proposal process to have our voices heard by our fellow investors.”*

—Amazon Employees for Climate Justice

*“Shareholder proposals have been a cost-effective way for investors to provide feedback to boards of directors that has been critical in both senses of the word. They have made companies better and increased confidence in the era of separation of ownership and control.”*

— Nell Minow, noted corporate governance expert and Vice Chair of ValueEdge Advisors

*“This reaction was completely predictable. If the SEC didn’t see it coming, what does that say about their understanding of investors’ views? If they did see it coming, but forged ahead anyway, what does that say about their commitment to their investor protection mission”?*

—Barbara Roper, Director of Investor Protection, Consumer Federation of America

*“The mission of the SEC is to protect investors, but investors did not seek these changes. The SEC should protect investors’ ability to help hold publicly traded companies accountable rather than undermining shareholder rights at the behest of corporate front groups.”*

—Leslie Samuelrich, President, Green Century Capital Management

*“We fail to see any business case for less frequent consideration of emerging risks and opportunities, especially as studies increasingly link ESG and financial performance.”*

—Jeffery W. Perkins, Executive Director, Friends Fiduciary Corporation

## Appendix 2 – Op-eds for the Comment Record

Ken Bertsch, [The Value of Shareholder Voting](#), The CLS Blue Sky Blog (April 23, 2020)

Michael Frerichs, Illinois State Treasurer, [Stop the SEC: This is Not the Time to Slash Shareholder Rights and Reduce Oversight of Companies](#), Responsible Investor (April 20, 2020)

Ken Bertsch, [The Attack on Shareholder Rights](#), Proxy Preview (March 17, 2020)

Michael Frerichs, Seth Magaziner, Joe Torsella, and Shawn Wooden, [State Treasurers to the SEC: Don't Undermine Investor Protections](#), Barron's (March 4, 2020)

Jonathan Macey, [Behind the SEC's War on Freedom of Speech](#), Bloomberg Opinion (March 2, 2020)

Lorraine Kelly, [Commentary: SEC's New Proxy Adviser Regulations Will Harm Real Main Street Investors](#), Pensions & Investments (February 25, 2020)

Jim Allen, [Is the SEC Jeopardizing Financial Analyst Independence?](#) in Market Integrity Insights (February 25, 2020)

Fiona Reynolds, [The SEC is Wrong to Hobble Shareholder Proposals](#), Financial Times (February 9, 2020)

Lisa Woll, [SEC Shareholder Proposal Muffles Main Street Voices](#), Bloomberg Law (February 3, 2020)

Rob Fohr, SEC Rule Change [Would Muzzle the Religious Liberty of Faith-Based Investors](#), the Courier-Journal (February 3, 2020)

Various Authors, [As SEC Curtails Shareholder Activism, Big Institutional Investors Must Act](#), Corporate Knights (January 28, 2020)

Michael Hiltzik, [The SEC is Trying to Stifle Shareholders' Right to Challenge Corporate Managements](#), the Los Angeles Times (January 7, 2020)

Sanford Lewis, [SEC Rulemaking Threatens to Disrupt ESG Investment Ecosystem and Undermine Shareholder Rights](#), Responsible Investor (January 7, 2020)

James K. Cummings and Laura Campos, [A Critical Tool for Holding Corporations Accountable Is Under Attack. Philanthropy Must Speak Up](#), the Chronicle of Philanthropy (December 4, 2019)

Bruce Freed, [Do Not Stifle Shareholder Voices](#), Financial Times (November 24, 2019)

Carl Icahn, [Let Proxy Advisers Do Their Work](#), Wall Street Journal (November 18, 2019)

Lisa Woll, [The SEC Wants to Change the Rules for Filing Shareholder Motions – For No Good Reason](#), MarketWatch (November 5, 2019)

Jeffrey W. Perkins, [Are Corporations Really Afraid of Shareholder Proposals?](#), the Philadelphia Inquirer (March 14, 2019)

Julie Gorte, [Shareholders are Looking for Value, Not Pushing Politics](#), GreenBiz (January 14, 2019)

### **Videos for the Comment Record**

Investor Rights Forum, Video Featuring Illinois Treas. Michael Frerichs; Julie Gorte, Impax Investments; Brandon Rees, AFL-CIO Office of Investment; Bruce Herbert, Newground Social Investment; Sr. Nora Nash, Sisters of St. Francis of Philadelphia; Natasha Lamb, Arjuna Capital; and John Harrington, Harrington Investments, [Investors Speak Out against SEC Proposals to Weaken Corporate Accountability Rule](#) (April 2020), available at <https://bit.ly/InvestorsSpeak>

Stigler Center at the University of Chicago, Video Debate between Nell Minow, Vice Chair of ValueEdge Advisors and Professor Steve Kaplan, Booth School of Business, [The Future of Corporate Governance: Proxy Voting Rules and Beyond](#) (January 13, 2020), available at <https://research.chicagobooth.edu/stigler/events/stigler-lectures#SECProxy>

### **Podcasts for the Comment Record**

The [Activist Insight Podcast](#) Beyond the Boardroom with the Council of Institutional Investors' Ken Bertsch (February 24, 2020)

[Business Scholarship Podcast](#), Sarah Haan on Civil Rights and Shareholder Activism (November 24, 2019)