File Number S7-2026-23

ICCR'S OPPOSITION TO THE SEC'S PROPOSAL TO RESCIND RULE 14a-8 AND TO AMEND RULE 14a-4

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November 20, 2026

Via comment portal

U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Attn.: Ms. Countryman

Re: File Number S7-2026-23 - Opposition to the Proposed Rescission of Rule 14a-8 and Amendments to Rule 14a-4

Dear Ms. Countryman:

I. Introduction

The Interfaith Center on Corporate Responsibility ("ICCR") strongly opposes the Commission's proposal to rescind Rule 14a-8 under the Securities Exchange Act of 1934 ("Exchange Act") and to amend Rule 14a-4 in the manner set forth in Release No. 34-106383 (the "Proposing Release"). ICCR appreciates this opportunity to help inform the Commission on the critical importance of the Rule 14a-8 process over more than 80 years, and on the purpose for which the SEC initially adopted and has enforced both rules. ICCR is a 55-year-old coalition of more than 300 members representing a cross section of religious investors, foundations, asset managers, pension funds, endowments, and other institutional investors that have long relied on Rule 14a-8 and the SEC staff's guidance to engage with companies. ICCR's members collectively represent over $6 trillion in invested capital.

Many of ICCR's members have over 50 years of experience with the shareholder resolution process, and their long-term engagements with companies on a wide variety of issues have helped to mitigate risk and have built long-term value for companies and their shareholders through meaningful improvements in corporate policies and practices. The organization has been at the forefront of shareholder advocacy throughout its history, making ICCR uniquely-situated to provide insights into how Rule 14a-8 has facilitated collaborative corporate-shareholder engagements resulting in the emergence of best practices in a variety of areas.

For more than eight decades, the shareholder proposal process has served as a cost-effective way for corporate management and boards to gain a better understanding of shareholder

priorities and concerns, particularly those of longer-term shareholders concerned about the long-term value of the companies they own. Engagement by ICCR members and other shareholders has served as a crucial "early warning system" for companies to identify emerging risks.

By this letter ICCR urges the Commission to recognize that: (1) it would violate the Administrative Procedure Act ("APA") to undertake a wholesale rescission of Rule 14a-8 instead of putting into place reasonable alternatives designed to continue to give voice to constitutional entitlements; and (2) the safeguards created by Rule 14a-4(c) were meaningfully considered and designed to ensure that the shareholders get to decide how their votes are cast. Removing these safeguards would functionally transform the rule into a loophole that would redirect shareholders' voting rights to management. If the SEC deems it appropriate to update those rules in the public interest and for the protection of shareholders - the two criteria set forth in the Exchange Act statute authorizing the proxy rules - there are ways to accomplish those objectives consistent with the law, public policy, and economic fairness. The Proposing Release falls far short of that mark. We therefore urge the SEC to consider reasonable alternatives to wholesale rescission, and to avoid the material harms that would result from adopting the proposed amendments to Rule 14a-4.

Congress adopted the Exchange Act to safeguard *interstate* transactions as part of a *national market system* "affected with a *national public interest*" ... to ensure, among other things "the maintenance of fair and honest markets in such transactions."[1] In furtherance of that goal, Congress created the U.S. Securities and Exchange Commission,[2] adopted a statutory regime governing proxies to function *nationally* in a uniform manner as part of that national market system, and directed the SEC to adopt rules and regulations "necessary or appropriate in the public interest or for the protection of investors."[3]

The SEC opens its Proposing Release with the statement that "'[c]orporations are creatures of state law,'" and that "'regulation of corporate governance is regulation of entities whose very existence and attributes are a product of state law.'"[4] That much is true. What the SEC omits is that the regulation of the *interstate* national market system is definitively <u>not</u> a creature of state law, and the Exchange Act was designed precisely to establish a set of federal rules for purposes of interstate uniformity, reliability, and efficiency. The two are not inconsistent, as the states and the SEC regulate different parts of the process. For example, it is

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1 Exchange Act Section 2, 15 U.S.C. § 78b (emphasis supplied). The other interests protected besides interstate commerce include "the national credit, the Federal taxing power," ... [and] the national banking system and Federal Reserve System."

2 Exchange Act Section 4(a), 15 U.S.C. § 78d(a).

3 Exchange Act Section 14(a)(1), 15 U.S.C. § 78n(a)(1).

4 Exchange Act Rel. No. 34-106383 at 7, Fed. Reg. Vol. 91, No. 181 (Sept. 21 2026) at 59905 (hereinafter cited as FR at "x").

up to the state of incorporation to decide *whether* an annual meeting need be held,[5] but federal law determines *how* the information provided in advance of the annual meeting gets disseminated in interstate commerce on the national stage. Likewise, the statement in the Proposing Release that "the conduct of shareholder meetings ... is governed by State law"[6] is also true, but wholly irrelevant when it comes to how those proposals get included in a company's proxy statement pursuant to the federal regime.

Section 14(a) of the Exchange Act has, since 1934, "formed the statutory basis for a *comprehensive* set of SEC regulations governing proxy solicitations."[7] And the rules promulgated thereunder "govern[ ] the manner in which proxies or other authorizations may be solicited from the holders of securities registered under Section 12 of [the Exchange Act], whether for the election of directors, approval of other corporate action, or some other purpose."[8]

Even without parsing through the legal authority that arguably removes from the states the jurisdiction to regulate the operations of a nationally-distributed proxy statement, common sense dictates that multistate oversight would render completely unworkable the system of proxy access, disclosure, and distribution. What law would control? The state in which the corporation is domiciled? Or the state in which the company has its principal place of business? Or the state of the proponent? And what would give Texas, for example, the jurisdiction to dictate the rights of a shareholder residing in Tennessee? And what would happen when the law of two states conflict? Those questions in and of themselves help inform the explicit purpose of Congress when adopting Section 14. Congress intended that the statute "occupy the field"[9] of proxy solicitation within a national market system, directing the Commission to adopt "such rules and regulations ... as necessary or appropriate in the public interest or for the protection of investors."

In contrast, the Proposing Release suggests a "logic" leading to a conclusion that the states should undertake the task Congress reserved for and delegated to the SEC. We respectfully disagree. That the Commission after 80 years suddenly discovered a hidden flaw unnoticed by generations of experts should itself have given the Commission pause. Instead, the Commission has barreled ahead on a path that turns the SEC's statutory mandate on its head and results in a profound abdication of its duty and responsibility to protect investors.

The SEC has long recognized its authority to adopt and enforce Rule 14a-8, and has consistently supported that recognition in its statements to the public, to the courts, and to Congress. The courts have enshrined that recognition in the law, and Congress has never

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5 *See, e.g.,* 8 DE Code § 228 (Consent of Stockholders or Members in Lieu of Meeting), as cited in the SEC staff's report to the Commission: "Disclosure to Investors - A Reappraisal of Federal Administrative Policies under the '33 and '34 Acts" (March 27, 1969) ("The Wheat Report").

6 *Id*.

7 *ISS v. SEC*, 142 F.4th 757, 761 (D.C. Cir. 2025) (emphasis added).

8 Securities and Exchange Commission's 36th Annual Report to Congress at p. 45 (1970).

9 *See* Garrick B. Pursley, *Preemption in Congress*, 71 OHIO ST. L.J. 511, 513 N.2, 525 (2010) (discussing securities law preemption and the jurisprudence of field preemption).

repudiated the SEC's authority. To the contrary, Congress has consistently reaffirmed in various amendments to the Exchange Act its intent to assert the broadest possible economic regulation of interstate securities transactions.

The SEC recognized a company's legal obligation to include shareholder proposals in its proxy statement in 1938, years before the SEC adopted its earliest iteration of Rule 14a-8.[10] That disclosure obligation is a federal one that does not intrude on state law, and the resulting reliance on the rule and the informal guidance process created by the SEC to support compliance created a barrier to rescission that the SEC has failed to overcome.

Nothing in the Proposing Release supports the Commission's suggestion that it lacks the authority to have promulgated and enforce Rule 14a-8. But even if the Commission had a valid legal basis for advocating in favor of that argument, the SEC has no legal authority to reach that conclusion and state it as fact. Only the courts have that power.

The Proposing Release omits any discussion of the reliance interests integral to any consideration of a proposed rule change. Its Economic Analysis section omits the reality of the additional costs to both shareholders and issuers, as well as the excessively-heightened regulatory and litigation risk to which the proposed changes to both Rule 14a-8 and Rule 14a-4 expose *issuers* by removing the protective regime currently in place.

Thus, if the Commission rescinds Rule 14a-8 as proposed, and removes the safeguards in Rule 14a-4 that help ensure compliance with state law requirements that *shareholders* make the voting decisions, a court may well deem the SEC's actions to have been arbitrary and capricious, particularly in view of the well-documented decades of reliance on the rule. The Proposing Release sets forth the Commission's concerns about potential incursions into state law. The SEC's current rules have been deemed legally appropriate in the balance of the careful tension between federal and state law. In contrast, the Commission's proposed actions threaten to create the very incursions into state law that the Commission claims to avoid.

II. ICCR's Members Have Long Relied on Rule 14a-8 as a Catalyst for Meaningful Engagement with the Companies They Own.

A. The work of ICCR members demonstrates the material, beneficial impact of Rule 14a-8.

ICCR members' long-time work has consistently demonstrated that Rule 14a-8 has been successful in striking a carefully-calibrated "balance" between "preserving the ability of shareholders to engage with a company and other shareholders through the shareholder proposal

[10] Statement of Informal Proposals for the Rendering of Staff Advice With Respect to Shareholder Proposals, 41 Fed. Reg. 29989 (July 20, 1976) ("1976 Advice on Shareholder Proposals").

process" and the needs of corporate management to effectively run public companies.[11] Rule 14a-8 has long provided the disclosure framework for the shareholder proposal process in which ICCR and its members have actively participated.

Rule 14a-8 has been an orderly mechanism for the two-way exchange of ideas between those who manage a company for long-term success, and the shareholders who are committed to that long-term success. These shareholders demonstrate their confidence in the company by supplying it with the financial resources on which the company relies. Our members have long relied on Rule 14a-8 as a catalyst for engaging companies to bring about changes instituting policies and practices now deemed standard.

1. Examples of ICCR members engagements supported by Rule 14a-8

As one ICCR nonprofit bank member represented in a comment letter to the SEC, the importance of Rule 14a-8 is "not abstract" but rather "is demonstrated by a concrete record of outcomes that have created measurable shareholder value and strengthened the governance of public companies across American industry." Outcomes have included increased disclosures around such subjects as human capital management, enabling investors to assess workforce-related risks "that are increasingly recognized as financially material." Other achievements have included "improved relationships between companies and their workforces" which "reduc[es] the risk of costly labor disruptions, employee litigation or high turnover." Companies with which they have engaged have agreed to reduce climate-related financial exposures, helping companies be "better positioned to deliver sustained value to shareholders."

Another member is a nonprofit dedicated to maintaining stable and healthy financial systems by evaluating the consequences of corporate practices and advocating for improvements. One of their focuses has been to support shareholder proposals at major restaurant companies to address the overuse of medically-important antibiotics in food-producing animals, which leads to antimicrobial resistance (AMR). AMR has been shown to cause economic consequences that "extend far beyond the food industry: drug-resistant infections can increase healthcare costs, reduce labor productivity, disrupt food production, and undermine economic growth." Their shareholder proposals ask companies to adopt policies "consistent with World Health Organization guidelines on antimicrobial use in food-producing animals."

Contrary to the claim in the Proposing Release that Rule 14a-8 has created a burden on management in connection with the annual meeting - the existence of Rule 14a-8 has actually engendered a system that encourages dialogue, and often leads to resolution whereby investors maintain a working relationship with management without the need to submit shareholder proposals at the annual meeting. Alternatively, if a shareholder proposal has already been filed, the dialogue encouraged by Rule 14a-8 frequently results in proponents withdrawing proposals based on an agreement that engagement on an issue will continue. In fact, in a typical proxy

[11] Substantial Implementation, Duplication, and Resubmission of Shareholder Proposals Under Exchange Act Rule 14a-8, 87 Fed. Reg. 45052, 45060 (2022) (withdrawn June 12, 2025 in anticipation of the current initiative to rescind Rule 14a-8).

season, more than 100 ICCR member proposals that have been filed are withdrawn pursuant to an agreement between the company and shareholder that is achieved through dialogue.

In that respect, the rule does far more than meets the eye, including the introduction to companies of shareholder risk-related concerns that management may not have considered or previously quantified. In those cases where a shareholder proposal was filed and management sought no-action relief, the parties typically respected that outcome and did not seek further relief in the courts. When a proposal does end up in the company's proxy statement, the voting results help the company assess whether the issue set forth in the proposal is potentially important to the company and its shareholders. It essentially serves as an "early warning system" to help the company manage risk by identifying future financial, legal, and reputational risks.

2. Rule 14a-8 operates beyond the language of the rule to catalyze engagement

Nearly all of ICCR's members, regardless of their subject-matter focus - have found that - contrary to the claim in the Proposing Release that Rule 14a-8 has created a burden on management in connection with the annual meeting - the existence of Rule 14a-8 has actually engendered a system that encourages dialogue, and often leads to resolution whereby investors maintain a working relationship with management without the need to submit shareholder proposals at the annual meeting. Alternatively, if a shareholder proposal has already been filed, the dialogue encouraged by Rule 14a-8 frequently results in proponents withdrawing proposals based on an agreement that engagement on an issue will continue.

In that respect, the rule does far more than meets the eye, including the introduction to companies of shareholder risk-related concerns that management may not have considered or previously quantified. In those cases where a shareholder proposal was filed and management sought no-action relief, the parties typically respected that outcome and did not seek further relief in the courts. When a proposal does end up in the company's proxy statement, the voting results help the company assess whether the issue set forth in the proposal is potentially important to the company and its shareholders. It essentially serves as an "early warning system" to help the company manage risk by identifying future financial, legal, and reputational risks.

3. Rescinding Rule 14a-8 without a reasonable alternative in place would cause impacts harmful to both shareholders and the companies they own.

Rescinding Rule 14a-8 would mean more than simply creating a void where the rule used to be. The impact would be that there would be no guidelines in place for the submission of shareholder proposals, and no prescribed mechanism for going through the process of disclosing proposals to the shareholder body. Shareholders would still submit proposals to management, but there would be no minimum ownership threshold required for a shareholder to file a proposal, no minimum number of days prior to a meeting for submitting a proposal (unless the company were to define that in its prior proxy statement much in the manner as is now accomplished), and - importantly - no defined exclusions that would permit a company to forego disclosing the proposal in its proxy statement.

Though rescission is likely to disproportionately impact smaller shareholders, larger investors likewise stand to suffer negative impacts. Disputes would become more costly to resolve due to legal costs and uncertainty, as well as possible delays occasioned by disputes. The potential for meaningful engagements with companies may become weaker, reflecting the broader impact of the rule.

If Rule 14a-8 were rescinded, the proxy statement itself would still be subject to review by the SEC and governed by the then-existing body of proxy rules. And, as discussed below, even if states were able to leap over the transactional preemption barrier in an attempt to enforce legislation concerning shareholder proposals on proxy statements, on which legal regime would issuers and proponents rely? Rule 14a-9 prohibits material omissions or misstatements in the solicitation of proxies, including the omission of proper shareholder proposals, and Rule 14a-9 would still be applicable to the entire proxy statement. Therein lies the dichotomy: even if a state were to embed in its laws a shareholder right to file a proposal - a right that has for 80 years and more been deemed intrinsic to state corporate law without an explicit enabling statute - that law could not go beyond the state's borders to answer the legal question whether a company's claim of exclusion would constitute a materially misleading omission.

Rescission will not auto-shift responsibility to the states, and states will soon conclude that interstate commerce is not theirs to regulate. In that regard, the safest means of proceeding would likely be for companies to keep their existing internal controls and procedures in place until the SEC recognizes that a national system is not only a good idea, but an imperative for efficient operations of the market.

What this scenario demonstrates is that the proposed rescission will prove unworkable, even if the states were each to adopt rules to attempt to fill the void. Alternatively, the states might move to form a model set of uniform laws. If that were to occur, what would be the point of not having the federal agency take the lead with a uniform, nationally-applicable rule?

What this scenario also risks is a return to the pre-Exchange Act conditions that gave rise to the adoption of Section 14(a) in the first place. Rescission will operate to the detriment of shareholders because of an inability to bring nonresponsive companies to the table for dialogue. If the SEC chooses this route, it needs to replace Rule 14a-8 with a rule obligating companies to respond to shareholder requests for dialogue. And, as previously stated, the concurrent detriment to companies is that, without the current rule, there will be no ownership thresholds, time restrictions, or exclusions.

The negative impacts of rescinding 14a-8 will be borne by proponents as well as by a wide range of investors who have developed thoughtful and comprehensive proxy voting policies. For example, ICCR's October 1, 2026, blog post, included as an Appendix to this letter, provides an overview of major investment managers' proxy voting policies. In-depth research and scrutiny went into the creation of these managers' policies to guide the voting of their shares.

But proxy voting is a responsibility for thousands of pension funds, religious investors, foundations, unions, and universities as well. And funds governed by ERISA understand, as the

Department of Labor has stated, that the proxy is an asset and thus must be voted conscientiously and responsibly. In addition, further research illustrates that hundreds of state and city pension funds also consider the act of voting their shares to be a major responsibility.

See, for example, Yale University's proxy guidelines, included as an Appendix, as well as an attached compilation of guidelines from a number of other leading universities, also included as an Appendix. The conclusion we draw from these guidelines is that there is a major ripple effect on institutions who are not proponents but nevertheless see the proxy as an important tool they use to submit their views to company management.

B. The SEC's recognition of a company's obligation to disclose a shareholder proposal in the company's proxy statement predates the earliest iteration of Rule 14a-8, and its informal process of compliance review directly created the long-term reliance on both the rule and the staff's compliance guidance.

The SEC was deliberate in its efforts to get companies to comply with their obligation to include shareholder proposals in their proxy statements. The repeated failures to include shareholder proposals in company proxy statements was the impetus for requiring the filing with the SEC of *all* proxy statements:

> In 1938, the Commission advised persons "desiring informal opinions or suggestions" in connection with proxy materials to present the request "as far in advance of the solicitation as practicable. **The procedure did not materially reduce the number of proxy solicitations in violation of the rules**, however, and, in 1940, the Commission amended its rules to require, as they have provided ever since, that proxy materials be filed with the Commission for its inspection prior to solicitation.[12]

The SEC further made it clear that shareholder proposals known to management must be included in the company's proxy statement to render that statement not misleading:

> In 1938, the Commission took the view that a proxy statement was misleading if management did not indicate any security holder proposals which it knew would be presented at the meeting and against which it intended to vote the proxy it was soliciting.[13]

That being the case, there is no support for the notion that a rescission of Rule 14a-8 would suggest that the matter goes to the states to regulate. Were that statement true, the SEC would have referenced that role prior to and at the time the SEC promulgated Rule 14a-8. But such was not the case.

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[12] 1976 Advice on Shareholder Proposals, *supra* note 1, at 29989.

[13] Id.

As Commission Chair Purcell explained at the [Hearings Before the House Committee on Interstate and Foreign Commerce on H.R. 1493 (SEC Proxy Rules), 78th Cong., 1st Sess.] (p. 170):

> The proxy statement purports to tell the stockholders everything that is going to be taken up at the meeting. The management knew these proposals were going to be taken up at the meeting. It knew that it intended to oppose them. Any statement which did not include those proposals and the position of the management was obviously misleading, because the soliciting material purported to tell the stockholders everything that is going to be taken up at the meeting that the management knew about.[14]

The Chair's statement makes it clear that if Rule 14a-8 were rescinded, the proxy statement itself would still be subject to review by the SEC and governed by the then-existing body of proxy rules. Even if states were able to leap over the transactional preemption barrier in an attempt to enforce legislation concerning shareholder proposals on proxy statements, on which legal regime would issuers and proponents rely? Rule 14a-9 prohibits material omissions or misstatements in the solicitation of proxies, including the omission of proper shareholder proposals, and Rule 14a-9 would still be applicable to the entire proxy statement. Therein lies the dichotomy: even if a state were to embed in its laws a shareholder right to file a proposal - a right that has for 80 years and more been deemed intrinsic to state corporate law without an explicit enabling statute - that law could not go beyond the state's borders to answer the legal question whether a company's claim of exclusion would constitute a materially misleading omission.

The SEC's explanation of its reasoning for requiring SEC filings together with the informal guidance efforts in an attempt to compel compliance with the antifraud provisions of Rule 14a-9 indicate the importance of what the SEC has for over half a century viewed as an essential corporate obligation. Coupled with shareholders and companies having relied on both the subsequently-enacted Rule 14a-8, as well as the procedures put into place since not long after Congress adopted the statute over 80 years ago, it creates a strong reliance interest which the SEC has not adequately addressed." When an agency changes course, "it must be cognizant that longstanding policies may have engendered serious reliance interests that must be taken into account." *DHS v. Regents of the Univ. of Cal.,* 591 U.S. 1, 30 (2020). The SEC failed to take those reliance interests into account, so that were the Commission to take action based on the Proposing Release, a court would likely deem the SEC's actions to have been arbitrary and capricious.

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[14] *Id.*

III. From No Action To "No Objection" to Proposed Rescission

In 1976, the SEC memorialized that process of guidance provided by staff to companies on the receiving end of shareholder proposals.[15] By that process, companies received valuable informal guidance from SEC staff to help them identify the potential risk of excluding certain proposals from their proxy statements. Though the process was informal and there was no promise that the staff would weigh in, they consistently did so for over 50 years. For the entirety of those five decades, both companies and shareholders have relied extensively on that process for guidance, and companies relied on it to reduce the risk of an agency enforcement action.

On November 17, 2025, the SEC Division of Corporation Finance upended the no-action process for both that division as well as for the Division of Investment Management. It did so via a division-level announcement that staff would no longer review no-action requests and proponents' responses in an attempt to provide guidance to issuers. Rather, the staff, upon request, would indicate that it did not "object" to the exclusion so long as the company made in its submission an "unqualified representation" that it had a "reasonable basis to exclude the proposal."[16] When that occurred, some companies unilaterally excluded proposals, notwithstanding the attendant risks of doing so. For that reason the 2025-2026 proxy season saw a number of court challenges to company notices of intent to exclude proposals for the first time in 30 years, with a few minor exceptions in between.

The rapidity with which the Division progressed from "no objection" to its "no response at all"[17] to the current Proposing Release to rescind Rule 14a-8 in its entirety suggests the possibility that the rescission was the ultimate goal all along. Yet the Commission represented to the United States District Court for the District of Columbia that it had not considered "any documents or other materials as a basis for the [November 2025] Statement."[18] With that statement to the court, the Commission admitted that it had not complied with the APA by engaging in a rigorous evaluation and finding a valid justification for its change both then and with respect to the actions it now proposes.

Moreover, the Division's 2025 Statement improperly overturned a Commission-level release. Though the SEC delegated to the Division the authority to perform certain tasks, those

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[15] *Id.*

[16] Statement Regarding the Division of Corporation Finance's Role in the Exchange Act Rule 14a-8 Process for the Current Proxy Season. https://www.sec.gov/newsroom/speeches-statements/statement-regarding-division-corporation-finances-role-exchange-act-rule-14a-8-process-current-proxy-season. We note that an SEC Division has no authority to overturn a Commission-level release, rendering both the November 2025 Statement and 2026 Updated Statement (*infra* note 11) improper manners by which to undertake and announce those change.

[17] Updated Statement Regarding the Division of Corporation Finance's Role in the Exchange Act Rule 14a-8 Process. https://www.sec.gov/newsroom/speeches-statements/corpfin-statement-rule-14a-8-process-081426?utm_medium=email&utm_source=govdelivery#_edn3.

[18] *ICCR v. SEC*, Defendant SEC's Certified List Administrative Record, ECF No. 16, 1:26-cv-00957 (May 22, 2026).

functions are largely ministerial.[19] The Division may issue interpretive releases without being subject to the notice and comment requirements of the APA.[20] However, the Division lacks the authority to overturn or supersede an interpretation originally set forth in a release put forth by the Commission, as Commission-level releases are published in the Federal Register and are agency pronouncements even if they are interpretive versus carrying the force of law.

The SEC's broad mandate is, in principal part, investor protection and to ensure fair and orderly markets. Congress's specific mandate to the SEC in Exchange Act Section 14(a) is to adopt rules "in the public interest or for the protection of investors." The implementation of those mandates is the promulgation of rules designed to elicit full and fair disclosure by companies, creating a regulatory environment that helps companies gauge and avoid risk. It was therefore curious to see the Commission, through the actions described above, compromise the risk-management framework of SEC regulation on which the very issuers rely to remain compliant.

Though larger companies typically understand those risks and make their own decisions based on consultation with counsel, smaller and/or newer public companies may not fully appreciate all of the nuances and, hence, the consequences of their actions. For example, there were undoubtedly some companies that did not appreciate that the moment they filed their Rule 14a-8(j) notice of intent to exclude a shareholder proposal, they implicated the requirement to notify their insurance companies of the trigger that gave their shareholder proponents the right to sue the company. The right to sue may continue for several years after the company has already held its annual meeting of shareholders.

In consideration of the foregoing concerns, we set forth below our analysis as to why the SEC should reconsider rescinding the entirety of Rule 14a-8. We also urge the Commission to recognize that its proposed amendments to Rule 14a-4 are contrary to the mandate that in proxy solicitations, "whether by the management or minority groups, disclosure must be made of all material facts concerning the matters on which security holders are asked to vote, and they must be afforded the opportunity to vote 'yes' or 'no' on each matter other than elections."[21] The proposed amendments make a mockery of that requirement.

IV. Legal Reasons for Preserving the Rule

A. "It has long been settled that Rule 14a-8 'represents a proper exercise of the authority conferred by Congress on the Commission under Section 14(a).'" SEC Statement to the United States Court of Appeals for the Fifth Circuit Just 38 Months Ago.

The SEC stated to the court of appeals that Rule 14a-8 "represents a proper exercise of authority conferred by Congress on the Commission under Section 14(a)" "to require fair

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[19] 17 C.F.R. § 200.30-1.

[20] APA Section 553(b)(A), 5 U.S.C § 553(b)(A); SEC Rule of Practice 192(b); 17 C.F.R. § 201.192(b).

[21] SEC's 1970 Report to Congress at pp. 45-46 (supra note [8]).

opportunity for the operation of corporate suffrage" (*quoting SEC v. Transamerica Corp.*, 163 F.2d 511, 518 (3d Cir. 1947), cert. denied, 332 U.S. 847 (1948)). Brief of Respondent Securities and Exchange Commission in *NCPPR v. SEC*, No. 23-60230 to the United States Court of Appeals for the Fifth Circuit at page 57 (Sept. 13, 2023).[22]

The SEC further stated to the court that "Section 14(a) and Rule 14a-8 ensure full and fair disclosure in the process by which shareholders participate in corporate decision-making." Indeed, Rule 14a-8 - properly promulgated pursuant to Exchange Act Section 14(a) - is the sole regulatory vehicle by which shareholders have the ability to share their concerns with the companies they own. It is also the sole regulatory mechanism by which shareholders may express those concerns, via the proxy statement put forth in connection with the company's Annual Meeting of Shareholders, in a manner that reaches fellow shareholders and facilitates at least a modicum of disclosure to enable shareholders to vote on the matter.

Citing the venerated Louis Loss, who did not have any of this administration's Executive Orders to guide him, the SEC represented to the court that "'[t]he Commission's power under § 14(a) is not limited to ensuring full disclosure.'"[23] Quoting then-Judge Ruth Bader Ginsberg when she was on the United States Court of Appeals for the D.C. Circuit, the Commission added that "Congress 'did not narrowly train section 14(a) on the interest of stockholders in *receiving* information.'"[24] The case they cited - *Roosevelt v. DuPont* - goes on to state that "section 14(a) shelters use of the proxy solicitation process as a means by which stockholders may become informed about management policies *and may communicate with each other*."[25]

In December 2025, the U.S. Court of Appeals for the District of Columbia Circuit reiterated the broad reach of Section 14(a): "Section 14 supplies a broader set of provisions designed to ensure the integrity of shareholder voting processes by regulating the exercise of proxy authority.[26] In reaching that conclusion, the court quoted Supreme Court precedent stating that "an agency may not rewrite clear statutory terms to suit its own sense of how the statute should operate."[27] In construing an agency's rulemaking under *Loper Bright*, if an "agency is authorized to exercise a degree of discretion" in defining statutory terms, the court's role under the APA is "to independently interpret the statute and effectuate the will of Congress subject to constitutional limits" by "recognizing constitutional delegations, fixing the boundaries of the delegated authority, and ensuring the agency has engaged in reasoned decisionmaking within

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[22] The case was ultimately decided and reported as *NCCPR v. SEC,* No. 23-60230 (5th Cir. Nov. 14, 2024), *rehearing en banc denied and substitute decision issued* (May 14, 2025).

[23] *Id.* at page 57, note 12, *quoting* IV Louis Loss et al., Securities Regulation 6.C.2 (6th ed. 2020).

[24] *Id.*, *quoting Roosevelt E.I. Du Pont de Nemours & Co.*, 958 F.2d 416, 421 (D.C. Cir. 1992) (R.B. Ginsburg, J.) (emphasis supplied).

[25] *Roosevelt*, 958 F.2d at 421-22 (emphasis supplied).

[26] *ISS v. SEC*, 147 F.4th at 214.

[27] *Id.* at 213, quoting *Util. Air Regal Corp. v EPA*, 573 U.S. 302, 314 (2014).

those boundaries."[28] The court stated that its conclusion was reinforced by the structure of the statute. "Section 14 supplies a broader set of provisions designed to ensure the integrity of shareholder voting processes by regulating the exercise of proxy authority."[29]

What exactly has changed since 2023? And, for that matter, 2025? Nothing that the SEC has been able to articulate in terms that would satisfy the Administrative Procedure Act's strict requirements for avoiding a conclusion that the Commission's actions were arbitrary and capricious. Indeed, the drafters of the Proposing Release appear to have been unaware that the SEC itself made those representations to the court just over three years ago. With respect to the discussion in the release of the authority acknowledged by the *Transamerica* court - discussed below in the SEC seems to state that its most recent positive reference to *Transamerica* was in 2007.[30]

The decade following *Transamerica* saw further confirmation by the courts, this time in the Second Circuit. Specifically, in *SEC v. May*, appellants argued that Section 14(a) and the regulations thereunder were "unconstitutional as unauthorized delegations of legislative power."[31] The court disagreed, stating that "the Commission's proxy rules as applied either to management or to insurgent stockholder groups are clearly authorized by the statute."[32]

The SEC now has the opportunity via its adopting release to cure the deficiencies set forth in the Proposing Release by concluding that Rule 14a-8 should not be rescinded. We urge the SEC to consider reasonable alternatives to wholesale rescission, and to avoid the material harms that would result from adopting the proposed amendments to Rule 14a-4.

B. The alternatives must be reasonable and designed to accommodate the smaller shareholders the SEC was created to protect.

Any alternatives proposed and adopted must be realistic and workable especially for the smaller shareholders whose interests Congress has charged the SEC with safeguarding. The benefit of our perspective as an organization with over 300 members is that we have a realistic sense of the impact of proposed changes on smaller investors. The alternatives in the Proposing Release are not feasible for most of ICCR's members.

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[28] *Id.* at 213, citing *Loper Bright Enters v. Raimondo*, 603 U.S. 369, 394-95 (2024)(citation modified).

[29] *Id.* at 213.

[30] Proposing Release at 34 n.103 and accompanying text; Fed. Reg. Vol. 91 at 59911.

[31] 229 F.2d 123, 124 (2d Cir. 1956).

[32] Id. (citing American Power & Light Co. v. S.E.C., 329 U.S. 90; Yakus v. United States, 321 U.S. 414)).

1. Independent proxy solicitation is not a realistic substitute for Rule 14a-8.

For ICCR's members, the cost estimates in the Proposing Release for undertaking a proxy solicitation are not only not feasible for a small organization, they are grossly understated. One of our members has estimated that a single solicitation would cost more than 11% of the annual amount they donate to their nonprofit grantees. As they would not consider taking funds from their beneficiaries to undertake a proxy solicitation, that suggested alternative is no alternative at all.

2. The proposed amendments to Rule 14a-4(c) would heighten those already unrealistic cost of undertaking an independent solicitation.

Moreover, the proposed amendments to Rule 14a-4(c) would render an independent solicitation even more expensive and therefore out of reach. "[A] proponent would have to solicit every shareholder, not just the largest institutions. Given the unreasonableness of the costs of a solicitation for a small shareholder, the member has concluded that "only the largest and wealthiest investors would be able to put a question before shareholders."

3. Online platforms such as LinkedIn and other social media sites cannot serve as a adequate alternatives to Rule 14a-8.

Social media is not designed to reach the entire shareholder body, nor can it possibly serve as an adequate notice and call of meeting. Those media are not included with the materials sent to shareholders prior to voting, and it "carries none of the protections of the federal proxy rules." When our members publish their work online, it's for the benefit of transparency, but it does not even remotely reach the level of disclosure required by the federal proxy rules.

Indeed, per the Commission's own pronouncements, nothing short of publication in the proxy materials would suffice.

4. Shareholders should not be forced to litigate to get the information they need to make informed investment and voting decisions.

Litigation should never be the answer. Though there is a clear private right of action to seek redress in the courts, companies must not be permitted to hedge risks that a shareholder will not sue. Betting on not getting caught is simply not a responsible way to manage a business or engage in enforcement oversight. It is also possible that companies do not appreciate the fact that once they submit a (j) notice indicating an intent to exclude a proposal they have implicated their obligation to provide notice to their insurance carrier that they have just triggered a potential action against the company.

5. Collaborative engagement is the best tool for both companies and investors, and Rule 14a-8 provides both a strong incentive to engage as well as a uniform set of rules to manage the process.

Engagement is effective both in terms of potential outcomes and in terms of cost. The existence of Rule 14a-8 to serve as a complement to the blanket antifraud Rule 14a-9 provides a strong incentive to find a collaborative way to address shareholder concerns. And - if a shareholder does end up filing a proposal - the certainty and uniformity of Rule 14a-8 provides the reasonable framework contemplated by the SEC in compliance with its mandate to Congress.

C. The right to have a shareholder proposal disclosed in the company's proxy statement supersedes state governance provisions designed to thwart disclosure.

The SEC errs by implying in the Proposing Release that a rescission of Rule 14a-8 would somehow automatically kick the can to the states. The SEC recognized that it would create a void were the rule to be rescinded, which demonstrates the SEC's understanding that Rule 14a-8 is essential for the efficient operation of the proxy rules. Only the SEC has it backwards, assuming that the states previously "declined" to regulate the space only because the SEC was in the space.[33] More likely, the states understood that the disclosure of a shareholder proposal in a proxy statement used in interstate commerce was outside of any legitimate state governance interest, but rather fell squarely within the realm of the interstate commerce.

The SEC further errs in its Proposing Release (at p. 91), improperly concluding that Rule 14a-8 is a separate "right" embedded into the proxy rules, thereby distinguishing it from the remaining rules enacted pursuant to Exchange Act Section 14(a). That assumption is not only incorrect, it is contrived and does not pass muster.

Disclosure is already required if a shareholder proposal is material to a solicitation of proxies in connection with a shareholder meeting and thus necessary to make the company's communications not misleading. Disclosure is mandated by SEC Rule 14a-9. To the extent a benefit has been created, it inures to companies, not shareholders, in the form of the limitations on proposals that require shareholders to meet certain thresholds for filing along with every exclusion other than the one requiring that proposals be a proper matter under state law. Take away the rule, and the disclosure obligation does not disappear. Rather, there will be no defined limits on timing, the length of proposals, or any defined exclusions, subjecting companies to the unknown as to what might come their way.

Commissioner J. Sinclair Armstrong conveyed the benefit message in 1954 to attendees of a meeting of the New York Chapter of the American Society of Corporate Secretaries at the Harvard Club of New York City. A member of the first Republican majority Commission since its founding, and facing a grumpy crowd not enamored with Rule 14a-8, he impressed upon them

[33] Proposing Release at 52; FR at 59,917.

the gift bestowed on them given that the "revised proxy rules now specifically provide that management may omit from its proxy material a security holder's proposal which relates to the conduct of the ordinary business operations of the issuer."[34] He also offered up the fact that "a new provision has been adopted to relieve management of the necessity of continuously repeating in its proxy material security holder proposals which on previous submission have received little security holder support."[35]

There is no evidence that the presence of a federal rule has inhibited the development of state law as the SEC claims in the Proposing Release. Delaware did not codify the right to vote by proxy until almost 30 years after the SEC promulgated the federal proxy rules. The Model Business Corporation Act, which has been adopted at least partially by 36 states, including Washington, D.C. and Guam, provides that a shareholder holding 10% of voting shares may call a special meeting for a vote on the issue the shareholder indicates in its demand for a special meeting. Whether the measure is what a majority of states have done or what state a majority of companies look to for state corporate law, the result is that state law development has. not been stymied.

Texas has attempted to regulate access to proxy statements for inclusion of shareholder proposals by setting a threshold prohibitively high for most small shareholders such as ICCR's members, but it is more likely than not that the state's attempt to meddle in interstate commerce and in the national market system will fail. The state may, of course, pass the laws, but the moment they attempt to regulate events outside their state they will undoubtedly run into roadblocks and challenges. Moreover, states are not obligated to fill the void. Whether they try or not, the SEC's actions are bound to raise more questions than answers as it already has done, causing states to scramble to figure out how to manage a space in which they do not belong.

An important consideration is that not all state laws touching on shareholder voting will infringe on federal law. Where a private company is involved, the ownership is intrastate, or the matter does not reach the issue of access to proxy statement, then the question of intrusion does not arise. The states have the right to adopt any law they want. However, when the issue crosses over into access to the proxy statement, the considerations include whether all shareholders will be treated equally.

An apt analogy is the federal securities law concept of "exempt securities" versus "exempt transactions." State laws are not in and of themselves preempted, and therefore not comparable to "exempt securities," but rather are more similar to "exempt transactions," meaning that they become preempted only when they touch on a question relating to proxy access or would exclude a shareholder proposal for any reason other than not being violative of state law. Even then, the SEC frames the state law exclusion in extremely narrow terms:

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[34] Address of . Sinclair Armstrong, Commission, Securities and Exchange Commission, before a Meeting of the New York Chapter of the American Society of Corporate Secretaries at p. 8 (Feb. 18, 1954).

[35] *Id.* The Commissioner also described the *Transamerica* case and assured the audience that "[t]he new proxy rule is in entire accord with the legal bases of [the *Transamerica*] decision and consistent with the court's statement that 'a corporation is run for the benefit of its stockholders and not for that of its managers." *Id*. at p. 7.

> Depending on the subject matter, some proposals are not considered proper under state law if they would be binding on the company if approved by shareholders. In our experience, most proposals that are cast as recommendations or requests that the board of directors take specified action are proper under state law. Accordingly, we will assume that a proposal drafted as a recommendation or suggestion is proper unless the company demonstrates otherwise.[36]

What the SEC will have wrought by abandoning its mission is to foist upon the issuers and their investors a disorderly system that no longer functions efficiently. The result will likely be a combination of exits from the market for more predictable investments, along with actions that will ultimately be deemed to have produced inadequate disclosures, except for those companies that understand the benefits of Rule 14a-8 and voluntarily continue to follow their existing internal controls and procedures. The more apt question is why the SEC would engage in such a wayward endeavor.

Those proxy statements without the current guardrails on shareholder proposals will increase the cost to companies, the costs of which have not been properly analyzed or included in the Proposing Release. In addition, the absence of any protective guidelines for exclusions will potentially expose companies to Rule 14a-9 liability.

In *SEC v. Transamerica Corp.* the SEC challenged, among other things, the company's proposed exclusion of certain shareholder proposals to be submitted at the company's annual meeting. Concluding that a proposal that shareholders approve the independent auditors is "beyond any question ... a proper subject for action by the stockholders," the court noted that "the audit of a corporation's books may not be considered to be peculiarly within the discretion of the directors. *A corporation is run for the benefit of its stockholders and not for that of its managers*."[37]

In that case, one of the shareholder proposals put forth a request that an account of the shareholder meeting be sent to all stockholders. The company challenged that request, complaining about costs. Adjudicating the matter, the court stated:

> [W]e can perceive no logical basis for concluding that it is not a proper subject for action by the security holders.... True it may cost Transamerica $20,000[38] annually, but accurate information as to what transpires respecting the corporation is an absolute necessity if stockholders are to act for their joint interest. *If stockholders cannot act together, they cannot act effectively.*[39]

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[36] Note to Rule 14a-8(i)(1).

[37] *Transamerica*, 163 F.2d at 517. (Emphasis supplied.)

[38] An annual cost of $20,000 in 1947 dollars is worth approximately $300,000 today.

[39] *Transamerica*, 163 F.2d at 517-18. (Emphasis supplied.)

Finally, with respect to Transamerica's intent to exclude a shareholder proposal on amending the notice provisions of a company bylaw , the existing bylaws created a situation whereby the company could exclude a proposal even though it ignored the SEC's conclusion that the proposal be included. In reversing the U.S. District Court for the District of Delaware, and ordering that the shareholder proposals be re-solicited, the U.S. Court of Appeals for the Third Circuit ruled:

> If this minor [bylaw] provision may be employed as Transamerica seeks to employ it, it will serve to circumvent the intent of Congress in enacting the Securities Exchange Act of 1934. It was the intent of Congress to require fair opportunity for the operation of corporate suffrage. The control of great corporations by a very few persons was the abuse at which Congress struck in enaction Section 14(a).[40] We entertain no doubt that Proxy Rule X-14A-7[41] represents a proper exercise of the authority conferred by Congress on the Commission under Section 14(a). *This seems to us to end the matter. The power conferred upon the Commission by Congress cannot be frustrated by a corporate bylaw*.[42]

The SEC recognized that *Transamerica* remains good law. Indeed, *Transamerica* has not been challenged or overturned with respect to the concept for which it stands and the principle for which the SEC cited the case in its brief just three years ago. Coming out of the Third Circuit, the case has been cited as authority by courts in at least the Second, Sixth, Seventh, Eighth, and District of Columbia Circuits.[43]

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[40] *Id.* at 518 n. 12, citing H. Rep. No. 1383, 73d Cong., 2nd Sess. (1934) 13-14 and S. Rep. No. 792, 73rd Cong., 2nd Sess. (1934) 12.

[41] Rule X-14A-7 represents a prior numbering system for what subsequently became numbered as Rule 14a-8.

[42] *Transamerica*, 163 F.2d at 518.

[43] See, for example: *SEC v. May*, 134 F. Supp. 247, 258 (S.D.N.Y. 1955), *aff'd,* 229 F.2d 123 (2d Cir. 1956) ("Injunction against the use of unlawfully obtained proxies and postponement of a stockholders meeting long enough to correct the effects of the unlawful solicitation"); *Dyer v. SEC*, 266 F.2d 33, 47 (8th Cir. 1959), 290 F.2d 541, 542 (8th Cir. 1961), and 289 F.2d 242, 246 (8th Cir. 1961); *Borak v. J. I. Case Co.*, 317 F.2d 838, 848 (7th Cir. 1963), *aff'd,* 377 U.S. 426 (1964) ("The obvious purposes of Section 14(a) is the protection of the right of shareholders to a full and fair disclosure of all material facts which affect corporate elections by proxy"); *Union Pac. R. Co. v. Chicago & N. W. Ry. Co.*, 226 F. Supp. 400, 414 (N.D. Ill. 1964) ("There is ample authority for the cancellation of a stockholders' meeting and the invalidation of proxies upon a motion for a preliminary injunction"); *Med. Comm. for Hum. Rts. v. Sec. & Exch. Comm'n*, 432 F.2d 659, 680–81 (D.C. Cir. 1970) ("As our earlier discussion indicates, the clear import of the language, legislative history, and record of administration of section 14(a) is that its overriding purpose is to assure to corporate shareholders the ability to exercise their right - some would say their duty - to control the important decisions which affect them in their capacity as stockholders and owners of the corporation. Thus, the Third Circuit has cogently summarized the philosophy of section 14(a) in the statement that '(a) corporation is run for the benefit of its stockholders and not for that of its managers.'(quoting *Transamerica*), *vacated as moot,* 404 U.S. 403 (1972) (moot because corporation included proposal in proxy before SCOTUS decision); *Rsrv. Life Ins. Co. v. Provident Life Ins. Co.*, 499 F.2d 715, 726 (8th Cir. 1974) ("In suits to redress violations of § 14(a) of the 1934 Act, federal courts under their equitable powers may grant all relief necessary to effectuate the congressional purposes of the Act"); *Werfel v. Kramarsky*,

D. Rescinding Rule 14a-8 would strip away the parameters on which companies rely for certainty against potential violations and the threat of government or private enforcement, while neither precluding submission of shareholder proposals nor the obligation to include them in a company's proxy statement.

The elimination of Rule 14a-8 would put companies at risk, and deprive shareholders of an understanding of the SEC staff's interpretation of their rights and companies' obligations. "The SEC's "proxy rules are concerned with assuring full disclosure to investors of matters likely to be considered at shareholder meetings." Hazen at § 10.2[1]. The SEC does not intend to rescind "Rule 14a–9, which prohibits 'false or misleading' statements made in any proxy statement, form of proxy, notice of meeting or other communication." *Amalgamated Clothing & Textile Workers Union,* 821 F.Supp. at 882 (citing 17 C.F.R. § 240.14a–9(a)). The rule has been interpreted to "require companies to provide shareholders with the opportunity to submit proposals to management for inclusion in the corporation's proxy materials." *Id.*

To complement Rule 14a-9, the Commission promulgated Rule 14a-8 "to catalyze what many hoped would be a functional 'corporate democracy.'"[44] The rule mandates subsidized shareholder access to a company's proxy materials, requiring "reporting companies ... to print and mail with management's proxy statement, and to place on management's proxy ballot, any 'proper' proposal submitted by a qualifying shareholder."[45] The idea was to provide shareholders a way to "bring before their fellow stockholders matters of [shareholder concern]" that are "proper subjects for stockholders' action under the laws of the state under which [the Company] was organized," and to "have proxies with respect to such proposals solicited at little or no expense to the security holder" [46]

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61 F.R.D. 674, 678 & n.3 (S.D.N.Y. 1974) ("'It was the intent of Congress to require fair opportunity for the operation of corporate suffrage'"); *Nat. Res. Def. Council, Inc. v. Sec. & Exch. Comm'n*, 432 F. Supp. 1190, 1205 (D.D.C. 1977) (quoting *Transamerica* for proposition that proxy rules 'promote "fair opportunity for the operation of corporate suffrage"'), *rev'd,* 606 F.2d 1031, (D.C. Cir. 1979) (reversing on reviewability and APA grounds, ultimately holding that SEC was not required to specifically consider proxy disclosure rule because (1) comments did not push for proxy disclosure alternative; (2) SEC's reasoning for not adopting general disclosure rule similarly applicable to proxy rule (though, the court noted, with less force because proxy disclosure is less expensive); (3) SEC announced new review of shareholder democracy protections mid-review) (proxy rule-relevant analysis begins on p. 1053); and *Trinity Wall St. v. Wal-Mart Stores, Inc.*, 792 F.3d 323, 354 (3d Cir. 2015) (Shwartz, concurring) ("Section 14(a) of the Exchange Act ensures that "[a] corporation is run for the benefit of its stockholders and not for that of its managers" (quoting *Transamerica*)).

[44] Alan R. Palmiter, The Shareholder Proposal Rule: A Failed Experiment in Merit Regulation, 45 Ala. L.Rev. 879, 879 (1994).

[45] *Id.* at 886; *cf. Roosevelt*, 958 F.2d 416 (maintaining that Rule 14a–8's "right to be informed" is complementary to but distinct from Rule 14a–9's "ban on misleading statements in proxy solicitations").

[46] "Proposed Amendments to Rule 14a-8 Under the Securities Exchange Act of 1934 Relating to Proposals by Security Holders," Exch. Act Rel. No. 19135 (Oct. 14, 1982) ("1982 Proposing Release").

Rule 14a-8 protects companies from Rule 14a-9 liability. If a shareholder proposal is properly excluded pursuant to one of the Rule 14a-8 exclusions, the exclusion will not generally be deemed to have been materially misleading under Rule 14a-9. However, if there is no Rule 14a-8 to define the exclusions the SEC has deemed reasonable, companies risk being charged with a material omission or a material misrepresentation with no parameters on which to rely, making it a question of fact subject to a burdensome court challenge.[47] We question why the SEC would choose to elect a path that creates unnecessary additional expense and uncertainty for all involved.

> The SEC has interpreted Rule 14a-9 to require companies to provide shareholders with the opportunity to submit proposals to management for inclusion in the corporation's proxy material. This interpretation grew out of the desire to ensure that the contents of the proxy statement reflect accurately all the issues that would properly arise at the annual meeting....[48]

In a case brought by the NYC Employees' Retirement System against a company, the court rejected the company's argument that Rule 14a-8 does not serve a purpose similar to that of Rule 14a-9: "Since a shareholder may present a proposal at the annual meeting regardless of whether the proposal is included in a proxy solicitation, the corporate circulation of proxy materials which fail to make reference to a shareholder's intention to present a proper proposal at the annual meeting renders the solicitation inherently misleading.[49]"

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[47] *See, e.g., Grimes v. Ohio Edison Co.*, 992 F.2d 455, 458 (2d Cir. 1993) (omission of a properly excluded proposal is not materially misleading under 14a-9, in contrast with the exclusion of an improperly excluded proposal). *See also NYCERS v, American Brands*, 634 F.Supp 1386 (SDNY 1986), ("omission of a proposal from proxy materials that was not properly excluded under Rule 14a–8(c) makes the proxy inherently misleading under Rule 14a–9"); *Amalgamated Clothing & Textile Workers Union v. Wal-Mart Stores, Inc.*, 821 F. Supp. 877, 882 (S.D.N.Y. 1993) (Rule 14a-9 independently requires companies to include shareholder proposals on proxy statements because the omission of proposals would be materially misleading); and *Roosevelt* (Rule 14a-8 is "complementary to, but distinct from, the Rule 14a–9 ban on misleading statements in proxy solicitations." The rule is "informational," and affords shareholders "[a]ccess to management proxy solicitations to sound out management views and to communicate with other shareholders on matters of major import...." 958 F.2d at 421.

[48] *Amalgamated Clothing*, 821 F. Supp. at 882.

[49] New York City Employees' Ret. Sys. v. Am. Brands, Inc., 634 F. Supp. 1382, 1386 (S.D.N.Y. 1986).

V. The SEC in its Proposing Release has failed as required by the APA adequately to justify the reasons for its proposed changes.

A. The serious, long-term reliance interests associated with Rule 14a-8 coupled with the lack of a credible rationale for rescission will make it challenging for the SEC to demonstrate that an effort at wholesale rescission of the rule is anything other than arbitrary and capricious.

The SEC has not stated an APA-compliant rationale to justify rescinding the rule on which investors have long relied. Its proposal to rescind the rule is accordingly arbitrary and capricious and contrary to law. The agency rested its proposed change in policy on factual findings that contradict those underlying its prior policy, yet failed in its Proposing Release to articulate the legally-sufficient factual detail underlying that change as required by the APA and as set forth by the U.S. Supreme Court: "An administrative agency may alter or rescind its policies, including when a new administration enters office.... But when 'its new policy rests upon factual findings that contradict those which underlay its prior policy,' a more detailed explanation is required."[50]

That was the finding of the Fifth Circuit when the SEC, just a few years ago, attempted to rescind a portion of a rule adopted during the prior administration relating to proxy advisory services. The court found that, by rescinding the rule, the SEC's actions were arbitrary and capricious because: (1) "the agency failed adequately to explain its decision to disregard [one of] its prior factual finding[s]," and (2) "the agency failed to provide a reasonable explanation why the[ ] risks were so significant under the [prior] rule as to justify its rescission."[51]

In one of the leading cases on the APA demands when an agency changes position, the Supreme Court has emphasized that the agency must justify its change of policy by addressing the facts and circumstances that "underlay" the prior policy. I No. 25-cv-3777n *Encino Motorcars, LLC v. Navarro*, 579 U.S. 211 (2016), the Court explained:

> "In such cases it is not that further justification is demanded by the mere fact of policy change, but that a reasoned explanation is needed for disregarding facts and circumstances that underlay or were engendered by the prior policy."[52]

The same holds true here. As set forth above, the agency has had Rule 14a-8 in place for more than 80 years with a rich record of reliance in the form of company no-action requests, proponent responses, and staff concurrences or refusals to concur (as the process evolved). And yet the Proposing Release does not - because it cannot - address how the facts have changed over the past three years or how the reliance interest has changed to the point that companies and

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[50] *National Ass'n of Mfrs. v. SEC*, 105 F4th 802, 810-11 (5th Cir. 2024) (quoting *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 516 (2009).

[51] *Id*. at 811.

[52] *Id.* at 222 (quoting *FCC v. Fox Television Stations Inc*, 556 U.S. 502, 515 (2009). *See also League of Women Voters v. USCIS,* No. 25-cv-3777 (D.Md. Aug. 3, 2026).

shareholders no longer need a national, efficient rule. Thus, under similar circumstances, the Fifth Circuit ruled that the SEC had no basis for rescinding the rule.

Likewise, more recently, the Eleventh Circuit in *American Securities Ass'n v. SEC*, 147 F.4th 1264, 1275 (11th Cir 2025), rejected an SEC rule because the agency provided no "good reasons" for changing position. Likewise, the court concluded that the agency action is arbitrary and capricious where an agency "failed to consider an important aspect of the problem."

Here, the SEC in its Proposing Release offered a novel theory suggesting that the SEC lacked authority to promulgate its rules. The theory would have the reader believe that during the entire history of the agency, those who came before did not appreciate what Congress has mandated them to do. –The rationale in the Proposing Release rationale is deficient because the SEC does not address how yesterday's carefully-gathered and supportable facts somehow no longer apply. Indeed, "[t]he agency did not engage in any analysis of its prior finding regarding the [need for the rule], or explain why it had changed its mind"[53] in any meaningful way that would justify from a legal perspective why it can no longer carry out its core congressional directive.

The SEC, in reaching a policy decision to rescind its own rules based on a same-branch Executive Order versus an identifiable set of facts representing changed circumstances as required under the APA, has offered up a supposed rationale that is plainly deficient under the law. The agency has failed to provide a reasonable explanation as to how the Rules are suddenly unnecessary and an incursion into state law after previously having considered and found to the contrary.

Congress delegated to the Commission authority to determine what type of disclosure is appropriate in the public interest or for the protection of investors. In the rulemaking context, it is for the agency as part of its rulemaking responsibility to develop an administrative record and make judgments based on that record on the issue of what disclosure is appropriate. The SEC did just that, amending Rule 14a-8 over the years. The SEC in its Proposing Release has not even attempted to provided a reasoned explanation why it must suddenly abandon its prior 80-year record and findings of the need for Rule 14a-8..

B. The SEC's attempt to justify its proposed rescission of Rule 14a-8 due to changed circumstances fails to overcome eight decades of reliance on the rule.

To bolster its deficient policy arguments, the Commission points to several changes since Rule 14a-8 was adopted that it says undermine the case for the rule today. The Proposing Release urges that the original justifications for Rule 14a-8 "have not been substantiated in practice or are less compelling today."[54] The support for the SEC's arguments is thin, and there is reliable evidence contradicting each of the Commission's claims. Accordingly, these purported developments do not justify wholesale rescission of the long-standing rule.

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[53] *Id.* at 812.

[54] Proposing Release at 36.

For four of these supposed changes, the only supporting evidence of the Commission's intentions in 1942 is vague characterizations from a contemporaneous statement by then-Commission Chair Ganson Purcell defending the rule. He is quoted as stating that costs for issuers were "small" compared to today, but no actual numbers are provided to put that description in context.[55] Presumably, Chair Purcell was basing that characterization on the fact that including a proposal entailed adding a page or two in the proxy statement and a line on the proxy card, which would generate a modest incremental cost. The unreliability of current estimates of issuer costs is discussed below, as is the second purported changed circumstance, the notion that voting support was much higher in the early years of Rule 14a-8. Thus, those claims are unsupported.

The Proposing Release also claims that the large number of proposals now submitted violates the Commission's original expectation when it adopted the predecessor to Rule 14a-8. Chair Purcell's statement that there was "no flood of stockholders' proposals" at the time of the Rule's adoption falls short of establishing any kind of defined expectation for proposal volume. Although it is true that volume has increased since the early years of Rule 14a-8, proposal submission numbers tend to ebb and flow, and each of the last two years has seen a decrease in total submissions: Russell 3000 companies received 718 proposals in the 2026 season, down from 1000 in 2024 and 840 in 2025.[56] Without information about the Commission's expectation in 1942, this argument seems more like a complaint that there are just too many proposals currently being submitted. Alternatives besides rescission could address that concern, though we do not concede its validity.

The Commission urges that there was greater clarity in 1942 about shareholders' right to present proposals, which Rule 14a-8 was intended to facilitate, than there is today. The Proposing Release provides no evidence about the state of the law in the early years of the Rule's operation; the only source cited is Chair Purcell's description of a shareholder meeting disturbance. According to the Proposing Release, Chair Purcell related:

> a situation in which a company's chairman ruled a shareholder's floor proposal out of order, causing "so much opposition among the assembled stockholders that the chairman rescinded his ruling and permitted full discussion of the matter" and observing that "the stockholders made it clear that in that corporation, whether or not they agreed with their fellow stockholders, they believed that every stockholder should be given an opportunity to present his point of view to his fellow stockholders and to have them express their own judgment on its merits. This is the right that

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55 Proposing Release at 36.

56 https://www.governance-intelligence.com/shareholder-proposal-submissions-fall-as-sec-retreat-shifts-risk-to-companies.

> the State law intended to give stockholders and it is that right our rules protect and make a reality."[57]

This quote does not show changed circumstances because it is not evidence of historical circumstances. The fact that the shareholders in this narrative fought for their fellow holder's right to present a proposal in no way establishes that the shareholder indeed had a legal right to do so. The authors of the 1954 study of shareholder proposals mentioned above did not view state law as clear. They opined that "[w]hile a variety of questions arises in connection with the application of the proposal rule, the most perplexing problem is what constitutes a 'proper subject for action by the security holders' and is, therefore, a 'proper subject' for a proposal under X-14A-7."[58] They noted that the *SEC v. Transamerica* case decided in 1947 had "left undrawn the precise line of authority between security holders and directors from the standpoint of the permissible scope of security holder proposals under the law of the state of incorporation."[59]

Nevertheless, any current uncertainty about the validity of non-binding proposals under Delaware law would not justify rescission. Proposals are submitted to companies domiciled in other states (and foreign jurisdictions), and the lack of explicit statutory authorization in the Model Business Corporation Act ("MBCA"), which the Proposing Release offers as further evidence of uncertainty,[60] does not, standing alone, foreclose precatory proposals in jurisdictions whose corporate law follows the MBCA. Indeed, precatory proposals are arguably the only sorts of proposals that pass scrutiny, as otherwise the board could be deemed to be abdicating its duty to undertake certain decisions not independently reserved to shareholders.

The Commission argues that independent solicitation "may have become less burdensome" due to electronic delivery, obviating the need for the rule. The extent to which the Commission underestimates independent solicitation costs is discussed below. The appropriate question is not whether costs have come down, but rather what impact rescission would have now, after over 80 years of the rule's operation.

The Commission claims that alternative channels of communication are acceptable substitutes for shareholder proposals submitted pursuant to the rule. None of the options discussed is remotely adequate: They are more costly, less informative, more disruptive, less inclusive, or some combination of these qualities.

Several of the alternative channels proffered by the Commission, including one-on-one or small group dialogues with companies, social media platforms, and internet forums, are unable to convey the sentiment of all shareholders as a group. Shareholders using these informal channels miss the concrete feedback and clarity that results from voting. And companies, similarly, do not

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[57] Proposing Release at 37 n.108.

[58] Emerson & Latcham, *supra* note 151, at 808.

[59] *Id*. at 810.

[60] Proposing Release at 42.

obtain a full picture of their shareholders' views. As one scholar of the rule noted, the communication of shareholder sentiment to management is "harder to overlook or misinterpret than stock market performance."[61]

The companies that would be least likely to engage in these voluntary activities are poorer-performing companies and those with less shareholder-friendly corporate governance--in other words, the companies that could benefit most from shareholder input. Institutional investors may decline to participate due to privacy concerns and regulatory risks. Given these drawbacks, it is unsurprising that the Proposing Release concludes that evidence of the effectiveness of online forums as a substitute for the Rule is "limited."[62]

Votes against management proposals are a blunt tool, as reasons for shareholders' against or withheld votes are not always discernable, whereas a shareholder proposal allows for more precise communication. Most shareholders would rather support a shareholder proposal seeking more robust risk oversight on a subject, for example, than vote against directors. Vote-no initiatives do not involve a separate proxy statement and thus are less pricey in terms of printing, mailing and tabulation than independent solicitations; however, they are significantly more expensive than Rule 14a-8 proposals.

Nominating director candidates via proxy access or UPC is also mentioned in the Proposing Release as a potential substitute for Rule 14a-8 proposals. Director election campaigns are even more costly than shareholder proposals conducted via independent solicitation, given that they require greater solicitation intensity and entail more complex disclosures related to nominees and plans for the company, which increases legal costs associated with compliance with advance notice bylaws and proxy statement disclosure requirements.

All told, the alternatives offered in the Proposing Release suffer from major shortcomings as substitutes for the Rule. Only informal approaches are more affordable, but they lack the preference aggregation and clear communication benefits of Rule 14a-8. The higher - in some cases, much higher - costs associated with other options limit the number of such interventions proponents, especially individuals, would be able to undertake to an extent that many value-enhancing initiatives would be foregone. They are all alternatives *to* Rule 14a-8, not alternatives to wholesale *rescission of* Rule 14a-8, which is what the APA requires agencies to consider. The Commission cannot meet its burden by failing to consider alternatives to its proposed rulemaking activity and instead suggesting options to third parties, which is what it has done here. The SEC is not proposing to itself facilitate any of these supposed alternative means of shareholder engagement.

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[61] Patrick J. Ryan, "Rule 14a-8, Institutional Shareholder Proposals, and Corporate Democracy," 23 Ga. L. Rev. 97, 112 (1988).

[62] Proposing Release at 119.

VI. The SEC Acknowledges in its Proposing Release that the Proxy Rules Have Traditionally Been Viewed as Preempting State Law.

A. Congress Intended the Proxy Laws to "Occupy the Field."

The essence of the federal securities laws is embodied in Congress's preamble to the Securities Act of 1933, adopted in the wake of the Great Depression "[t]o provide full and fair disclosure of securities sold in interstate and foreign commerce..., and to prevent frauds in the sale thereof, and for other purposes."[63] A year later Congress adopted the Securities Exchange Act of 1934[64] to implement a national system of "regulation and control" to "protect and make more effective" the financial markets and to ensure they remain "fair and honest."[65] The preamble to the latter statute provides that Congress's intent was "[t]o provide for the regulation of securities exchanges and of over-the-counter markets operating in interstate and foreign commerce..., to prevent inequitable and unfair practices on such exchanges and markets, and for other purposes."

The SEC acknowledges in its Proposing Release that preemption is an issue that may call into question its assumption that the states will fill the void left by a rescission of the rule.[66] The Proposing Release also suggests that the existence of Rule 14a-8 may have discouraged states from "developing their own standards with respect to the inclusion of proposals in company proxy materials."[67] The SEC also states that rescinding the rule "would eliminate any implication of preemption stemming from *Transamerica* or otherwise and thus remove that potential disincentive for States to develop their own laws governing shareholder proposals."[68]

We disagree. Citing H.R. Rep. No. 1383 at 13-14, the D.C. Circuit recognized in *Roosevelt* that "Section 14(a) authorizes the SEC 'to control the conditions under which proxies may be solicited, and S. Rep. No. 792 at 12 under Section 14(a) "'the solicitation and issuance of proxies [is] left to regulation by the Commission.'" The references were couched in an analysis of the private right of action belonging to shareholders challenging a company's notice of intent to exclude the proponent's shareholder proposal. There could be no right to challenge an exclusion were there no right to put forth the shareholder proposal which - as a matter of full and fair disclosure - a company is compelled to include in its proxy statement soliciting votes in connection with its annual meeting of shareholders.[69]

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[63] Preamble to the Securities Act of 1933 ("Securities Act"), 15 U.S.C. § 77(a) et seq.

[64] Section 1 of the Securities Exchange Act of 1934 ("Exchange Act"), 15 U.S.C. § 78(a) et seq.

[65] *Id*. at Section 2, 15 U.S.C. § 78(b).

[66] Proposing Release at pp. 53-55.

[67] *Id.* at 198.

[68] *Id*. at 54.

[69] The Supreme Court in *J.I. Case Co. v. Borak* characterized the language of Section 14(a) as having "broad remedial purposes." 377 U.S. 426, 431-32 (1964).

B. The purpose of Section 14(a) is to provide for uniform national regulation of public issuer proxy solicitations.

The 1929 market crash and the ensuing Great Depression was the impetus for a uniform system of federal regulation of securities transactions by public issuers in the original adoption of the Securities Act of 1933 (regulating public offerings) and the Securities Exchange Act of 1934 (regulating interstate transactions in securities and creating the SEC). In Section 14(a) Congress expressly regulated solicitations of security holders of shares traded in interstate commerce or through any exchange, except for "exempted securities," and covers the reach of proxies for companies with securities listed or registered on any national securities exchange. "Exempted securities" being the sole exception, the statute is thus intended to reach all other interstate solicitations, and does not grant states the right to carve out a subset of those interstate solicitations.

Congress has reaffirmed the national purpose of the federal securities laws each time it enacted reforms to the securities statutes, including revisions to the Exchange Act passed in response to particular national economic crises and extended that reform to remedy a host of national economic crises. Thus, since its enactment in 1934, Congress has extended targeted reforms as part of its aim to regulate interstate transactions by all participants in public and private securities markets due to the impact of those reforms on the national economy. A review of the principal recent Exchange Act amendments follows:

- 1968: Congress revised the Exchange Act to add the Williams Act to include within Section 14 the regulation of tender offers and to enhance timely public disclosure to shareholders in large public securities acquisition transactions;

- 1975: Congress amended the Exchange Act (the Securities Acts Amendments of 1975). Because of the enormous economic growth of the securities markets. Congress adopted legislation directing the SEC to adopt rules to foster a national market system in securities and to ensure the efficient settlement of national securities transactions and adopted reforms for broker dealer accountability;

- 2002: Congress amended the Exchange Act by adding the Sarbanes Oxley Act in response to systemic failures of accounting and internal corporate governance controls exhibited in the Enron and WorldCom failures. Congress adopted systemic changes to the public company corporate governance and public accounting company oversight as part of its remedies;

- 2010: Congress amended the Exchange Act by adding the Dodd-Frank Act which - together with other reforms - was the response to the 2007-08 financial crisis. The statute included renewed regulation of bank oversight, and regulation of novel forms of securities, such as Swaps and other forms of derivative securities.

The intent of Congress to assert the broadest possible federal controls over the public and private markets for interstate securities transactions is captured in Exchange Act Section 2,

which highlights the regulation of securities transactions is *affected with a national public interest* which makes it necessary to provide for regulation and control of such transactions and of practices and matters related thereto, including transactions by officers, directors, and principal security holders, to require appropriate reports, to *remove impediments to and perfect the mechanisms of a national market system for securities* and a *national system* for the clearance and settlement of securities transactions and the safeguarding of securities and funds related thereto. The system was also designed and intended to "impose requirements necessary to make such regulation and control reasonably complete and effective, in order to protect *interstate commerce, the national credit, the Federal taxing power, the national banking system and Federal Reserve System* and to ensure the maintenance of fair and honest markets in such transactions.[70]

States have no ability to intrude on federal law to implement the long recognized power to regulate Interstate Commerce under the Constitution. See Art I, Section 8. Thus Congress' intent to do so is reflected in Sections 2, 3(a)(17), and 14(a) of the Exchange Act. This assertion of federal power must be assessed under the Supremacy Clause of the Constitution. Art. V1, clause 2. The foregoing statement of Congressional purpose in enacting the national regulation of interstate securities transactions found in the Exchange Act suggests the broadest possible federal preemption of state regulation of such transactions. The statutory exclusion for "exempted securities" in Section 14(a) indicates that the federal preemption of contrary state law is limited to this single exception.

Even if we were take a narrower view of the scope of Congressional intent to assert its broad interstate commerce powers, the preemptive force of federal regulation of interstate proxy solicitations by public issuers suggests that any contrary state law that conflicts with or interferes with the federal scheme of regulation of proxy solicitations would by preempted.

It is not, as the SEC stated in the Proposing Release, because its predecessors were intimidated - it's more likely because the current Commissioners know that they have no justification. There is no statutory ambiguity in the Exchange Act and therefore no reason for the SEC to reinterpret Section 14(a). Likewise this novel revelation, is entitled to no deference. because 14(a) means what it says. As explained last year by the DC Circuit, Section 14(a) "adopted provisions designed to ensure the integrity of shareholder voting processes by regulating the exercise of proxy authority."*ISS v. SEC*, 147 F.4th at 214. That is exactly what Rule 14a-8 does, and the SEC has not provided a lawful justification for abandoning the Rule.

VII. The SEC's Attempt to Remove a Longstanding, Heavily-Relied on Vehicle of Expression Without an Adequate Replacement Violates the First Amendment to the Constitution

The shareholder right to corporate suffrage and to petition their companies they own is protected by the First Amendment. A number of ICCR members are faith-based organizations and steward their investments consistent with their religious values. For over 50 years,

[70] Exchange Act Section 2; 15 U.S.C. § 78b. (Emphasis supplied.)

companies and shareholders have relied on Rule 14a-8 and the aligned processes that have developed to both facilitate rights for shareholders and to establish boundaries so that companies may consider important issues and yet be able to rely on guardrails that serve to ensure they are not overwhelmed. If the Commission removes that sole regulatory vehicle of expression without establishing a viable alternative, the SEC risks violating both the free exercise and free speech guarantees of the First Amendment.

Religious organizations steward their organizational finances and the investments managed for their constituents and beneficiaries in alignment with the beliefs, teachings, and values of their faiths. Many religious organizations charge the entities managing their investments with carrying out strategies to minimize harm and positively affect society. Investment stewardship is one such strategy.[71]

For example, one of ICCR's faith-based members, a nonprofit healthcare organization, noted in its comment letter to the SEC that their investments and economic decisions "must serve human dignity and the common good as well as our financial interests. In that connection, they stated that they "bear a distinct moral and fiduciary responsibility" to evaluate how the companies in which they invest "impacts workers, families, the environment, and vulnerable populations." Many ICCR members submit shareholder proposals pursuant to Rule 14a-8 to address the impact of corporate policies and practices on the health of people and the planet, as well as to advocate for governance arrangements that effectively manage risk and ensure accountability. ICCR got its start in 1971 when multiple faith groups came together to address companies doing business in the racist apartheid regime in South Africa. In addition to filing proposals, ICCR's faith-based members vote their proxies, including on shareholder proposals, to advance their religious values. Our website includes testimonies from some ICCR members about faith-consistent investing,[72] and ICCR members are submitting their own comments in response to the Proposing Release.

Faith-based investors participate in the public markets pursuant to explicit and official stewardship directives enshrined in individual investment policies and even publications like *Mensuram Bonam*, which applies to all Catholic investors. These directives include religious obligations to submit and vote on shareholder proposals where change or engagement is necessary to allow the provision of capital to a company to be consistent with the broader exercise of religious practice and values. Rescinding Rule 14a-8 will directly and discriminatorily impact faith-based investors who rely on a uniform federal procedure for shareholder engagement in order to participate in the public markets in an equivalent capacity to secular investors. Rescinding Rule 14a-8 will force faith-based investors to compromise their protected religious exercise in at least one way: either they will be denied equal ability to participate in the public markets because divesting will be the only faith-aligned option when company conduct is not already aligned with religious stewardship directives and values, or they

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[71] *See generally* Amelia Miazad, *Faith Investors*, 110 Minn. L. Rev. 2247 (2026).

[72] ICCR.org/faith-consistent-investing-statement.

will be compelled to abrogate their own faith-based commitments in order to remain financially solvent. Neither option is acceptable or compatible with the First Amendment.

VIII. The Proposed Amendments to Section 14a-4 Violate the Principle that Shareholders Have the Right to be Able Affirmatively to Vote "For" or "Against" a Proposal.

Not content to rescind Rule 14a-8, the Commission proposes to make it more difficult and expensive for proponents to achieve support for proposals pursued through independent solicitations using the long-standing processes that are currently laid out in Section 14a-4. Currently, a proponent can preclude an issuer from exercising such authority by providing the issuer with notice of its intention to raise a proposal at an upcoming shareholder meeting and its plan to solicit holders of the number of shares needed to pass the proposal; the proponent must follow up with proof that it actually solicited holders of the requisite number of shares.

Under the Proposal, a proponent would have no way to defeat discretionary voting against a proposal. Instead, the issuer could exercise its discretionary authority if it simply includes a check box on the proxy card that a shareholder would have to check to withhold authority to vote its shares against the proposal. Even if multiple proposals will be presented, only one check box would be required.

Further putting a thumb on the scale for issuers, only bare-bones disclosure about the proposal would be required. The Proposing Release provides as an example "a non-binding proposal from a pension fund that the company adopt a proxy access bylaw provision."[73] That description is insufficient. In determining how to vote on proposals, shareholders consider not just the general subject matter, but also the specific terms of the proposal. In the case of a proxy access proposal, a shareholder would want to know how liberal or constrictive the right is in terms of ownership threshold and duration, maximum number of candidates who can be nominated, and the disclosure a nominating shareholder would be required to provide. We urge the Commission to require issuers to describe the proposal with more specificity than this.

A single check box for multiple proposals is coercive. The Commission does not allow issuers to "bundle" management proposals; as one securities law scholar explained:

> Bundling deprives shareholders of the right to convey their views on each separate matter being put to a vote, and instead forces them to cast a vote on the single proposal as a whole. This management practice may force shareholders to choose between rejecting the entire proposal or approving items they might not otherwise want implemented (as with the proverbial spoonful of sugar to help the medicine go down, shareholders may be required to accept the good with the bad).[74]

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[73] Proposing Release at 71.

[74] Randall S. Thomas, *Are Companies Impermissibly Bundling Proposals for Shareholder Votes?*, Harvard Law School Forum on Corp. Governance (May 26, 2015), https://corpgov.law.harvard.edu/2015/05/26/are-companies-impermissibly-bundling-proposals-for-shareholder-votes/.

Given the small number of proposals that tend to be pursued through independent solicitations, at a minimum the Commission should require a separate check box for each proposal.

The Proposing Release does not deny the negative effects the proposed amendments to Rule 14a-4(c) would have on proponents. Eliminating proponents' control over issuers' exercise of discretionary authority to vote against proposals, according to the Release, "reduces the proponent's expected probability of success" and could deter proponents from conducting independent solicitations.[75] This impact would be felt disproportionately by less well-resourced proponents.[76]

The Proposing Release acknowledges that the changes "may reduce the total volume of proposals submitted through independent solicitation," including value-enhancing proposals.[77] The Commission identifies factors bearing on that question, but it does not evaluate the likelihood of each factor even though evidence in the record would allow it to do so. The "on the one hand, on the other hand" discussion, which is replicated in many parts of the Proposing Release, falls short of the reasoned analysis of foregone benefits required by the Administrative Procedure Act.

The Commission proposed but did not adopt a similar check box approach in 1998.[78] The Commission explained at that time that it concurred with some commenters that such a check box could be confusing:

> A shareholder who receives the insurgent's card votes in favor of the proposal, and executes and returns the insurgent's card. But then the company either solicits, or resolicits, the same shareholder, and includes a "withhold" box on management's proxy card relating to the same non-14a-8 proposal. Since the shareholder does not wish to grant management discretionary voting authority on the proposal, it checks the box. But then, in the commenter's view, it may be unclear whether the shareholder has executed a subsequent proxy that revokes the shareholder's execution of the insurgent's card under applicable state law.[79]

According to the Commission, the current rules around discretionary voting would permit a proponent to circumvent rescission by coercing an issuer into including its proposal in the proxy statement. Currently, issuers retain a choice about inclusion and can based that decision on a judgment about the likelihood of the proposal's success. If a proposal is unlikely to garner much support, an issuer might rationally decide that it doesn't need discretionary voting to defeat

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75 Proposing Release at 157-158.

76 Proposing Release at 159.

77 Proposing Release at 157, 167-168.

78 Proposing Release at 69.

79 1998 Release at n.62.

it and can afford not to include the proposal. The proposed changes to Rule 14a-4(c), then, lack a compelling justification and seem intended to discourage proponents from conducting independent solicitations, even for value-enhancing proposals.

IX. The True Economic Analysis Strongly Favors Maintaining the Rule

A. The Economic Analysis set forth in the Proposing Release is inadequate under established law.

The Commission has failed to show that the proposal's anticipated cost savings justify the benefits that would be lost as a result of rescission. The Commission's cost-benefit analysis falls far short of the kind of economic analysis that would constitute reasoned consideration of an economically significant 840-year-old rule due to the Proposing Release's unrealistic estimates of cost savings flowing from rescission and minimization and/or complete omission of costs rescission will impose, including by discounting and omitting benefits provided by Rule 14a-8. Accordingly, the Commission has fallen far short of its obligation to establish an accurate economic baseline and assess the potential economic impact of the Proposal.

Too often, the Proposing Release punts on the likely magnitude, or direction, of a cost or benefit. Courts require agencies to consider reasonably foreseeable but difficult to quantify regulatory effects,[80] using a range if a specific value cannot be identified.[81] The Commission's own guidance (the "Guidance") requires it to quantify expected benefits and costs to the extent possible and explain, for unquantified elements, why they can't be quantified, using "the best available evidence of the likely quantitative and qualitative costs and benefits."[82]

In *Business Roundtable v SEC*,[83] the D.C. Circuit set aside proposed Rule 14a-11 - which the SEC adopted pursuant to a provision of Dodd-Frank (adding Section 14(a)(2)) - that authorized the Commission to adopt rules as to when a shareholder could nominate a director for the board and that shareholder nomination would be required to be included in the management proxy statement. Significantly, the DC Circuit held that the failure of the SEC to "apprise itself - and hence the public and the Congress - of the economic consequences of a proposed regulation" makes promulgation of the rule arbitrary and capricious and not in accordance with law.[84]

The Court highlighted that the SEC stated that the proposed rule would benefit shareholders in limiting their costs to mount a board challenge by a shareholder. The Commission had highlighted that such proposals could cost the companies some additional proxy

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[80] *E.g.,* Public Citizen v. Fed. Motor Carrier Safety Admin., 374 F.3d 1209, 1219 (D.C. Cir. 2004).

[81] *Chamber of Commerce v. SEC*, 412 F.3d 133, 143 (D.C. Cir. 2005).

[82] Memorandum to the Staff of the Rulewriting Divisions and Offices from the Division of Risk, Strategy, and Financial Innovation and the Office of the General Counsel, at 9-10 (Mar. 16, 2012) (https://www.sec.gov/divisions/riskfin/rsfi_guidance_econ_analy_secrulemaking.pdf) (hereinafter "Guidance").

[83] 647 F.3d 1144 (DC Cir 2011).

[84] 647 F.3d at 114 (citing *Chamber of Commerce*, 547 F.3d at 143.

printing costs and could distract management. Nevertheless, the SEC concluded that the potential benefits of the rule would "benefit the economy as a whole," and thus the benefits of the rule outweighed the costs. *Id*. at 1155.

In its decision, the DC Circuit was highly critical of this SEC analysis of the costs of company opposition for downplaying the intensity that management would have in opposing director challenges. The DC Circuit found that the SEC did nothing in its adopting release to dispute these claims as to costs, nor did it conduct its own analysis of such costs, or dispute the claims made by the commentor. On this ground the court concluded that the SEC had "neglected its statutory obligation to assess the economic consequences of its rule." *Id*. at 1150. The court also criticized the Commission for failing to rely on empirical data, and for discounting the "marginal" costs of the rule, and found that the SEC's actions were arbitrary and capricious. *Id*. at 1152.

In *Chamber of Commerce v. SEC*, [85] the DC Circuit Court set aside part of an SEC Investment Company Act rule directing mutual funds to have 75% of their boards be independent. The basis for the rejection was the failure of the Commission to respond to a point raised by the commentors as to the costs of the independence requirement. The court ruled that it was insufficient for the Commission to state that it was difficult to determine the costs of this independent staff requirement: the difficulty of the inquiry "does not excuse the Commission from its statutory obligation to determine as best it can the economic implications of the rule it has proposed." *Id*. at 143. The court also reversed the SEC for adopting the independent chair requirement without considering the alternative proposed by some of the commentators and the two dissenting Commissioners, ruling that the failure to consider the disclosure alternative violated the APA. *Id*. at 144-45.

B. The SEC in its Proposing Release overstates the benefits of rescinding Rule 14a-8.

1. The Commission overstates the cost savings to issuers from rescission, and ignores potential additional costs from likely alternatives that are less cost-effective

The estimates in the Proposing Release of issuer cost savings from rescission rest on a flimsy factual basis and are likely overstated. Total direct costs associated with a shareholder proposal are estimated in the Proposing Release by assuming that 107 hours are spent at an hourly rate (for both internal and external resources) of $462, which yields a per-proposal estimate of $49,000.[86] This cost covers reviewing and responding to issues raised in the proposal, engaging with the proponent, preparing the statement in opposition, printing and distributing proxy materials, communicating with outside consultants, engaging in solicitation, and seeking no-action relief.[87]

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[85] *Chamber of Commerce,* 547 F.3d at 143-44.

[86] Proposing Release at 125.

[87] Proposing Release at 123-24.

The Weinberg Center survey[88] that provides an input for the Release's cost estimate[89] reflects the experiences of just 35 public companies. From 2004 through 2017, 386 companies per year, on average, received at least one proposal,[90] so 35 companies represent just 9% of that universe. Because the survey was voluntary, the problem of negative response bias, in which dissatisfied people are more likely to respond, further undermines the representativeness of the data. The Business Roundtable survey cited in the Proposing Release suffers from the same limitation, as it represented the views of 35 public companies that have received a shareholder proposal.

It is important to separate costs that are inherent in the operation of Rule 14a-8 from those that flow from companies' choices. Unavoidable costs that are properly considered include the incremental expense of printing and mailing additional pages of the proxy statement, as well as internal staff time spent processing the proposal. But the Weinberg Center's costs include optional outlays, the largest of which are outside counsel fees paid in connection with seeking no-action relief. For 57% of survey respondents, more than half of Rule 14a-8 compliance costs are outside counsel expenditures; for 37% of respondents, that proportion is more than 75%.[91] It is not mandatory for companies to seek to exclude shareholder proposals, and now that the Division of Corporation Finance has withdrawn from its role in the no-action process, those costs should drop significantly. Issuer cost estimates that pre-date the elimination of the no-action process or do not disaggregate volitional and structural proposal cost elements should not be relied upon in analyzing the benefits of rescission.

Using the $49,000 per proposal figure, the Commission's estimate for annual cost savings across all issuers is only $39.6 million.[92] Neither amount is meaningful in the context of the large capitalization companies that receive around 70% of shareholder proposals.[93] For example, Meta Platforms, which typically receives a significant number of shareholder proposals each year, reported over $200 billion in revenue and $60 billion in net income in 2025.[94] The $39.6 million in total savings for all issuers is only about .02% of Meta's 2025 revenue and .07% of its net income for that year. In other words, if the roughly 800 shareholder proposals submitted across *all* companies were *all* submitted to Meta, neither Meta nor its shareholders would feel any financial burn Not all companies are as big or profitable as Meta, of course. For Vertex

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88 Lawrence A. Cunningham, "Shareholder Proposal Survey: Report and Analysis of Results," at 2 (John L. Weinberg Center for Corporate Governance, University of Delaware, Jan. 2026) (available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=6045474)

89 Proposing Release, at 125-126.

90 https://www.cii.org/files/10_10_Shareholder_Proposal_FAQ%282%29.pdf.

91 Cunningham, *supra* at 4.

92 Proposing Release at 178-179.

93 https://corpgov.law.harvard.edu/2023/09/01/trends-in-shareholder-proposals.

94 https://www.sec.gov/Archives/edgar/data/1326801/000162828026003942/meta-20251231.htm#icc066a9e83ae4c46b57ee4d9dc9d7021_79, at 89.

Pharmaceuticals, which carried one shareholder proposal in its proxy statement this year, the $49,000 savings is .0004% of its 2025 revenues of $11.97 billion and .001% of its $3.95 billion in net income.[95]

This paltry best case cost savings estimate is itself unrealistic. If states and companies adopt frameworks requiring inclusion of shareholder proposals in the proxy statement or if proponents use alternative tactics such as independent solicitations, the Release admits that the forecast cost savings would be undercut.[96] Those alternatives may be even more costly. When a shareholder proposal is pursued through an independent solicitation rather than on the issuer's card, the issuer loses visibility into the voting results; as a result, the issuer may need to engage in more intense solicitation than usual to determine how shareholders are voting, which would increase solicitation costs.

Substitution is the probable outcome of rescission. A few ICCR members tested the waters last season by pursuing floor proposals following unilateral exclusions of Rule 14a-8 proposals. If the Rule is rescinded, our members have discussed alternative strategies such as voting "No" on board members, independent solicitations, and floor proposals. We note that Ceres' small survey of its investor network members found that 82% would substitute independent solicitations for Rule 14a-8 proposals. Thus, the annual $39.6 *million* in cost savings should be taken with a grain of salt. Savings on indirect costs of management distraction could be similarly affected, as substitute tactics could demand more of management than Rule 14a-8 proposals.[97]

Question 44 of the Proposing Release asks whether rescission would encourage more companies to go public, which we doubt. The empirical evidence on companies' decisions about whether to go public dispels the notion that Rule 14a-8 plays any meaningful role. Issuers that have recently gone public receive few proposals: Research by the Council of Institutional Investors pegs the proportion of Russell 3000 companies that had gone public since 2016 that received a shareholder proposal from 2016 through 2025 at 4.4%.[98] As we discussed in our letter commenting on the Commission's semi-annual reporting proposal,[99] research shows that regulation plays a relatively small part in a company's going-public decision. For example, according to one study, "[r]emoving all estimated regulatory costs increases the average IPO

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95 https://www.sec.gov/Archives/edgar/data/875320/000087532026000056/vrtx-20251231.htm#ib44b4620d6d245e0bae824a83c255a23_133, at F-3.

96 Proposing Release at 129-130.

97 Proposing Release at 131.

98 See Letter from Jeff Mahoney, General Counsel, Council of Institutional Investors, submitted on Nov. 5, 2026, at 38 (https://www.sec.gov/comments/S7-2026-32/s7202632-1122380-3995427.pdf).

99 Letter from Josh Zinner, CEO, Interfaith Center on Corporate Responsibility, submitted on July 6, 2026 (https://www.sec.gov/comments/S7-2026-15/s7202615-949959-2925726.pdf).

likelihood after 2000 from .95% to 1.4%, which explains only 7.4% of the decline in IPO likelihood from pre-2000 to post-2000."[100]

2 . Non-proponent shareholders would not enjoy any cost savings from rescission and may end up spending more to vote on the independent solicitations and vote no campaigns that could replace Rule 14a-8 proposals,

The Commission also claims that non-proponent shareholders would enjoy cost savings as a result of not having to vote on as many shareholder proposals.[101] Those savings are not quantified, and there is strong reason for skepticism about them. Shareholder proposals account for fewer than 2% of total ballot items that go to a vote,[102] so the disappearance of Rule 14a-8 proposals would almost certainly not change the personnel needs of a shareholder that handles proxy voting in-house. A shareholder that handles its own proxy voting using outside research would continue to need that research for the remaining 98%+ of ballot items.

Nor would the cost of proxy advisory services likely drop as a result of the disappearance of shareholder proposals from management proxy statements. Proxy advisory firms charge a flat annual subscription fee, not a fee per ballot item. The loss of Rule 14a-8 proposals would not diminish the number of meetings for which a shareholder would require information, since all companies in the shareholder's portfolio would hold elections for at least some directors. Thus, even if a shareholder paid for proxy advice on a per-meeting basis, the cost would not be reduced.

Indeed, it is possible that rescission would increase voting-related costs for non-proponent shareholders. If even a modest number of Rule 14a-8 proposals are replaced by independent solicitations, shareholders would incur costs associated with voting on the proponent's proxy card, if they wished to support the proposal(s). That act would entail less effort if the shareholder had received the independent solicitation as a result of the proponent's mailing; if, however, the shareholder's holdings were not in an account to which the proponent mailed its materials, the shareholder would need to seek out the proponent and request those materials. Analyzing proposals brought via independent solicitation, at least thoroughly enough to know whether support is a possibility, is not optional for shareholders like many ICCR members that are subject to fiduciary obligations.

In sum, the projected cost savings from rescission for issuers are meager, especially given that proposal recipients are overwhelmingly large-capitalization companies, and even those small savings are likely overstated. Non-proponent shareholders would not enjoy any cost savings and may end up spending more to vote on the independent solicitations and vote no campaigns that could replace Rule 14a-8 proposals. These vanishingly small cost savings are not adequate to

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[100] Michael Ewens et al., "Regulatory Costs of Being Public: Evidence From Bunching Estimation," Working Paper 29143 (Aug. 2021) (www.nber.org/system/files/working-papers/w29143/w29143.pdf).

[101] Proposing Release at 133.

[102] https://www.davispolk.com/insights/client-update/how-funds-view-and-vote-shareholder-proposals.

support rescission, given the acknowledged benefits of Rule 14a-8 that would be lost, which are discussed below.

C. Understated and/or omitted significant categories of costs associated with rescission

The costs associated with rescission fall into two categories: (1) direct costs imposed on proponents and other shareholders, and potentially on issuers; and (2) indirect costs flowing from the loss of value-increasing proposals, which affect issuers and, by extension, their shareholders. The SEC grossly underestimates both kinds of costs, and fails to address certain categories of costs at all in the Proposing Release.

1. The Commission glosses over or completely ignores significant costs that would accrue to proponents from rescission, including the prohibitive cost of independent solicitations, and the cost of navigating a patchwork system governing communication with companies.

The Commission admits that shareholders seeking to present proposals post-rescission will face increased costs as a result of having to conduct their independent solicitations, or will be required to shift to vote no campaigns against directors and management compensation proposals. However, the costs attributed to independent solicitations by the Commission in the Proposing Release are orders of magnitude smaller than the costs proponents would face following rescission in attempting to replicate the distribution afforded by Rule 14a-8 or even distribute materials widely enough to have a decent chance of obtaining substantial support, especially if the proposed changes to Rule 14a-4(c) are adopted.

The Proposing Release uses inappropriate and incomplete data to estimate independent solicitation costs.[103] First, the data is outdated. The Commission's estimate of independent solicitation costs for a first mailing of $14,000 was derived from its 2021 universal proxy card ("UPC") rule making.[104] The Commission obtained the data it used for that calculation from a "proxy services provider," which is likely Broadridge, and even then the data was stale.[105] As well, a median value does not likely represent costs for solicitations at the larger capitalization companies that receive most shareholder proposals, nor does it reflect the broader solicitation efforts that will be necessary if the proposed changes to Rule 14a-4(c) are adopted.

Broadridge declines to provide cost estimates to shareholders without a concrete contest at hand. However, by using share range analyses Broadridge was willing to share, the per-account distribution cost, information about other fees such as the nominee and stratified mailing fees, and a contested estimation tool shared by a shareholder that conducted an independent

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[103] The material in this section addresses Question 38 of the Release.

[104] Proposing Release at 42-43.

[105] "Universal Proxy," Exch. Act Rel. No. 93596, at 110 (Nov. 17, 2021) (hereinafter, "UPC Release").

solicitation relatively recently, the SOC Investment Group produced a rough estimate of total mailing costs to reach holders of different proportions of shares at companies of various sizes.[106]

Size	Cost to reach 67%	Cost to reach 80%	Cost to reach 100%
Large-capitalization	$32,500	$266,000	$47.7 million
Mid-capitalization	$17,000	$44,000	$1.9 million
Small-capitalization	$13,500	$25,000	$411,000

In addition to distribution costs, the proponent of an independent solicitation must pay for legal advice to comply with the company's advance notice bylaw provision - a recent law review article pegged this cost as "easily run[ning] into the hundreds of thousands of dollars"[107] - as well as draft the proxy statement, and respond to Staff comments on it. The legal fees for an independent solicitation are many orders of magnitude larger than those incurred in connection with Rule 14a-8 proposals.

They can also vary a great deal. Litigation over a wrongful rejection of a proponent's notice under the advance notice bylaw, could cost "millions of dollars," according to one scholar.[108] An aggressive defense by the company could necessitate more communications - with concomitant legal review - than originally contemplated, and there could be litigation over the proponent's proxy materials or the validity of the proposal itself.

Finally, solicitation costs are a major cost component for an independent solicitation. In the UPC rule making, the Commission asserted that the bulk of the median expenditure of $750,000 for a dissident director contest was due to "discretionary solicitation activities."[109] Although a director contest likely calls for a more intense solicitation effort than a shareholder proposal, proxy solicitor costs are likely to be substantial.

Moreover, for proponents to navigate the inevitable tangle of state laws and issuer-specific standards that is likely to emerge from a post-rescission landscape, the costs could be particularly prohibitive for proponents - a significant area of cost that the Commission failed to even reference in their Proposing Release. A fragmented system of state-law and issuer-specific standards would impose meaningful monitoring and compliance costs on potential proponents. To preserve the option of submitting proposals, a shareholder would need to monitor state-law developments in all states in which portfolio companies are domiciled, as well as issuer-specific arrangements at portfolio companies. (The latter task could be triaged, possibly by performance

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[106] https://www.linkedin.com/posts/soc-investment-group_corpgov-shareholderrights-activity-7523130071688159233-XJiv

[107] Benjamin C. Bates, "Rewriting the Rules for Corporate Elections," New York Univ. L. Rev., Vol. 100, No. 3, 635, 694 (June 2025) (available at https://nyulawreview.org/issues/volume-100-number-3/rewriting-the-rules-for-corporate-elections/).

[108] *Id*. at 694.

[109] UPC Release at 110.

or governance quality, but that sorting process would entail its own costs.) As this is not a service that currently exists, it is not possible to estimate the cost with precision.

Both state-law and issuer-specific rules would necessitate collection of numerous parameters, such as eligibility thresholds, procedural requirements, substantive limitations on proposal subjects, dispute resolution processes, and, in the case of state-law frameworks, whether issuers can opt in or opt out from coverage. Issuer-specific proposal arrangements could be incorporated into a broader corporate governance data service, though the data would likely command a premium price due to its complexity and location in company bylaws rather than more easily parsed proxy statements. Dealing with many different frameworks would increase compliance costs in connection with proposal submission, as well, as proponents would almost certainly lack internal legal expertise on the range of drafting and procedural considerations.

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2. The Proposing Release focuses on illusory benefits to non-proponents but ignores significant cost

The Proposing Release focuses on benefits of rescission to shareholders that do not submit shareholder proposals, cost savings which, as we show above are illusory. But the complexity and fragmentation of the post-rescission proposal landscape will impose offsetting costs as well. Rule 14a-8 and the Commission Staff's interpretation of it limit the proposals on which shareholders are asked to vote. For instance, proposals on employee compensation have historically been excludable under Rule 14a-8's ordinary business exclusion. For that reason, an institutional investor need not devote resources to deciding how it should analyze and vote on such proposals; even if a rare proposal should appear on a proxy due to the issuer not challenging it, the investor can abstain.

Following rescission, the universe of proposals and the range of topics could expand significantly. The White Paper and Discussion Draft released this month by Delaware's Corporation Law Council setting forth the Council's recommendation for a Delaware statutory provision to replace Rule 14a-8 does not include an ordinary business exclusion.[110] Shareholders could thus be faced with drafting proxy voting guidelines and making voting decisions on many unfamiliar subjects, which could call for outside legal and consulting advice.

A less constrained set of potential proposals would require institutional shareholders to revise their proxy voting guidelines and update them more often to ensure that the full range of proposal formulations is covered. As part of that process, shareholders would need to monitor (or pay someone else to monitor) developments in the laws of all states where issuers in their portfolio are domiciled. As this is not a service that currently exists, it is impossible to provide cost estimates for it. Drafting guidelines on new subjects or formulations would entail research and analysis to determine appropriate approaches and factors to use in proxy voting decisions.

The range of proposal topics might also constrict, rather than expand, in a regime governed by state law and/or company-specific frameworks. In that event, many of ICCR's members would revise their guidelines to ensure that their views on matters previously addressed by Rule 14a-8 proposals are reflected in their approach to voting on management proposals. For example, a shareholder whose current guidelines support requests for disclosure on a topic that can't be addressed through a shareholder proposal post-rescission could revise its guidelines to advise withholding support or voting against directors serving on a committee whose oversight of that topic falls short. The continuous monitoring and updating of state-law frameworks and company-specific arrangements, followed by ongoing updating of proxy voting guidelines to tailor them to the evolving legal landscape imposes real costs on shareholders that should be considered in the economic analysis.

D. Indirect costs of rescission: Benefits provided by Rule 14a-8 that would be lost

In the U.S. corporate governance system, management is centralized in the board of directors, which state corporate law gives extensive power to manage the business and affairs of the corporation. Shareholders' loss of control gives rise to frictions that economists call "agency costs," and many problems in corporate law are analyzed through the lens of minimizing those costs.[111]

Agency costs, which include managerial misbehavior, short-sightedness, and incompetence, can be reduced by accountability-promoting governance arrangements and shareholder interventions focused on ling-term value creation. Shareholder interventions at

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[110] Corporation Law Council, "White Paper and Discussion Draft for Revisions to the Delaware Law on Stockholder Proposals," at 16, A5-A6 (Nov. 9, 2026) (https://sos.delaware.gov/wp-content/uploads/sites/14/2026/11/White-Paper-on-Stockholder-Proposals.pdf) (hereinafter, "Delaware White Paper").

[111] See, e.g., Adolf A. Berle & Gardiner Means, The Modern Corporation and Private Property 112-116 (1967)

publicly traded companies with dispersed shareholders occur less often than would be optimal due to the "collective action problem." As one economist has described it:

> No shareholder can capture the full gains from monitoring a firm's managers. The benefits from such monitoring efforts will accrue to investors according to the size of their holdings, not according to their monitoring efforts. Because other shareholders can take a free ride on the monitoring efforts of any one shareholder, no individual shareholder has much of an incentive to expend resources in monitoring managers.

Rule 14a-8 ameliorates the collective action problem by providing a cost-efficient means of shareholder communication—the issuer's proxy statement. The Commission's Investor Advisory Committee ("IAC") has recognized this benefit, stating that shareholder proposals "can address potential agency costs—reduction in value caused by managerial entrenchment—and a broad stream of academic research shows that shareholder proposals have demonstrably done so over the past twenty years."[112]

The Commission systematically underestimates the benefits that would be lost as a result of rescission. It ignores research about the value produced by governance reforms and transparency improvements; sweeps aside evidence of the disproportionate share of majority-supported shareholder proposals submitted by retail investors; disregards the value of settlements, including those following sub-majority votes; and omits benefits of the Rule's communication function for non-proponent shareholders and issuers that do not receive proposals. Lowballing the benefits of the Rule prevents the Commission from establishing an accurate economic baseline and rigorously analyzing the likely impact of the Proposal, as required by case law and the Guidance.

X. For Over Eight Decades, Shareholder Proposals Have Been a Critical Mechanism for Promoting Positive Change in Corporate Governance and Corporate Risk Mitigation

Shareholder proposals allow shareholders to press for value-increasing reforms to corporate governance, policies, and reporting practices. Governance arrangements that insulate boards and managements from shareholder influence, in particular, have been shown in many studies to be associated with poorer company performance. For example, research has found that classified boards cause a statistically significant 18.15% reduction in firm value.[113] A constellation of five entrenching governance arrangements, including classified boards, was associated with lower firm value.[114] And in another study, companies with the strongest showing

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[112] Recommendation of the SEC Investor Advisory Committee (IAC) Relating to SEC Guidance and Rule Proposals on Proxy Advisors and Shareholder Proposals, at 16 (Jan. 24, 2020).(www.sec.gov/spotlight/investor-advisory-committee-2012/sec-guidance-and-rule-proposals-on-proxy-advisors-and-shareholder-proposals.pdf) (the "2020 Recommendation").

[113] Olubunmi Faleye, "Classified Boards, Firm Value, and Managerial Entrenchment," 83 J. F. Econ. 501 (2007).

[114] Lucian Bebchuk et al., "What Matters in Corporate Governance," Rev. Fin. Stud., Vol. 22, No. 2, 783-827 (Feb. 2009) (https://papers.ssrn.com/sol3/papers.cfm?abstract_id=593423).

on an index measuring shareholder rights enjoyed abnormal returns of 8.5% per year, while companies with the worst scores had lower profitability and sales growth.[115] A 2017 study analyzed more recent data and found that S&P 1500 companies with higher scores on a takeover defense index had significantly lower firm value and profitability than those with lower scores, and the negative correlation was even stronger for companies with a poison pill, staggered board, and limits on shareholder charter/bylaw amendment.[116]

Researchers have also found a link between shareholder-empowering governance arrangements and better company financial performance. According to 2018 Bank of America internal research, "investors could have avoided almost all of the bankruptcies of the last several years by avoiding companies that do not have good metrics on ESG."[117] An analysis of the academic literature by Deutsche Asset & Wealth Management and researchers from the University of Hamburg found that 62.3% of meta-analyses showed a positive relationship between shareholder-friendly corporate governance and corporate financial performance.[118] Higher levels of board and top management diversity correlate with superior financial performance along numerous dimensions.[119]

Companies are less likely to make value-enhancing changes to their corporate governance arrangements if they do not receive a shareholder proposal. A 2019 study found that a company was 7.3% more likely to change any of eight governance arrangements in a year it

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[115] Paul Gompers et al., "Corporate Governance and Equity Prices," Quant. J. Econ., 118(1), 107-155 (Feb. 2003) (https://papers.ssrn.com/sol3/papers.cfm?abstract_id=278920).

[116] Sydney Siahaija, "Takeover Defenses and Firm Performance," at 25-26, 28 (2017) (https://thesis.eur.nl/pub/38611).

[117] Bank of America 2018 Annual Report, at 8 (available at https://archive.org/download/01-bank-of-america-bac/Bank%20of%20America%20%28BAC%29%20Annual%20Report%202018.pdf).

[118] Gunnar Friede et al., "ESG and Corporate Financial Performance: Mapping the Landscape," p.7 (Dec. 2015) (https://institutional.dws.com/content/_media/K15090_Academic_Insights_UK_EMEA_RZ_Online_151201_Final_(2).pdf).

[119] *See* https://newsroom.bankofamerica.com/system/files/2019_Environmental_Social_Governance.pdf; Credit Suisse, "Does Gender Diversity Improve Performance?" Jul. 31, 2012 (https://www.credit-suisse.com/us/en/about-us/research/research-institute/news-and-videos/articles/news-and-expertise/2012/07/en/does-gender-diversity-improve-performance.html); Vivian Hunt, Dennis Layton & Sara Prince, "Diversity Matters," McKinsey & Company, Feb. 2, 2015 (http://www.diversitas.co.nz/Portals/25/Docs/Diversity%20Matters.pdf); see also Guido Giese, "Foundations of ESG Investing: How ESG Affects Equity Valuation, Risk, and Performance," J. Portfolio Mgmt., at 4-5 (July 2019) (https://www.msci.com/documents/10199/03d6faef-2394-44e9-a119-4ca130909226) (finding that high ESG-rated companies paid higher dividends, earned more profits, and had fewer "idiosyncratic risk incidents" involving large stock price drops).

[119] Vivian Hunt, Dennis Layton & Sara Prince, "Diversity Matters," McKinsey & Company, Feb. 2, 2015 (http://www.diversitas.co.nz/Portals/25/Docs/Diversity%20Matters.pdf); see also Guido Giese, "Foundations of ESG Investing: How ESG Affects Equity Valuation, Risk, and Performance," J. Portfolio Mgmt., at 4-5 (July 2019); Vivian Hunt, Dennis Layton & Sara Prince, "Diversity Matters," McKinsey & Company, Feb. 2, 2015 (http://www.diversitas.co.nz/Portals/25/Docs/Diversity%20Matters.pdf); see also Guido Giese, "Foundations of ESG Investing: How ESG Affects Equity Valuation, Risk, and Performance," J. Portfolio Mgmt., at 4-5 (July 2019)

received a shareholder proposal than in a year that it did not. The eight included several governance arrangements that were the focus of studies discussed above, including proposals to declassify the board, rescind a poison pill, eliminate supermajority vote requirements, and give shareholders the right to call a special meeting.[120] The results of the successful campaign by union pension funds to persuade issuers to switch from a plurality vote standard for director elections to a majority standard,[121] and the New York City pension funds' proposal initiative that led 139 companies to adopt proxy access bylaws,[122] provide anecdotal evidence of this connection.

A. The Studies Cited in the Proposed Release are Flawed or Incomplete, and Significant Evidence Exists to Show the Longer-Term Benefits of the Shareholder Engagement Process

A 2023 meta-analysis of 67 studies on "short-term price responses to shareholder activism campaigns" by Josef Bajzik and three co-authors is featured in the Proposing Release.[123] That study found that "shareholder activism creates value but, after controlling for selective publication of empirical [findings], its magnitude is more modest than commonly thought."[124]

Contrary findings from other event studies are not analyzed. Though we believe that event studies have serious limitations, as discussed below, the Commission should explain why it highlighted the Bajzik study.[125] A study by Cuñat et al. comparing governance shareholder proposals that narrowly achieved majority support with those that fell just short of a majority found that "on the day of the vote, a shareholder governance proposal that passes yields an abnormal return of 1.3% relative to one that fails," with larger impacts for proposals addressing the management insulating governance structures that have been extensively studied and are described above. [126] This finding contradicts the Proposing Release's statement that "the academic literature does not consistently identify proposals from any particular proponent category (or proposal subject matter) as uniformly value-enhancing or value-reducing."[127]

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[120] John G. Matsusaka et al., "Opportunistic Shareholder Proposals by Union Shareholders," at 32 and Table 13 (2018) (available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2666064)

[121] https://corpgov.law.harvard.edu/2019/02/06/the-long-view-the-role-of-shareholder-proposals-in-shaping-u-s-corporate-governance-2000-2018/

[122] https://governance.weil.com/insights/nyc-comptroller-sets-his-sights-on-board-composition-diversity-and-refreshment-announces-boardroom-accountability-project-2-0/

[123] Josef Bajzik et al., "Does Shareholder Activism Create Value? A Meta-Analysis," at 10 (2023) (available at https://www.econstor.eu/bitstream/10419/272232/1/activism.pdf).

[124] *Id*. at 20.

[125] The Guidance requires the Commission to explain why it gives more weight to some empirical studies than others. Guidance, at 14.

[126] Vicente Cuñat et al., "The Vote is Cast: The Effect of Corporate Governance on Shareholder Value," at 4 (2010) (available at https://www.nber.org/papers/w16574)

[127] Proposing Release at 145.

The value of the shareholder proposal process or particular kinds of proposals should not be evaluated using short-term stock price movements. There is significant uncertainty, following a vote on a proposal, about whether, how and when it will be implemented, given that nearly all proposals are precatory. Discussing the lack of a stock price bump from shareholder proposals, as opposed to other kinds of activism, the Bajzik study stated that "due to the non-confrontational nature of shareholder proposals and the uncertainty over whether they will ultimately be approved the stock price response to this type of activism is less positive."[128]

Shareholder proposals are not designed to produce the kind of near-term stock price bump measured by event studies. The changes promoted in proposals aim to enhance value over the long term through increased accountability and transparency,[129] consistent with long-term investment horizons of many institutional investors, including ICCR members. Indeed, through imposition of share ownership duration requirements, the Commission has made a judgment that the proxy statement communications channel should be available only to longer term shareholders. Finally, stock price event studies reflect market participants' expectations during a short window about the implications of proposal-related developments, which may be wrong. Share price reactions on the day of a shareholder proposal vote may reflect market participants' beliefs about other matters on the ballot at that meeting, such as director elections and approval of executive compensation arrangements.[130]

A second short-term stock price event study on which the Proposing Release relies rests on several unrealistic assumptions. A study by John Matsusaka and two co-authors analyzed stock price reactions to no-action determinations by the SEC Staff and found, on average, favorable stock price reactions to determinations allowing exclusion. The authors concluded that investors view shareholder proposals as value reducing, especially those submitted by individuals.[131]

Questionable assumptions inherent in this study include that institutional investors' investment staff have a view on precatory shareholder proposals, know about the no-action process and monitor the release of determinations, and trade on determinations during a 10-day period after issuance. Most institutional investors separate the investment and stewardship functions,[132] so it is unlikely that investment staff know about non-binding proposals or the no-action process. Monitoring for no-action determinations relevant to an institution's portfolio

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128 Bajzik, *supra* note 123 at 31.

129 Cuñat, *supra* note 126 at 3.

130 Given that companies do not have to disclose vote results until several days after a shareholder meeting, share price movements on the meeting day may not incorporate information about such results.

131 John G. Matsusaka et al., "Can Shareholder Proposals Hurt Shareholders? Evidence From Securities and Exchange Commission No-Action-Letter Decisions," J. Law and Econ. Vol. 64, at 109 (Feb. 2023).

132 Lucian Bebchuk & Scott Hirst, "Index Funds and the Future of Corporate Governance: Theory, Evidence, and Policy," 119 Colum. L. Rev. 2029, 2063 (2019) (available at https://columbialawreview.org/content/index-funds-and-the-future-of-corporate-governance-theory-evidence-and-policy/)

holdings, which do not appear on the Commission's EDGAR system, would be more difficult than staying on top of periodic filings. And the window period in Matsusaka's study is calculated from the "decision date" on the determination, but determinations are generally uploaded to the Commission's web site several days after the date on the determination with a further delay before they are available on legal databases such as Lexis.[133] As a result, the study measured price movements during a time when only the issuers and proponents know the disposition of the requests. The authors admit that the study's universe, proposals that companies sought to challenge (approximately 37% of proposals), is not representative and "possibly overrepresents the population of bad proposals."[134]

The literature does identify longer-term benefits of shareholder engagement. A 2018 study of global engagements primarily on environmental and social issues found that successful engagements led to higher sales growth and that successfully engaged firms with low ESG scores prior to engagement had statistically significant excess cumulative abnormal returns compared with similar non-engaged firms in the year after the end of the engagement."[135] Cuñat found that companies where a governance proposal passed engaged in fewer acquisitions and had lower capital expenditures, both viewed as "proxies for empire building and potentially inefficient behavior," and had higher firm value as measured by Tobin's Q, in the several-year period following the meeting.[136] The Commission dismisses the Cuñat study in a footnote on the ground that Tobin's Q is imprecise - despite the fact that it is one of the most commonly used measures of firm value in economics research - and that the study's focus on closely-contested votes "may mean its findings are less applicable to less contested votes."[137]

The Guidance directs the Commission to use the "best available information about a rule's likely economic consequences."[138] The robust empirical research on takeover defenses, and the strong link between shareholder proposals and elimination of such defenses, enable a rough approximation of the value of just one group of those proposals, filed in connection with the Harvard Shareholder Rights Project's ("SRP's") campaign for board declassification among S&P 500 and Fortune 500 companies. In that campaign, which ran from 2011 to 2014, investors assisted by the SRP submitted 196 shareholder proposals seeking board declassification. One hundred twenty-one of the companies that received proposals agreed to declassify.[139]

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133 https://supportcenter.lexisnexis.com/app/answers/answer_view/a_id/1089185/~/how-to-find-sec-no-action%2C-exemptive%2C-and-interpretive-letters

134 Matsusaka, *supra* at 119.

135 Tamas Barko et al., "Shareholder Engagement on Environmental, Social, and Governance Performance" (Sept. 2018) (https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2977219).

136 Cuñat, *supra* note 83, at 5, 40.

137 Proposing Release at 145 n.391.

138 Staff Memorandum at 1.

139 www.sec.gov/Archives/edgar/data/1600422/000092189522001556/ex995to13da109271001_051022.pdf

The Faleye study discussed above, which found that board classification was associated with 18.15% lower firm value as measured by Tobin's Q, estimated the impact of board classification on the median firm's market value at -$74.6 million.[140] Board declassifications spurred by the SRP's Rule 14a-8 proposals thus enhanced the value of those 121 companies by approximately $9 billion. That figure represents over 227 years of issuers' $39.6 million cost savings from rescission.

Likewise, shareholder proposals requesting a policy providing for misconduct-triggered executive compensation clawbacks have also yielded concrete benefits. The New York City pension funds advocated in a 2013 shareholder proposal that Wells Fargo adopt a strengthened clawback; the policy adopted in response to the proposal later provided the basis for recovering $60 million from two senior executives following the company's fake-accounts scandal. That figure, the result of a single proposal, is nearly double the estimated annual cost savings from rescission across all issuers and does not include the value of deterring misconduct at Wells Fargo and other companies. There is evidence, as well, that clawback policies that apply in the case of restatements not involving fraud lead to better-quality financial reporting,[141] which provides concrete value to shareholders.

The Proposing Release relies heavily on voting results as a measure of the value of shareholder proposals. It states, "The fact that many proposals often receive less than majority support suggests that they may address issues of interest primarily to a minority of shareholders rather than shareholders more broadly and therefore can result in costs without commensurate benefit," though it concedes that "minority support alone does not mean a proposal is not important or of no value to the company."[142]

The voting results yardstick and emphasis on majority votes are flawed for several reasons. As discussed below, Rule 14a-8 performs several functions that do not depend on majority or even high levels of voting support: It facilitates communication among shareholders and between shareholders and management, aggregates shareholder preferences, and can provide an early warning of emerging issues.

Voting results, by definition, exclude proposals that were settled and therefore withdrawn before they could be voted on. It is not unreasonable to assume that a company's willingness to implement a proposal reflects, at least to some extent, the view that it could obtain significant voting support. Thus, the universe of proposals on which shareholders end up voting may be

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[140] Olubunmi Faleye, "Classified Boards, Firm Value, and Managerial Entrenchment," 83 J. F. Econ. 501, 509 (2007). The impact on the average firm's market value was much higher, at $795 million.

[141] Ed DeHaan et al., "Does Voluntary Adoption of a Clawback Provision Improve Financial Reporting Quality?" (2013) (https://www.researchgate.net/profile/Ed-Dehaan/publication/256018059_Does_Voluntary_Adoption_of_a_Clawback_Provision_Improve_Financial_Reporting_Quality/links/644a7bea97449a0e1a605bb7/Does-Voluntary-Adoption-of-a-Clawback-Provision-Improve-Financial-Reporting-Quality.pdf).

[142] Proposing Release at 129.

skewed toward new proposals, for which predictions are less reliable, and weaker proposals on which the company saw little downside from going to a vote.

We are unaware of empirical research on this question, but anecdotal evidence supports it. For example:

- The New York City Comptroller submitted 72 proposals on proxy access in 2016, with 52 settling before going to a vote.[143] That season, shareholder support for proxy access proposals averaged 51.1%.[144]

- The Investors for Opioid Accountability ("IOA") initiative, co-led by an ICCR member, achieved pre-vote settlements of half of the 52 proposals submitted by IOA members over several years; of the remaining 26 proposals that went to a vote, seven - or 27% - received majority support.[145]

Although the Proposing Release calls the legitimacy of settlements into question, only six years ago the Commission recognized them as a desirable outcome. In adjusting upward the resubmission thresholds contained in Rule 14a-8, the Commission stated that "we believe that the new thresholds may also serve as better indicators of the likelihood that a proposal will result in an agreement between the company and the shareholder-proponent or raise management's awareness of an issue."[146]

Votes short of a majority can indicate significant shareholder concern and lead to value-enhancing changes. The IAC's 2020 Recommendation explained why even proposals that fail to garner majority support provide important benefits:

> [S]hareholder proposals have increasingly led institutional investors—informed by proxy advisors—to become much more sophisticated and focused in their analyses of these topics. The routinized discipline of companies and shareholders being required to engage in debates over shareholder proposals reduces uncertainty and information asymmetries, increasing market efficiency.[147]

For example, in connection with the IOA initiative, ICCR member Sisters of St. Francis of Philadelphia submitted a proposal asking AmerisourceBergen to issue a report on board oversight of opioid-related risks. Despite the fact that the proposal received support from 41% of

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[143] New York City Comptroller, New York City Pension Funds 2016 Shareowner Initiatives: Postseason Report, at 6-7, 8-10, 18-20 (2016).

[144] https://corpgov.law.harvard.edu/2016/08/26/the-2016-proxy-season-proxy-access-proposals.

[145] Investors for Opioid Accountability, "Two-Year Progress Report," at 1, 3 (2019) (https://www.iccr.org/reports/iopa-two-year-summary-report/) (hereinafter, "IOA Report").

[146] "Procedural Requirements and Resubmission Thresholds under Exchange Act Rule 14a-8," Exch. Act Rel. No. 89964, at 68 (Sept. 23, 2020) (hereinafter the "2020 Release").

[147] 2020 Recommendation, *supra* note 112, at 16.

shares voted, the company agreed to produce the requested report.[148] In 2016, holders of 41% of Chevron's shareholders voted at the meeting supported a proposal filed by ICCR member Wespath Investment Management and Hermes EOS asking the company to publish an annual assessment of long-term portfolio impacts relating to the transition to a low-carbon economy. The proposal was refiled for the 2017 season, but it was withdrawn because Chevron issued a report that was responsive to the request.

There is also a timing problem inherent in the Commission's approach. It can take time to socialize a proposal and for shareholders to amend their proxy voting guidelines to cover it, necessary steps to generate substantial voting support. During a period of debate over a proposal, empirical research may be conducted that supports adoption. In 1987, support for board declassification proposals averaged 16.8%; by the 2018-2019 seasons, that average was over 80%.[149] In the 2000s, the studies cited above provided evidence that takeover defenses, especially classified boards, had a negative effect on firm value and performance. It makes no sense to posit that a board declassification proposal lacked value when it received 16.8% support, but became valuable once a shareholder consensus had developed and majority support became commonplace.

The Proposing Release contrasts current proposal voting results with supposedly more robust support levels obtained during the early decades of the Rule's existence. The only support provided for this notion is a statement by Commission Chair Ganson Purcell that proposals were often "accepted by managements" and received "respectable percentages of the votes cast," though the Commission admits that it doesn't know what those "respectable percentages" were.[150] A 1954 law review article analyzing shareholder proposal voting results from 1948 to 1951 found that 60% of proposals achieved less than 8% voting support.[151] Only seven proposals, or 2.3%, achieved majority support.[152] To Chair Purcell, these may have been "respectable percentages" at the time, but they are meaningfully lower than current proposal support levels.

The Commission's analysis of lost benefits suffers from a rhetorical defect throughout which prevents it from satisfying the requirement to weigh costs and benefits and explain the reasons for its assessment. Repeatedly, the Proposing Release states that the extent or even direction of an impact depends on some factor. It then describes the ways that factor could influence the impact, in some cases even mentioning evidence that should affect an assessment of which direction or magnitude is the more likely outcome. However, rather than use all available information to make a judgment, the Commission simply moves on to another part of the discussion.

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148 IOA Report at 12.

149 https://www.sec.gov/comments/s7-23-19/s72319-6729684-207400.pdf, at 19 n.43.

150 Proposing Release at 35 n.106

151 Frank D. Emerson & Franklin C. Latcham, "The SEC Proxy Proposal Rule: The Corporate Gadfly," Univ. Chicago L. Rev., Vol. 19, 807, 830 (1950).

152 *Id.* at 828.

An example of this technique can be found on page 163 of the Proposing Release, which discusses the crucial issue of whether rescission and the proposed changes to Rule 14a-4 would lead to a loss of value-enhancing proposals:

> The economic significance of these composition effects [the elimination of certain proposals due to the increased costs associated with independent solicitations] depends on the direction of the filtering effect. If the proposals most likely to exit the system are those with the weakest underlying shareholder support, companies and shareholders would benefit from a reduction in the burden of reviewing and voting on proposals that do not reflect broadly shared concerns. If, however, the proposals that would most likely not be presented are those with stronger underlying shareholder support - as the individual proponent data suggest is possible - the composition effect would represent a cost rather than a benefit, as the set of proposals that might include value-enhancing proposals would no longer be submitted. Further, independent solicitations have historically received significant shareholder support (close to half of them passed during the 2022-2025 period). Thus, to the extent the proposed amendments to Rule 14a-4(c) reduce these submissions, this could represent a cost.

The individual proponent data referenced in this discussion finds that voting support for proposals sponsored by individual proponents tend to achieve significantly higher voting support,[153] which the Commission considers a proxy for value. As discussed above, rescission would require that proponents who wish to pursue proposals shift to independent solicitations, which are far more costly than proposals submitted pursuant to the Rule (and would become even more costly than they are now upon adoption of the proposed Rule 14a-4(c) changes). Because proponents' budgets are limited, many fewer proposals would be submitted. The Proposing Release asserts that the "economic significance"[154] of this dramatic reduction depends in large part on the extent to which the foregone proposals would have been value-enhancing.

It is true that one cannot forecast precisely how many proposals individual shareholders would pursue via independent solicitation. Even if individual proponents are able to spend more than their current outlay on Rule 14a-8 proposals, the cost of pursuing even a quarter of the proposals as independent solicitations would be preclusive. Simply put, the very proponents whose proposals are deemed most valuable by the Commission would be most disadvantaged by rescission.

The speculation that proponents whose motivations for submitting proposals are "primarily to make a statement, generate publicity, or put a governance concern on the record, rather than to garner majority support," might not reduce the number of proposals they pursue

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[153] Proposing Release at 163.

[154] *Id.*

following rescission lacks support.[155] The Commission declines to identify any such proponents. Institutional investors like ICCR's members, many of which are subject to fiduciary constraints, are unlikely to submit proposals for those reasons, even in the lower-cost environment provided by Rule 14a-8. Press accounts of prominent individual investor proponents suggest that most have relatively modest financial resources, certainly not enough to pursue the same number of independent solicitations as Rule 14a-8 proposals.[156] The Commission's agnosticism on the likely impact of rescission on value-enhancing proposals runs counter to the evidence in the record and abdicates its responsibility to provide reasoned support for the Proposal.

B. Shareholder Proposals can Create a Valuable Early-Warning System on Emerging Risks, and are a Crucial Mechanism for Communication between Shareholders, Boards, and Management

Another benefit of the shareholder proposal process that is not easily quantified is providing shareholder voice. This function is more valuable in the current investing environment where passive investment strategies limit shareholders' ability to do the "Wall Street Walk" and sell shares if they are dissatisfied with management. There is some overlap between this benefit and the ability, discussed above, to bring about value-enhancing reforms. But facilitating communication among shareholders and between shareholders and management also has independent value.

Proponents surely benefit from the Rule's facilitation of communication. Rule 14a-8 provides a channel for communicating with all of the company's shareholders and aggregating shareholders' preferences through the vote. Negative feedback in the form of a very low vote may communicate to the proponent that the issue addressed in the proposal is not of concern to other shareholders. More subtly, a large number of abstentions may signal that while those shareholders appreciate the importance of the issue, they are unpersuaded that the specific action suggested in the proposal is the right action for the company to take. Proponents can use this feedback to adjust their approaches.

Non-proponent shareholders also exercise voice via Rule 14a-8 proposals. Many institutional investors, especially asset managers, are unlikely to sponsor a proposal, because they are reluctant to offend issuers that are clients or prospective clients, costs associated with pursuing advocacy would be difficult to absorb in an environment where fees are under pressure, or regulatory interpretations deter advocacy. As Professors Ronald Gilson and Jeffrey Gordon put it, mutual funds are "rationally reticent" - they "will respond to proposals but are unlikely themselves to create them."[157] Such stewardship is especially valuable for indexed funds and

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[155] *Id.* at 161.

[156] *See* Steven Davidoff Solomon, "Grappling With the Cost of Corporate Gadflies," The New York Times (Aug. 20, 2014).

[157] Ronald J. Gilson & Jeffrey N. Gordon, "The Agency Costs of Agency Capitalism: Activist Investors and the Revaluation of Governance Rights," 113 Colum. L. Rev. 863, 867 (2013) (columbialawreview.org/content/the-agency-costs-of-agency-capitalism-activist-investors-and-the-revaluation-of-governance-rights/); see also Bebchuk & Hirst, at 2063 ("Index fund managers may be more deferential to managers of particular companies

investors employing passive equity strategies in which selling shares when dissatisfied is not an option.

Communication via the Rule 14a-8 proposal process is not limited to the proponent and issuer. Shareholders that are not proponents can gain information about management from its response to proposals. Statements in opposition to proposals, which appear in the proxy statement, can contain information not disclosed elsewhere. The presence of a shareholder proposal on the proxy statement can also lead to the distribution of supplemental communications urging shareholders not to support the proposal, which may allow shareholders to glean other insights.

The Rule's communication function can aid issuers as well, by ensuring that the board has access to outside perspectives. Boards and management teams tend to be drawn from homogenous backgrounds; two scholars of the Rule have noted that communication of views through Rule 14a-8 can "weaken the social and psychological forces that can insulate management and the board from alternative perspectives regarding the objectives of the firm and how they can be achieved."[158]

As noted above, Rule 14a-8 proposals can provide a valuable early warning system for emerging risks. Proposals filed by ICCR members warned several issuers about risks that later materialized, costing the issuers billions in fines and litigation settlements. For example:[159]

- Shareholders identified risks associated with subprime lending a full eight years before the financial crisis. In 2000 and 2001, shareholders submitted proposals to Household International, Inc., one of the largest subprime mortgage lenders, requesting that it comprehensively address the risks of its predatory lending practices. Household successfully excluded the 2000 proposal under the ordinary business exception but was forced to include the 2001 proposal. In 2002, Household settled claims for $484 million filed by nineteen states and D.C. that were based on its predatory subprime lending practices, and in 2003 the SEC instituted cease-and-desist proceedings against Household. That same year, HSBC acquired Household, and within four years HSBC had written off $11 billion in defaulted loans. In 2016, HSBC finally reached a $1.575 billion settlement in a class action over Household's predatory lending scheme that was filed in 2009. These predatory lending practices identified by shareholders in 2000 were industry-wide and ultimately caused the 2008 financial crisis and the Great Recession. 8.7 million jobs were lost, the Dow Jones dropped 53% in less than a year and a half, Lehman

with which they have (or hope to have) business ties than they are to managers of other companies. . . . Indeed, client favoritism is consistent with the empirical evidence.") (columbialawreview.org/content/index-funds-and-the-future-of-corporate-governance-theory-evidence-and-policy).

[158] J. Cox & R. Thomas, The SEC's Shareholder Proposal Rule: Creating a Corporate Public Square, Columbia Business Law Review at 1155-1156 (2022).

[159] *See* https://corpgov.law.harvard.edu/2026/10/08/shareholder-proposals-as-an-early-warning-system-for-corporate-risk-and-the-cost-of-ignoring-them.

Brothers declared the largest bankruptcy in history, and 3.8 million Americans lost their homes.

- Shareholder proposals submitted to Facebook/Meta every year from 2020 to 2025 asked the company to address risks related to child safety online. Despite the fact that the 2022 proposal received support from 56.7% of non-insider shares voted—Meta has a dual class stock structure that greatly amplifies insider voting power—the company declined to implement it. In 2026, Meta agreed to pay $18 billion to settle claims relating to the harms to children of the company's social media platforms.

- Johnson & Johnson opposed a 2022 shareholder proposal requesting that it stop selling talc-based baby powder, claiming that "decades of science have reaffirmed its safety." The company announced in July 2026 that it would pay $5.5-7 billion to settle litigation over health harms from the product.

- In 2015, 2016 and 2018, shareholders asked Monsanto (later bought by Bayer) to report on risks associated with its sale of glyphosate (Roundup), which the company opposed on the ground that the "the purported harms suggested in the proposal are simply unsubstantiated and unproven assertions improperly characterized as risks." In February 2026, the company settled a class action lawsuit alleging health harms from the product, agreeing to pay up to $7.25 million.

The Proposing Release acknowledges the possibility that signals sent through proposal outcomes could "provide benefits to companies (such as by enabling more informed corporate decisions, revealing shareholder dissatisfaction before it escalates to more disruptive forms of engagement, or prompting value-enhancing corporate policy changes)" and that loss of this signaling would "represent[] a cost of rescission."[160] Later in the Proposing Release, the Commission's characterization is less tentative: "[E]ngagement based on the Rule 14a-8 process provides companies with a lower friction, lower reputation cost mechanism to come to an agreement and learn about shareholder preferences"; loss of that mechanism could "increase costs for both proponents and companies."[161]

Although the Proposing Release recognizes these benefits, they are not considered in its economic analysis, and the Commission provides no justification for this omission. The qualifier "could" does not change the fact that the Proposing Release identifies clear costs of rescission and then ignores them; companies are, as the Commission recognizes, provided with a "lower friction, lower reputation cost mechanism" for shareholder engagement, and there is no conceivable way for this not to have at least some economic impact. This significant omission is wholly incompatible with the reasoned consideration required for agency decisionmaking. Overall, we believe that rescission would lead to issuers being less informed about shareholder views, given that there is no way to replicate the distribution to all shareholders and vote

[160] Proposing Release at 146-147.

[161] *Id.* at 138.

tabulation functions of Rule 14a-8 proposals, unlike the Commission, we think this is an obvious economic cost of rescission.[162]

The Commission has repeatedly affirmed the importance of the Rule in facilitating this shareholder communication function. In a 1982 release, for example, the Commission described the revisions made to the Rule over time as refining the bases for exclusion and "assuring the goal of security holder communication."[163] The Commission recognized the importance of the Rule to small investors in 1998, when it declined to raise the ownership threshold for submission beyond $2,000 "in light of Rule 14a-8's goal of providing an avenue of communication for small investors."[164]

In the experience of ICCR members, the rule is critical in facilitating meaningful engagement between shareholders and issuers, some of which will not engage unless a proposal is filed. The Proposing Release is dismissive of the importance of engagement, stating that "Although Rule 14a-8 was not adopted to serve as a means of shareholder engagement, we recognize for purposes of assessing the baseline that some shareholders use the Rule 14a-8 process as an engagement tool."[165] Only a few years ago, though, the Commission elevated the value of engagement. In 2020, when the Commission adopted amendments to Rule 14a-8, it justified a new requirement that proponents provide dates and times they are available to meet with companies by asserting that the requirement "may encourage more direct communication between the proponent and the company. This may foster potential beneficial shareholder engagement more generally; it may promote more frequent resolution of proposals outside the voting process."[166]

Finally, the preference aggregation and communication functions of the rule benefit companies that have not received a proposal on a particular subject. Those companies benefit by being able to ascertain general shareholder sentiment on the topic and, at least to some extent, to predict how their own shareholders are likely to vote. This broader communication benefit acts as a multiplier, facilitating the adoption of value-enhancing reforms such as majority voting in director elections beyond the specific companies that received proposals. Private engagement and less precisely tailored voting outcomes post-rescission, such as those resulting from vote no campaigns, would not provide that benefit.

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[162] This material addresses Question 45 in the Proposing Release.

[163] 1982 Proposing Release, *supra*.

[164] Exchange Act Release No. 40018 (May 21, 1998).

[165] Proposing Release at 112.

[166] 2020 Release, *supra* note 146, at 124.

XI. The Commission's perspective about the "Unintended Consequences" of Rule 14a-8 is not borne out in reality and does not provide a rationale for the full rescission of the rule.

The "unintended consequences" identified in the Proposing Release bemoans several aspects of the Rule's operation, characterizing them as "unintended consequences" that justify rescission. All of these purported unintended consequences rest on mischaracterizations of Rule 14a-8 and state-law developments or unsupported claims about how the Rule operated in the past or was originally intended to operate. None of these arguments makes a case for rescinding the Rule, which would exchange a low-cost, predictable, uniform federal regulatory regime for the chaos engendered by a patchwork of state-law rules (or lack thereof) and company-specific frameworks.

The Commission's first complaint is that Rule 14a-8 has effectively pre-empted state corporate law on shareholder proposals. If one accepts the Proposing Release's depiction of Rule 14a-8 as providing a federalized right to present a shareholder proposal at a shareholder meeting, independent of whether such a right exists under state law, the Commission's claim that the Rule supplants or displaces state corporate law might have merit. But that is not the case. Rule 14a-8 does not provide a substantive federal right to have a shareholder proposal considered at a shareholder meeting; this is demonstrated by the fact that deference to state-law limitations on proposal formulations is embedded in the Rule. See Rule 14a-8(j)(1). Rule 14a-8 facilitates proponents' exercise of their state-law proposal rights and provides non-proponent shareholders with information about proposals that will be presented at a meeting.

Perhaps recognizing this obstacle, the Proposing Release also makes the softer version of the argument, asserting that the existence of Rule 14a-8 has inhibited states' and companies' development of laws and company-specific frameworks to govern shareholder proposals. The Commission's assertion that this has occurred because states avoid "politically contentious decisions" and companies fear shareholder backlash[167] is belied by Texas' decision to enact a statute empowering companies to adopt a much higher ownership threshold for submitting a shareholder proposal. High-profile companies like Tesla and Exxon Mobil have opted, with shareholder approval, to shift their domicile to Texas. Even before the Commission has made a decision on rescission, Delaware's Corporation Law Council, which makes recommendations to the legislature, has stepped out with a proposal for its own shareholder proposal proxy access regime.[168] In 2009, in response to two kinds of Rule 14a-8 proposals, the Delaware legislature amended Section 112 and 113 of the Delaware General Corporation Law to make clear that a company's bylaws can provide for shareholder access to the proxy for the purpose of director nominations and reimbursement of short-slate director contests, respectively.[169]

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[167] Proposing Release at 51.

[168] *See* Delaware White Paper.

[169] https://www.olshanlaw.com/newsroom/alerts/Delwaware-Gerneral-Corporation-Law.

Similarly, if shareholders currently have the ability to coerce companies not to adopt proposal rules through private ordering by threatening to vote against directors or take other action, there is no reason to believe rescission would magically eliminate that threat. In fact, votes against directors are likely to become more common if Rule 14a-8 is rescinded. The Proposing Release's claim that rescission "would **ensure** that the appropriate bodies—i.e., State legislatures, courts, and, when permitted by relevant State law, companies—determine the circumstances under which proposals should be included in a company's proxy materials"[170] (emphasis added) is the kind of unsupported wishful thinking that cannot serve as the basis for rescission of a long-standing regulation that provides valuable benefits to proponents, other shareholders, and issuers.

The Proposing Release ignores the benefits of uniformity provided by the Rule.[171] The original rationale for Section 14(a)'s adoption, after all, was the inadequacy of state regulation prior to the Exchange Act's enactment. (As a 1940 law review article by Commission staff members put it, "the solicitation of proxies [prior to enactment of the proxy rules] was controlled, or it might be better described as uncontrolled, by appropriate state law."[172]

As discussed above, inconsistent eligibility, procedural, and substantive state-law or issuer-specific frameworks for shareholder proposals would impose monitoring and compliance costs on proponents and non-proponent shareholders. Given competition for state charters, and the fact that incorporation decisions are made by management, we anticipate a race to the bottom in which those states that do try to fill the vacuum created by rescission compete with one another to adopt the most management-friendly rules. State courts, which with the exception of Delaware lack experience with shareholder proposals, would be responsible for enforcement of those standards, generating uncertainty for both proponents and issuers. The Commission should describe any benefits created by this kind of variation and weigh them against the costs.

The Commission urges that providing shareholders with leverage to press for changes in governance arrangements or corporate behavior or to pursue private benefits is also an unintended consequence of Rule 14a-8.[173] This claim is hard to understand. It cannot be the case that the Commission is unaware that Rule 14a-8 facilitates shareholders' ability to advocate for changes in company governance or policy. "It is obvious to the point of banality ... that Congress intended by its enactment of section 14 ... to give true vitality to the concept of corporate democracy."[174] It seems quite likely that the Commission was aware that a basic premise of democracy is that constituents have leverage, and that ensuring meaningful avenues for protecting this leverage was an *intended purpose*. If it were not, then Rule 14a-8 actually *would* have been enacted outside the scope of authority Congress granted to the Commission.

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[170] Proposing Release at 51.

[171] The material in this section addresses Questions 8 and 9 in the Release.

[172] Sheldon E. Bernstein & Henry G. Fischer, "The Regulation of the Solicitation of Proxies: Some Reflections on Corporate Democracy," 7 U. Chi. L. Rev. 226 (1940)

[173] Proposing Release at 45.

[174] *Roosevelt.*, 958 F.2d at 421–22 (*quoting Med. Comm. for Hum. Rts.*, 432 F.2d at 676).

The Proposing Release expresses concern that proposal settlements are another unintended consequence, lamenting that "proponents may submit proposals to initiate a dialogue with a company when they have little or no intent for their proposals to actually be included in company proxy materials and voted on by fellow shareholders," perhaps out of a desire to obtain private benefits.[175] It is unclear why settling before rather than after a shareholder vote is viewed as particularly problematic—all one-on-one negotiations are by definition not transparent—unless one believes that companies systematically overestimate the likelihood of proposal success. That seems unlikely in light of the wide availability of institutional investor proxy voting guidelines and voting records and the expertise developed by proxy solicitors. As stated above, the Commission's suspicion of settlements is inconsistent with its 2020 views.[176]

The only support the Proposing Release provides for the assertion that settlement of proposals prior to a vote is inconsistent with the Rule's "original purpose" a law review article whose author expresses that opinion.[177] She does not, however, rely on evidence regarding Rule 14a-8's original purpose; rather, she argues that "traditional justifications" for the Rule, including its communication and agency cost mitigation functions, are inconsistent with negotiated settlements.[178] That claim, which is contestable, does not address the original purpose of Rule 14a-8. In any event, Rule 14a-8's "personal claim or grievance" exclusion can be relied on to exclude proposals where there is evidence that the proposal was submitted to secure a personal benefit.

Proponent concentration is the third unintended consequence identified in the Release. According to the Commission, the fact that a significant number of proposals is submitted by a small number of proponents is "counter to" how the Commission tended for the Rule to be used.[179] The Commission's evidence that early Commissions did not intend for individual proponents to submit multiple, even numerous, proposals consists of Commission Chair Ganson Purcell's assertion that the Rule was not intended as a channel for some proponent to "mak[e] a stump speech for some political party" and a later statement in a Commission release that Rule 14a-8 was not designed as a "publicity mechanism to further personal interests."[180] Neither of these statements, however, addresses the number of proposals a proponent may or should submit.

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[175] Proposing Release at 45, 47.

[176] 2020 Release, *supra* note 146 at 124.

[177] Release, at 45-46 & fns. 139-140.

[178] *See* Sarah C. Haan, "Shareholder Proposals and the Private Ordering of Public Elections," Yale L. J. Vol. 126, 262, at 287, 293, 341 (2016) (available at https://yalelawjournal.org/article/shareholder-proposal-settlements-and-the-private-ordering-of-public-elections).

[179] Proposing Release at 48.

[180] *Id*.

Evidence from the early decades of the Rule suggests that proponent concentration was the norm then. The 1954 study of shareholder proposals in the late 1940s and early 1950s reported that the Gilbert brothers had submitted 47% of the 286 proposals during that period and four other proponents had submitted another 24% of them.[181] Between 1987 and 1994, 22% of proposals were submitted by the Gilbert brothers and 15% by Evelyn Davis.[182] Proponent concentration is not inherently problematic; even assuming one believes it is, the Commission does not explain why revision of the Rule is not the appropriate response rather than rescission.

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We appreciate the opportunity to comment on this important rulemaking. We urge the Commission to recognize that its legal authority for Rule 14a-8 is well-established, extends to all securities traded in interstate commerce, and cannot seriously be challenged. We ask the Commission to consider the First Amendment interests of faith-based investors that will be significantly burdened by rescission and to address the market-wide reliance interests of investors and companies who have business models, investment strategies, and financial plans that depend on Rule 14a-8.

We ask the Commission to conduct thorough economic analysis that looks at all benefits of Rule 14a-8 and all potential costs of rescission and weighs these costs and benefits in proportion to their impact in the context of the Commission's mandate to regulate in the public interest and for the protection of investors. And we request that, after engaging in thorough and reasoned analysis of these issues, the Commission fulfill its statutory obligation to consider reasonable alternatives to rescission.

If you have any questions, or if it would be useful to discuss this comment with us, I can be reached at the telephone number and email address provided on the portal access form.

Sincerely,



Josh Zinner
Chief Executive Officer

Beth-ann Roth

Beth Young

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[181] Emerson & Latcham, *supra* note 151, at 832.

[182] Kobi Kastiel & Yaron Nili, "The Giant Shadow of Corporate Gadflies," Southern Cal. L. Rev., Vol. 94, 569, 590 (2021).

APPENDIX A

The negative impacts of rescinding 14a-8 will be borne by proponents as well as by a wide range of investors who have developed thoughtful and comprehensive proxy voting policies. For example, ICCR's October 1, 2026, blog post, included in Appendix A.1, provides an overview of major investment managers' proxy voting policies. In-depth research and scrutiny went into the creation of these managers' policies to guide the voting of their shares.

But proxy voting is a responsibility for thousands of pension funds, religious investors, foundations, unions, and universities as well. And funds governed by ERISA understand, as the Department of Labor has stated, that the proxy is an asset and thus must be voted conscientiously and responsibly. In addition, further research illustrates that hundreds of state and city pension funds also consider the act of voting their shares to be a major responsibility.

See, for example, Yale University's proxy guidelines, included in Appendix A.2, as well as an attached compilation of guidelines from a number of other leading universities, included in Appendix A.3. The conclusion we draw from these guidelines is that there is a major ripple effect on institutions who are not proponents but nevertheless see the proxy as an important tool they use to submit their views to company management.

APPENDIX A.1

The Impact of the Elimination of Rule 14a-8 on Institutions with Detailed Proxy Voting Policies

05 October 2026

By Tim Smith, ICCR Senior Policy Director

The SEC has advanced a proposal to eliminate the ability of shareowners to file shareholder proposals while continuing their traditional attacks on the proponents and the subject matter of the resolutions. None of the three Republican SEC Commissioners who voted for rescission have ever acknowledged examples of resolutions leading to positive agreements with companies and improvements in policies and practices. Instead, they ignore the decades of positive engagement that the shareholder resolution process has stimulated as well as positive concrete results. There are no Democrats serving on the current Commission, even though there should be three Republican Commissioners and two Democrats.

Putting aside the SEC's ideological attacks on shareholder rights, it is important to note that the sponsors of resolutions are but one category of investors. There is another class, which includes investment managers, pension funds, foundations etc. who have never filed a resolution but have carefully crafted proxy voting guidelines guiding their voting decisions on both management and shareholder proposals. These are investors with tens of trillions of dollars in AUM that describe voting as part of their fiduciary duty as an owner and have dedicated time to create detailed voting guidance. We note this acknowledgement by the DOL, "The Department of Labor has long recognized that voting rights and other shareholder rights attributable to shares held by ERISA-governed employee benefit plans are plan assets in their own right." (See DOL here).

We could list hundreds of such policies as references, but we include below a list of 20 prominent investment managers that post their policies. The issue is not how they vote but

the seriousness with which they take the voting process. Note too that all 20 refer to shareholder rights and value good governance by companies. These voting policies refer both to management proposals as well as those by shareholders.

Shareholder rights is one of the four pillars of Vanguard's Proxy Voting Policies for US Companies, which state that:

"The Funds believe that companies should adopt governance practices to ensure that boards and management serve in the best interests of the shareholders they represent. Such governance practices safeguard and support foundational rights for shareholders."

When assessing "the quality of company governance", Vanguard looks to:

- *"How effectively has the company's governance structure supported shareholder rights consistent with market norms?*
- *Has the board been sufficiently accessible and responsive to shareholder input in the past?"*

BlackRock's Proxy Voting Guidelines (2026), indicate that the firm believes that protecting shareholder rights is a key responsibility of board members, and the firm commits to holding boards that do not live up to this responsibility accountable, by voting against their re-election: *"Where we determine that a board has not acted in the best interests of the company's shareholders, or takes action to unreasonably limit shareholder rights, we may not support the relevant committees and/or individual directors."*

State Street's Global Proxy Voting and Engagement Policy (2026) echoes the importance of corporate governance structures that protect shareholder rights, arguing that the *"three principles of effective board oversight, disclosure and shareholder protection apply across all of State Street Investment Management's proxy voting decisions and engagements."*

Without the ability to file resolutions and have them voted on, major portfolio managers would face a new vacuum on proxy statements making it more difficult to have focused discussions on such material issues.

ICCR members have held numerous dialogues as clients and shareholders with these investment firms. Often, they explain they did not vote in favor of a given resolution because of the wording but that they did communicate to company management on the issues captured in these resolutions. In addition, on numerous occasions they do vote for resolutions seeking increased transparency and disclosure, believing they are in the best

interests of investors. In 2025, 50 shareholder resolutions received majority voting support, many of them asking for expanded disclosure, including five resolutions asking for companies to expand their political spending disclosure.

In addition, in 2026, one individual filer, John Chevedden had 125 resolutions receiving over 25% votes and 14 resolutions receiving majority votes. It is highly likely that some of the country's large investment managers and pension funds supported the variety of governance reforms he championed.

This is the story the SEC conveniently ignores — that resolutions are often a catalyst for large investors, prompting internal discussion of the issue and private conversations with management. They have been a critical element in stimulating good governance and expanded transparency for investors.

Asset Manager Proxy Voting Guidelines	**Date**	**Mentions Shareholder Rights?**
AllianceBernstein LP	October 2025	Yes
BlackRock	January 2026	Yes
Capital Group's Global Proxy Policy	March 2026	Yes
Charles Schwab Investment Management	March 2026	Yes
Dimensional Fund Advisors	February 2026	Yes
Dodge & Cox	February 2026	Yes
Fidelity	March 2025	Yes
Fisher Investments	October 2024	Yes
Geode Capital Management	February 2025	Yes
Goldman Sachs Asset Management	March 2025	Yes

Invesco Capital Management	March 2026	Yes
JP Morgan Asset Management	April 2026	Yes
Morgan Stanley & Co.	January 2026	Yes
Norges Bank Investment Management	2025	Yes
Northern Trust Investments Inc.	March 2026	Yes
Robeco Asset Management	September 2026	Yes
State Street Global Advisors	April 2026	Yes
T. Rowe Price Associates	August 2026	Yes
The Vanguard Group	January 2026	Yes
Voya Financial	April 2026	Yes

APPENDIX A.2

Advisory Committee on Investor Responsibility

Policies & Past Actions

Policies and Past Actions

Concept of "Social Injury"

At the heart of *The Ethical Investor's* approach to institutional investor responsibility is the concept of social injury. As defined in the "Suggested Guidelines for the Consideration of Factors Other than Maximum Return in the Management of the University's Investments" contained in the *The Ethical Investor* (the "Guidelines"), "social injury" means "the injurious impact which the activities of a company are found to have on consumers, employees, or other persons, particularly including activities which violate, or frustrate the enforcement of, rules of domestic or international law intended to protect individuals against deprivation of health, safety, or basic freedoms; for purposes of these Guidelines, social injury shall not consist of doing business with other companies which are themselves engaged in socially injurious activities."

Guidelines for the Voting of Shares

With respect to the exercise of voting rights, the university relies on the Guidelines, which provide, in relevant part:

"The University will vote for a proposition which seeks to eliminate or reduce the social injury caused by a company's activities, and will vote against a proposition which seeks to prevent such elimination or reduction, where a finding has been made that the activities which are the subject of the proposition cause social injury. This paragraph will not apply to any proposition which seeks to eliminate or reduce social injury by means which are found to be ineffective or unreasonable."

"The University will not vote its shares on any resolution which advances a position on a social or political question unrelated to the conduct of the company's business or the disposition of its assets."

A more detailed summary of Yale's approach to proxy voting as it relates to social issues can be found at the Annual Report page.

CCIR Statement on Proxy Resolutions

In 1989, the CCIR clarified further the university's policy with respect to proxy voting and advised the ACIR that shareholder action can be taken only in response to issues that involve "substantial social injury" and that are "susceptible to competent evaluation by the university under criteria reflecting broad moral consensus within the academic community." Votes in favor of proxy resolutions "should be preceded by a determination that the issue is one on which it is appropriate for the University to take a formal position as a shareholder."

In 2013, the CCIR reaffirmed the policy and noted, among other things, that proxy initiatives should not be supported where the "resolution would impose a serious competitive disadvantage on the company in relation to other companies in the same industry which are engaging in similar social injury," or "the activity in question neither violates nor frustrates the intent of governing laws and regulations that represent a balance struck in the context of competing political influences in a democratic society." These general principles may be superseded by specific guidance on a particular issue, as occurred in the case of tobacco companies and private prisons.

Guidelines for the Divestment of Shares

With respect to divestment, the Guidelines provide that:

> "Notwithstanding a finding of social injury or grave social injury – a) The university will not exercise its shareholder rights under the foregoing paragraphs, but

> will instead sell the securities in question, if a finding is made that … (i) it is unlikely that, within a reasonable period of time, the exercise of shareholder rights by the university (together with any action taken by others) will succeed in modifying the company's activities sufficiently to eliminate at least that aspect of social injury which is grave in character …"

Not all findings of social injury or grave social injury give rise to immediate shareholder engagement and/or divestment. The Guidelines go on to provide:

> "Notwithstanding a finding of social injury or grave social injury …
>
> b) If a finding is made that correction of such social injury will impose a serious competitive disadvantage on the company involved (in relation to other companies in the same industry which cause similar social injury), the university will defer taking shareholder action to compel the company to correct the social injury on a unilateral basis until the university has determined that it will not be possible for it or others to induce the management of the company to bring about industrywide corrective action within the constraints, if any, imposed by the antitrust laws.
>
> c) If a finding is made that correction of such social injury cannot reasonably and appropriately be undertaken by company or industrywide action, as compared to government action, the university will not exercise its shareholder rights under the foregoing paragraphs except to communicate with the management of the company to urge it to seek

necessary action from the appropriate government agencies.

d) If a finding is made that, because of extraordinary circumstances, university action otherwise indicated under these Guidelines is likely to impair the capacity of the university to carry out its educational mission (for example, by causing adverse action on the part of governmental or other external agencies or groups, or by causing deep divisions within the university community), then the university will not take such action."

Past Actions

South Africa

In 1978, the Yale Board of Trustees adopted a policy on investing in companies doing business in South Africa. In subsequent years, Yale engaged scores of companies in dialogue about their responsibilities in the country. When company actions were incompatible with university policy, Yale sold its shares. From 1978 through 1994, Yale divested shares of 17 companies doing business in South Africa, representing a total market value of approximately $23 million. In February 1994, recognizing the positive changes occurring in the country, the Yale Board of Trustees lifted all investment restrictions.

Tobacco

Several times since the early 1990s, the university studied the issue of its tobacco holdings. As a result of the reviews, the Yale Board of Trustees established guidelines on voting of tobacco proxies.

In order to give the Advisory Committee on Investor Responsibility guidance for the 1994 proxy season, the Yale Board of Trustees approved instructing the Advisory Committee to vote in favor of well-constructed proxy resolutions relating to tobacco which:

- Embody effective controls on the distribution and marketing of tobacco products to minors
- Contain appropriate restrictions on, and regulation of, the distribution and marketing of tobacco products overseas
- Encourage public education regarding the risks of consuming tobacco products

In 1996, the Corporation Committee on Investor Responsibility voted to supplement the instructions provided to the Advisory Committee on Investor Responsibility in February 1994, by instructing the Advisory Committee on Investor Responsibility to vote, additionally, in favor of well-constructed proxy resolutions which:

- Call upon tobacco companies to place health warnings about the dangers of addiction, disease and death caused by smoking on all advertising and promotional items for tobacco products distributed throughout the world
- Request companies to cease advertising tobacco products to minors, including all uses of the company’s brand names and associated symbols for sponsorships; (c) request tobacco companies to support enforcement mechanisms at all

governmental levels to prevent illegal sales of tobacco products to minors
- Request tobacco companies to take actions designed to reduce the health risks to minors
- Call upon tobacco companies to report publicly accurate information relating to the ingredients of their products that have probable adverse health effects

The Yale Board of Trustees voting guidelines stem, in part, from a decision to exercise "voice" with respect to any harmful marketing and distribution practices.

Following the ACIR's investigation of the risks and negative effects associated with vaping especially affecting minors, the CCIR affirmed in February 2019 that Yale's established guidelines on the voting of tobacco proxies extend to non-combustible nicotine products.

Private Investments and Ethical Oversight

In 2002, the ACIR and the Yale Investments Office took up the issue of ethical oversight of private investments. Applying existing policies to private holdings posed a challenge, because the shareholder resolution activity of the ACIR had no analog in private investment holdings. In the realm of private assets, where corporate control rests with a highly concentrated investment group, shareholder resolutions do not exist.

To address this issue, the Yale Investments Office, in consultation with the ACIR, developed a framework to address ethical issues relating to private investments. In

particular, ethical investing policies recommended by the CCIR (as advised by the ACIR) and adopted by the Yale Board of Trustees could be applied to both marketable securities and private investments. The university's response to ethical issues in private investments would differ in some respects from the process employed for publicly-traded securities, due to the varying nature of the investment structures and potential remedies. Oversight of policy implementation would remain with the CCIR for both marketable and private positions.

The Yale Board of Trustees has articulated the following policy with regard to private investments:

"When the Yale Corporation, upon recommendation of the Corporation Committee on Investor Responsibility after its consultation with the Advisory Committee on Investor Responsibility, adopts policies regarding ethical investing, those policies will apply to both public and private investments. In the event that the Corporation concludes that Yale's private investment managers have engaged in socially injurious activity, the University will fashion an appropriate remedy including use of voice, disassociation from the offending investment manager, and, as a last resort, disposition of the tainted partnership interests."

Sudan

On January 31, 2006, the ACIR presented a report to the CCIR regarding its findings and recommending a policy of divestment. In February 2006, the Yale Board of Trustees voted unanimously to divest from seven oil and gas companies operating in Sudan, as well as from obligations of the Sudanese government. On February 23, 2013, Yale's

divestment policy was clarified to align with the policy of the U.S. and the international community to support the independence of South Sudan. Click here to read more about Sudan Divestment.

Recent Actions

Climate Change

On August 27, 2014, the CCIR issued a public statement on climate change, which incorporated new proxy voting guidelines for implementation by the ACIR. Specifically, the guideline provides:

> Yale will generally support reasonable and well-constructed shareholder resolutions seeking company disclosure of greenhouse gas emissions, analyses of the impact of climate change on a company's business activities, strategies designed to reduce the company's long-term impact on the global climate, and

company support of sound and effective governmental policies on climate change."

Private Prisons

In June 2018, the Yale Board of Trustees adopted the following proxy guidelines for issues relating to private prisons which were drafted by the ACIR and endorsed by the CCIR:

Yale will support reasonable, and well-constructed shareholder resolutions related to improvements in the corporate social responsibility of private prisons. Examples of resolutions that would be supported in the future include those seeking disclosure by private prison companies of their political contributions and lobbying activities and the use of contracts with private prison companies that contain incentives based on objective measures of

performance such as lower recidivism rates. Other resolutions that would be supported relate to efforts to reduce prisoner rape and sexual abuse and efforts to reduce the high cost of phone calls made by prisoners at private prisons. The University also would support resolutions that request that the boards of directors of private prison companies obtain independent assessments of their success in reducing violence, use of force incidents, disciplinary and grievance systems, contraband, lockdowns and positive drug tests. These examples are meant to be illustrative and not comprehensive as it is not possible to anticipate precisely the full range of issues that might be presented for shareholder consideration in the future."

Assault Weapons

Following an investigation by the ACIR, the CCIR recommended the adoption of a policy that the university not invest in any retail outlets that market and sell assault weapons to the general public. The Yale Board of Trustees adopted the policy in 2018. In 2024, the policy was clarified to cover assault weapons manufacturers that engage in retail activities to the general public.

CCIR Statement On Assault Weapons Retailer Policy

Fossil Fuel Investment Principles

In April 2021, the Yale Board of Trustees adopted principles to guide the university in applying its ethical investment policy to the fossil fuel industry. These principles were developed and proposed by the Committee on Fossil Fuel Investment Principles in its report.

The ACIR uses these principles to identify fossil fuel producers that, upon approval of the CCIR, are ineligible for investment by Yale. The principles and the restricted list can be found here. Members of the Yale community may make suggestions by writing ACIR_Inquiry@yale.edu.

Private Prisons

In October 2021, based on the recommendation of the ACIR, the Yale Board of Trustees adopted a policy making the two largest private prison operators, CoreCivic and GEO Group, ineligible for investment by Yale's endowment. The CCIR's statement can be found here.

APPENDIX A.3

Examples of university proxy voting guidelines from various elite universities, current as of November 19, 2026. Collated by Yale University students involved in ethical investing and proxy voting.

- **Yale:**[1]
  - ***Advisory Committee on Investor Responsibility (ACIR)***
    - This is a committee with students, faculty, alumni and staff that evaluate the shareholder resolutions that companies which they vote on send over (they get proxy votes due to their stakes within the company – because of the yale endowment).
    - Students rarely file shareholder resolutions – the only instance was the DHSRI filling in 2016 for ExxonMobil.

  - ***Corporation Committee on Investor Responsibility (CCIR)***
    - A standing committee of the Yale Board of Trustees that reviews what the ACIR sends in and gives a final verdict.

- **Harvard:**[2]
  - *The Advisory Committee on Shareholder Responsibility (ACSR)*
    - Made up of faculty, students and alumni, writes the guidelines and recommends votes.
  - *The Corporation Committee on Shareholder Responsibility (CCSR)*
    - Made up of Harvard Corporation members, reviews the guidelines and makes final voting decisions.

- **Columbia:**[3]
  - **Columbia supports:**
    - Proposals which require companies to disclose objective, verifiable facts that are material to investors, i.e., those which are viewed by a reasonable investor as having significantly altered the total mix of information made available.
    - Proposals which, on balance, favor the benefits of mandatory disclosure over the costs of potential liability, e.g., by ensuring that a disclosure

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[1] ACIR Homepage, https://acir.yale.edu/ (*See* Appendix B, *supra*, for PDF of Yale's proxy voting guidelines).

[2] Shareholder Responsibility Committees, Harvard University, https://www.harvard.edu/shareholder-responsibility-committees/; President and Fellows of Harvard College - Corporation Committee on Shareholder Responsibility, https://www.harvard.edu/wp-content/uploads/2026/08/General1.Overview.pdf

[3] Columbia Finance, Proxy Voting Guidelines, https://www.finance.columbia.edu/content/proxy-voting-guidelines/ (note that guidelines are advisory rather than binding).

mandate is narrowly tailored to the purpose underlying a shareholder proposal.

- **In concerns with *environment, energy and sustainability* section:**
  - Climate disclosure: Supports resolutions requesting companies to report their climate impacts, risks, and opportunities.
  - Greenhouse gas emissions: Supports emissions disclosure, quantitative reduction goals, and alignment with science-based emissions targets.
  - Renewable energy: Supports proposals encouraging renewable energy development and reporting.
  - Environmental protection: Supports disclosure of environmental risks, biodiversity protection, and efforts to reduce negative environmental impacts.
  - Sustainability and waste: Supports sustainability reporting and reviews of waste management and recycling practices.
  - Political accountability: Supports disclosure of corporate political contributions and lobbying activities.

- **Columbia does not support:**
  - Proposals which mandate the disclosure of information that is inherently vague, subjective or subject to uncertainty.
  - Proposals that request public reports and research on the safety of genetically modified organisms beyond what is regulated by USDA, FDA, and EPA
  - Proposals that request that independent committees of the board review company policy and procedures for monitoring the safety of genetically engineered products.
  - Proposals that call for reduction in greenhouse gas emissions by specific amounts or within a specific time frame, unless:
    - The company lags behind industry standards.
    - The company has been the subject of recent, significant violations, fines, litigation, or controversy related to greenhouse gas emissions.

- **Dartmouth:**[4]
  - The ACIR reviews shareholder proposals involving environmental, social, and governance issues (ESGs). Its recommendations must comply with Dartmouth's Board of Trustees Statement on Investment and Social Responsibility.

[4] https://www.dartmouth.edu/investments/docs/2026_acir_report_final.pdf (page 4-6); https://www.dartmouth.edu/investments/sustainability/advisory_committee.php; https://www.dartmouth.edu/investments/docs/2024_acir_report_final.pdf

        - ACIR generally supports proxy resolutions requesting greater corporate disclosure and transparency (such as reporting on lobbying, political spending, or workplace policies), provided the request is reasonable and not overly costly or onerous to implement.[5]
        - When evaluating social or governance proposals, ACIR looks to Dartmouth's own institutional policies and practices as a benchmark (for example, using the College's non-discrimination policies to guide votes on workplace diversity and pay equity).[6]
    - Dartmouth distinguishes directly held securities, where it can exercise voting rights, from investments held through external managers, where it generally cannot directly vote.
    - The committee recommends abstaining on ESG resolutions it has not specifically reviewed, rather than treating the absence of a recommendation as affirmative support.
    - For recurring topics, ACIR relies on its prior voting record to maintain consistency. For entirely novel issues where there is no clear precedent or sufficient time for full debate, the committee defaults to abstaining.[7]
        - Abstention policy (adopted 2005):[8]
            - When a shareholder declines to exercise its right to vote its proxy resolutions, the shareholder's vote with respect to that resolution is automatically counted in support of management.
            - Under this policy, Dartmouth actively casts a vote to abstain on every ESG proxy resolution that ACIR has not specifically reviewed and issued a voting recommendation on, ensuring an unreviewed ballot is not inadvertently counted in support of management.

    - **Scope of proxy voting:**
        - Dartmouth only casts proxy votes for U.S. publicly traded companies in which the College holds shares directly.
        - Because the majority of Dartmouth's endowment is invested through funds managed by external investment managers, Dartmouth is not the shareholder of record for those securities and does not receive proxy ballots or have voting discretion over them.

    - **Examples from Dartmouth's 2026 voting record:**

[5] https://www.dartmouth.edu/investments/docs/2018_acir_annual_report.pdf
[6] *Id.*
[7] *Id.*
[8] https://www.dartmouth.edu/investments/sustainability/advisory_committee.php

        - Alphabet Climate Commitments and AI Data Centers Report/Action on Climate Change - For (7.33% support)
        - Verizon Communications Inc Report Board Oversight of Climate Report/Action on Climate Change - abstained (support: 15.87%)
        - NextEra Energy Inc - Reducing Contribution to Climate Change Report/Action on Climate Change - Abstained (34.19%)
        - NextEra Energy Inc - Report on Emission Reduction Policies Report/Action on Climate Change - opposed (support: 1.18%)

- **Stanford:**[9]
    - *Goal is to "prevent substantial social injury"*
    - Shareholder issues at Stanford are directed by the Board of Trustees through its Special Committee on Investment Responsibility (SCIR), supported administratively by the Office of Investment Responsibility and Stakeholder relations (IRSR). The endowment's market portfolio is managed by the Stanford Management (SMC).

    - **Voting Policies:**
        - Stanford's governing Statement on Investment Responsibility establishes that the primary role of the endowment is generating long-term financial returns to support the university's research and teaching mission
        - The Board of Trustees exercises shareholder voting authority when corporate actions threaten or inflict what the university defines as substantial social injury (serious, direct harm to public health, human welfare, or ecological stability)
        - To manage routine proxy ballots efficiently, the Trustees maintain standing affirmative voting directives on recurring social topics. For instance, the university automatically votes in favor of resolutions calling for comprehensive greenhouse gas emissions reporting.
        - Members of the Stanford community can formally petition the IRSR to review specific holdings or sponsor new shareholder resolutions if documented evidence indicates corporate conduct that contradicts these standards

- **Brown:**[10]
    - ACURM creates the policy and investment office votes based on a wide range of proxy topics

[9] https://irsr.stanford.edu/; https://irsr.stanford.edu/sites/g/files/sbiybj28736/files/media/file/stanford-investment-responsibility-guidelines_0_0.pdf; https://news.stanford.edu/stories/2018/12/frequently-asked-questions-investment-responsibility.
[10] https://acurm.brown.edu/voting-guidelines; https://acurm.brown.edu/about/charge.

- Proxy voting guidelines at Brown are set by the Advisory Committee on University Resource Management (ACURM) which advises Brown's president on ethical and social responsibility issues in investing. ACURM drafted the voting guidelines in 2003 and the Brown Corporation approved them. They were last amended in December 2007 where the provisions covered by the guidelines are voted automatically in line with them. Brown's Investment Office casts the votes, which must be consistent with the guidelines.

- The guidelines cover proxy proposals on the following social responsibility topics:
  - Animal Rights
  - Banking and Insurance
  - Board Diversity
  - Charitable Contributions
  - Climate Change
  - Environmental Issues
  - Equal Employment Opportunity
  - Executive Pay and Social Performance
  - Genetically engineered Products
  - Global Label Standards
  - Health Issues/Abortion
  - Human Rights
  - Internet/Communication
  - Mexico
  - Military Issues
  - Nuclear Power
  - Pandemics
  - Political Contributions
  - Tobacco

- In general, Brown and ACURM support proposals for reports and development of standards where cost doesn't appear excessive and when the intent is to inform and focus management attention on issues of moral responsibility. They oppose proposals that are already adequately covered by existing relevant law, where the intent appears to be to expose the company to private agendas, or something which would impose an unreasonable cost or administrative burden on the company.

- **Cornell:**

- Cornell University does not publicly publish its full proxy voting guidelines. However, Cornell's Investment Committee revised its proxy voting policies, prior to the university's May 2020 announcement, to require investment managers voting on Cornell's behalf to emphasize maximizing long-term sustainable economic value rather than short-term gains. Cornell describes proxy voting as a way to influence corporate boards and managers to pursue more sustainable business practices. *This is not a system in which Cornell publicly casts an individual vote on every underlying company.* Cornell's Investment Office generally does not invest directly in individual public equities, and voting ordinarily takes place through outside managers with delegated mandates.

- **Key Findings:**
  1. Long-term sustainable value over short-term gains: Cornell's stated proxy-voting objective directs managers to consider durable economic value rather than immediate returns alone.
  2. External investment managers: Managers exercise proxy rights for holdings within their mandates. Cornell's ability to direct votes may be limited in pooled and indexed investments.
  3. ESG integration: In May 2020, Cornell reported that more than 70% of invested assets were managed by organizations committed to considering environmental, social, or governance (ESG) issues.
  4. Application example - fossil fuels: Cornell's May 22, 2020 moratorium on new private fossil-fuel-focused investments was justified partly by the long-run financial outlook and climate transition risks. The moratorium did not apply to indexed or other public equity mandates.[11]

[11] https://news.cornell.edu/stories/2020/05/cornell-announces-moratorium-fossil-fuel-investments; https://news.cornell.edu/stories/2020/02/fossil-fuel-divestment-faq-cornell-community; https://deanoffaculty.cornell.edu/faculty-governance/archives/resolutions/resolution-145-fossil-fuel-divestment/fossile-fuel-divestment-faq/what-is-an-endowment/; https://deanoffaculty.cornell.edu/faculty-governance/archives/resolutions/resolution-145-fossil-fuel-divestment/fossile-fuel-divestment-faq/endowment-sustainability-connections

APPENDIX B

We are convinced from ongoing engagements with companies that numerous management teams understand and support the issues being raised via the shareholder resolution process. Shareholder input is valued by many corporations. Whether the focus is diversity, climate change, or broader sustainability issues, we see many companies making the sensible business case for leadership on these topics. The three articles included in this appendix, which were written by ICCR and published in the *Harvard Law School Forum on Corporate Governance,* are illustrative of this common ground.

A Cross Section of Company Statements Supporting Climate Action

Posted by Erica Lasdon and Timothy Smith, ICCR, on Friday, August 7, 2026

Tags: Climate change, Climate Disclosure, climate risk, Corporate climate commitments, corporate sustainability, Decarbonization, Energy transition, Environmental stewardship, ESG, Greenhouse gas emissions, net zero, Sustainability
More from: Erica Lasdon, Timothy Smith, ICCR

Editor's Note: Erica Lasdon is the Director of Climate Change and Environmental Justice and Timothy Smith is the Senior Policy Advisor at the Interfaith Center on Corporate Responsibility (ICCR). This post is based on their ICCR memorandum.

Introduction

Over the past two years, the public conversation around corporate climate commitments has shifted considerably. Some companies that spoke openly about decarbonization have grown quieter, a phenomenon often described as “greenhushing”. Regulatory momentum behind mandatory climate disclosure at the federal level shifted to reverse, and sustainability language in public debate has increasingly been recast as a “woke” political position rather than a sound business judgment. And of course, the EPA relentlessly works to eradicate climate rules and regulations, including questioning science. Additionally, the SEC has moved to eliminate any company climate disclosure rules as they formerly propose to end the climate rule.

However numerous major American and global corporations continue to acknowledge that climate change is a critical risk and material business issue. When a food company states changing weather patterns threaten its agricultural supply chain or when an electric utility describes its net zero commitment in the environmental strategy section of its annual report, these are not political statements. They are assessments of business risk and opportunity, made by managements and boards with fiduciary obligations to their shareholders.

This document, compiled by the Interfaith Center on Corporate Responsibility, demonstrates that many businesses understand the necessity to address climate risk as part of their business planning processes. It is a business imperative. As Larry Fink, CEO of Black Rock has often said climate risk is investment risk. The breadth of sectors represented in this document also demonstrates that climate risk is not confined to any one industry, business model, or customer base, but is broadly embraced in the market today.

Corporate acknowledgment of climate risk matters for multiple reasons.

- **It informs investors:** Institutional investors representing trillions of dollars in assets continue to seek decision-useful information about how companies assess and manage climate-related risks, and corporate statements are a primary input into that analysis.
- **It reflects good corporate management:** Companies that publicly acknowledge their environmental footprint, and describe the steps they are taking to manage it, demonstrate accountability to the communities in which they operate, to their investors and to the broader public.
- **It preserves an accurate record:** At a moment when corporate climate language is being downplayed on websites, shareholder letters, and public communications, documentation of what companies have said over time carries

independent value.

An analysis of company Form 10-K disclosures shows that most climate-related descriptions in annual reports appear in risk factor sections, where it is drafted primarily from a legal perspective often resulting in boilerplate language. A risk factor noting that climate regulation 'could materially affect' a business tells us little about how management actually views the issue. For that reason, this compilation deliberately draws fewer quotes from financial filings, and instead favors management responses to shareholder proposals, company Sustainability reports and other public statements. This presents a more comprehensive and clear record of company perspectives on the importance of climate action.

Finally, this document does not grade companies on climate performance. Several companies quoted here have missed emissions targets, revised goals downward, or face ongoing criticism regarding the adequacy of their transition plans. However, these companies understand the compelling case for addressing climate and integrating it into their business planning. They do not do this for "political reasons" but because they understand it is a prudent and sensible way to do business. The fact that they acknowledge climate as a business risk in today's shifting environment is still a strong and relevant message.

Section 1: Financial Filings & Proxy Opposition Statements

Excerpts from Forms 10-K and definitive proxy statements (DEF 14A) filed with the SEC.

Energy

Dominion Energy | Form 10-K, FY2025, Environmental Strategy section (filed February 2026)

> *"Dominion Energy's mission is to provide the reliable, affordable, and increasingly clean energy that powers its customers every day. Dominion Energy is working to achieve its commitment of net zero carbon and methane Scope 1 and Scope 2 emissions and material categories of Scope 3 emissions… by 2050."*

Management statement, Environmental Strategy section of the annual report
Source: **SEC EDGAR: Dominion Energy 10-K, period ended December 31, 2025**

Chevron | DEF 14A, 2024, Statement in Opposition (p. 116)

In response to a shareholder proposal concerning the company's renewable energy investments and climate strategy (2024 annual meeting).

> *"Consistent with other investments, Chevron invests in renewable energy opportunities in furtherance of driving long-term shareholder value… Chevron's approach seeks to create value by delivering competitive returns across our portfolio of advantaged assets as we consistently strive to be more capital-, cost-, and carbon-efficient… Chevron's strategic and business planning processes regularly assess market conditions to guide its actions as Chevron aims to safely deliver higher returns and lower carbon."*

Board of Directors, Statement in Opposition, 2024 Proxy Statement
Source: **SEC EDGAR: Chevron DEF 14A, filed April 10, 2024**

Technology

Meta Platforms | DEF 14A, 2026, Statement in Opposition

In response to a shareholder proposal concerning the company's climate commitments (2026 annual meeting, May 27, 2026).

> *"As we continue to build the future of human connection and the technology that makes it possible, we strive to do so in a way that supports a more sustainable world. Since 2020, we have maintained net zero Scope 1 and Scope 2 emissions in our operations and have matched 100% of our annual electricity use with clean and renewable energy… As of January 2026, we had contracted for more than 30GW of clean and renewable energy projects across the globe, of which nearly 12GW were already in operation. We believe nuclear energy will play a pivotal role in the transition to a cleaner, more reliable, and diversified electric grid."*

Board of Directors, Statement in Opposition, 2026 Proxy Statement
Source: **SEC EDGAR: Meta Platforms DEF 14A, 2026**

Nvidia | DEF 14A, 2026, Statement in Opposition

In response to a shareholder proposal requesting enhanced climate-related disclosure, including Scope 3 emissions reporting (2026 annual meeting).

> *"NVIDIA's current practices evidence a clear commitment to sustainability, climate risk management, and effective disclosure. For example, NVIDIA consistently publishes highly detailed climate reporting, including in our 2025 Sustainability Report, which is assured by our financial auditor…"*

Board of Directors, Statement in Opposition, 2026 Proxy Statement
Source: **SEC EDGAR: Nvidia DEF 14A, 2026**

Amazon | DEF 14A, 2025, Board Response on Sustainability

From the board's discussion of the company's sustainability program in the 2025 proxy statement (filed April 10, 2025), presented in the context of responses to shareholder proposals.

> *"The Climate Pledge and Carbon-Free Energy. In 2019, we co-founded The Climate Pledge, a goal to reach net-zero carbon emissions across our operations by 2040, a decade ahead of the Paris Agreement's goal of 2050. We are proud that more than 550 companies across more than 55 industries and more than 45 countries have joined The Climate Pledge. As part of this commitment, we publish our carbon footprint and calculation methodology. In 2023, our absolute carbon emissions decreased by 3%, driven by an 11% reduction in emissions from electricity and a 5% decrease in indirect and supply chain emissions."*

Board of Directors, Amazon.com, Inc., 2025 Proxy Statement
Source: **SEC EDGAR: Amazon DEF 14A, filed April 10, 2025**

Banking & Financial Services

Wells Fargo | DEF 14A, 2026, Statement in Opposition

In response to a shareholder proposal requesting a report evaluating climate-related litigation risks tied to the bank's financing of high-carbon activities (Proposal 8, 2026 annual meeting, April 28, 2026).

> *"Our existing public disclosures describe our own operational sustainability efforts as well as our client-centric sustainability approach. We seek to meet the financial needs of our customers, clients and communities whether they are seeking to pursue their own sustainability goals or make their businesses more resilient. We also set a goal in 2021 to finance or facilitate $500 billion in sustainable finance by 2030, and continue to report our progress towards this goal."*

Board of Directors, Statement in Opposition, 2026 Proxy Statement
Source: **SEC EDGAR: Wells Fargo DEF 14A, 2026**

JPMorgan Chase | DEF 14A, 2026, Board Qualifications (Sustainability)

From the board skills matrix in the 2026 proxy statement, which also contains a letter from Lead Independent Director Stephen B. Burke. The proxy includes shareholder proposals on climate initiatives and a sustainability ROI report.

> *"Experience with sustainability-related matters is important to effectively oversee potential risks and opportunities related to climate, nature and social factors that could affect the business, including business solutions that foster sustainable economic growth and support our clients in pursuing their sustainability goals."*

Board of Directors, director qualifications, 2026 Proxy Statement
Source: **SEC EDGAR: JPMorgan Chase DEF 14A, filed April 6, 2026**

Citigroup | 2025 Proxy Statement

> *"Through climate risk and net zero analysis, in 2024 Citi continued to review client activities and engage with them as appropriate to understand their climate risk profiles and their transition plans, including where applicable, how they plan to adapt to and/or manage climate-related risks and how we can support them."*

Citigroup Inc., 2025 Proxy Statement
Source: **Citi 2025 Proxy Statement (PDF)**

The Travelers Companies | DEF 14A, 2026, Statement in Opposition

In response to a shareholder proposal concerning climate-related risk measurement and disclosure (2026 annual meeting).

> *"The Company takes comprehensive measures to identify and mitigate climate-related risks in its business. As stated in the Company's report, 'understanding climate-related effects on weather perils is part of our fundamental evaluation process in connection with the underwriting and pricing of risks related to many of our products.' Because… incorporating weather and climate variability into the Company's underwriting and pricing decisions is 'core to our strategy,' the Company has made significant investments in technology, data and analytics and personnel to refine its view of, and effectively manage, weather- and climate-related risks and to inform its business strategy."*

Board of Directors, Statement in Opposition, 2026 Proxy Statement
Source: **SEC EDGAR: The Travelers Companies DEF 14A, 2026**

Consumer Goods

Unilever | Annual Report Sustainability Statement, FY2025

> *"We updated our quantitative scenario analysis in 2025 to consider both our most material climate and nature risks and drivers, recognizing their interconnectivity. This included physical and transition risks likely to impact our business over the short, medium and long term."*

Unilever PLC, Sustainability Statement, 2025 Annual Report
Source: **Unilever Sustainability Statement 2025 (PDF)**

Maersk | 2025 Annual Report Sustainability Disclosure / Climate Pages

Maersk's FY2025 sustainability disclosures describe a company-wide climate risk assessment and 1.5°C aligned policy advocacy.

> *"In 2025, Maersk conducted a climate risk assessment to evaluate physical impacts on land-based assets and operations covering more than 1,400 own and third-party assets (terminals, warehouses, offices, and data centers), to identify exposure to hazards such as flooding, storm surge, windstorms, heatwaves, and water stress." "Maersk is committed to conducting all our policy outreach in alignment with the goal of limiting global temperature rise to 1.5°C."*

A.P. Moller-Maersk, climate disclosures referencing the 2025 Annual Report Sustainability Statement
Source: **maersk.com/sustainability/climate**

Source: **maersk.com/sustainability/climate Source: maersk.com, Climate Change (ESG priorities)**

Section 2: Company Statements — Executives, Sustainability Reports & Media

Statements by named executives and official corporate communications, drawn from speeches, podcasts, press releases, sustainability reports, and corporate websites, 2025–2026.

Technology

Apple | Corporate Environment Page and 2026 Environmental Progress Report

> *"Climate change is a defining issue of our time."*

Apple corporate statement, 2026
Source: **apple.com/environment**

Apple | CES technology conference, 2025

> *"At Apple, we're carbon neutral for our own operations and innovating every day to go even further in the urgent work to address climate change. The scale of this challenge is immense, but so is our determination to meet it."*

Tim Cook, Chief Executive Officer, Apple
Source: **CES Ltd. ESG analysis, April 2025**

Google | 2025 Environmental Report

> *"We reduced our data centre energy emissions by 12% in 2024 despite significant growth in electricity demand, showing it's possible to advance the two great transformations of our time, the AI revolution and clean energy growth, hand in hand. This is about building for the future through new advanced energy innovations and deeper supplier engagement, both of which are core parts of our strategy as we work toward our climate moonshots, 24/7 carbon free energy and net zero by 2030."*

Kate Brandt, Chief Sustainability Officer, Google
Source: **Sustainability Magazine, June 2025 (covering Google's 2025 Environmental Report)**

Source: **Google: Environmental Report 2025 announcement**

Microsoft | Carbon removal program statements, 2025

Microsoft is the world's largest purchaser of carbon removal credits. On the company's long-term offtake commitments:

> *"Nearly 100 percent of the carbon removal purchases announced in our current fiscal year will be delivered between 2030 and 2050 via long-term offtake agreements. We're not looking at this sustainability report to sustainability report."*

Brian Marrs, Senior Director of Energy and Carbon Removal, Microsoft
Source: **Trellis, June 10, 2025**

Source: **Axios, January 30, 2025 (7-million-ton Chestnut Carbon deal)**

Accenture | Sustainability Strategy, corporate website (2025)

> *"Growing regulatory pressure, consumer scrutiny and risk of material financial shocks from climate change and nature loss means every business must be a sustainable business."*

Accenture corporate statement
Source: **accenture.com, Sustainability Strategy**

Aviation & Shipping

Delta Air Lines | Skift GreenShift podcast (June 2025) and CES interview (January 2025)

> *"Delta is not a sustainability company that just happens to have an airline; we're an airline that has a sustainability team and policy. But we also know that if we don't decarbonize, we lose our license to operate over the next hundred years." "For us, it's just become part of the business. Every business decision that we're making at this point is taking sustainability into consideration."*

Amelia DeLuca, Chief Sustainability Officer, Delta Air Lines
Source: **Skift, June 3, 2025**

Source: **Miami Herald via Georgia Tech Research News, January 2025**

United Airlines | Corporate Impact Report (environmental strategy)

> *"United is on a mission to redefine the future of air travel with sustainability at the forefront. We believe that it is critical to continue to serve our purpose of connecting people and uniting the world, and we aim to find more sustainable solutions while also achieving our financial goals. Our ambitions are anchored in our business strategy, as building a future of sustainable aviation benefits our customers, employees and shareholders."*

United Airlines, Corporate Impact Report
Source: **corporateimpact.united.com, Our Environmental Strategy**

United Airlines | CERAWeek conference, March 2025

> *"I think SAF [sustainable aviation fuel] is the future."*

Scott Kirby, Chief Executive Officer, United Airlines, on the company's path to its 2050 net zero and 2035 interim emissions goals
Source: **Crain's Chicago Business, March 11, 2025**

Maersk | Corporate decarbonization commitment (current)

> *"Reaching net zero greenhouse gas emissions by 2040 demands more than ambition, it requires action. Today, alternative fuels are scarce and costly. To ensure fair competition and meet net zero targets on time, global regulations are essential. No one can do it alone. To decarbonize the industry, we must work together: customers, fuel producers, shipping lines, and policymakers."*

A.P. Moller-Maersk, attributed alongside CEO Vincent Clerc on the company's net zero page
Source: **maersk.com, All the Way to Net Zero**

Food & Beverage

PepsiCo | World Economic Forum panel, Davos, January 2026

> *"This is not about sustainability or profitability. This is about short-term or long-term. Growth is our business model, but growth for the long term means that we need to generate this growth without depleting the resources that will give us future growth."*

Ramon Laguarta, Chief Executive Officer, PepsiCo
Source: **ESG Dive, January 21, 2026**

General Mills | Climate Policy, corporate website (current)

> *"As a global food company, General Mills recognizes the risks that climate change presents to humanity, our environment and our livelihoods. Changes in climate not only affect global food security but also impact General Mills' raw material supply which, in turn, affects our ability to deliver quality, finished product to our consumers and ultimately, value to our shareholders."*

General Mills, Climate Policy
Source: **generalmills.com, Climate Policy**

Mars | HBR Future of Business event / IdeaCast, December 2025

Asked directly whether political backlash has changed the company's emphasis on climate:

> *"I would argue that this has absolutely nothing to do with politics at all. If you're a food company, you fundamentally live from converting crops that you buy, processing them, and packaging. There is no person on this planet who cannot say that there are significant impacts, because of climatic changes, because of hurricanes, because of warming temperatures, where crops cannot be grown in certain regions where they used to be grown."*

Poul Weihrauch, Chief Executive Officer, Mars, Incorporated
Source: **Harvard Business Review IdeaCast, December 2025**

Healthcare

Johnson & Johnson | Sustainability Magazine, September 2025

> *"We are wasting no time making progress because we know there is no time to waste. The world needs bold climate action to advance both human and planetary health."*

Paulette Frank, Chief Sustainability Officer, Johnson & Johnson
Source: **Sustainability Magazine, September 26, 2025**

Johnson & Johnson | Corporate environmental sustainability page, 2025

> *"At Johnson & Johnson, we know that healthy people need a healthy planet. According to the World Health Organization, 'climate change presents a fundamental threat to human health.' That's why, to support a healthy environment and the resilience of our business, we are taking action to improve the environmental footprint of our operations, our value chain and our product portfolio."*

Johnson & Johnson corporate statement
Source: **jnj.com, Environmental Sustainability**

Eli Lilly and Company | Corporate environmental sustainability page (current)

> *"Lilly acknowledges that climate change is negatively impacting human and environmental health. Action against climate change is required to achieve the goals of the Paris Climate Agreement and to avoid the most detrimental effects of climate change by limiting the global temperature rise to 1.5 °C. As a global company committed to making life better for people, Lilly recognizes our responsibility to reduce our greenhouse gas emissions to help fight climate change."*

Eli Lilly and Company corporate statement
Source: **lilly.com, Minimizing Our Environmental Impact**

Consumer Goods

Procter & Gamble | P&G climate initiatives page, 2025

> *"We see sustainability as a strategic way to help future-proof our operations and operate an agile, thriving business. Our focus is on significantly reducing absolute GHG emissions in our operations and supply chain."*

Procter & Gamble corporate statement
Source: **us.pg.com, Climate Initiatives and Net Zero Ambition**

Patagonia | Climate Goals, corporate website (current)

> *"The climate crisis poses an existential threat; if we don't clean up our mess, we'll be history. Business has a role to play, but it's only one lever. We must use all the tools at our disposal to secure a safer, more just future."*

Patagonia, Climate Goals
Source: **patagonia.com.au, Climate Goals**

IKEA | TIME Earth Award acceptance, March 2026

> *"Being climate smart is being resource smart, cost smart." "Companies are builders. We might need a bit of time to get moving, but once we get going, we're not gonna go back."*

Jesper Brodin, then Chief Executive Officer, Ingka Group (IKEA's largest retailer)
Source: **TIME, March 27, 2026**

Kimberly-Clark | Sustainability Policy, corporate website (current)

> *"Kimberly-Clark acknowledges the scientific consensus that GHG emissions from human activity, including those from our own operations, contribute to climate change, and we believe action must be taken to prepare our business for a low-carbon future.*"

Kimberly-Clark corporate statement
Source: **kimberly-clark.com, Sustainability Policies**

Colgate-Palmolive | Climate Action Commitment, corporate website (current)

> *"Achieving that future means we have an important responsibility to address climate change and its threat to disrupt every aspect of our lives, from environmental impacts like weather events, water security and biodiversity, to food supply to socioeconomic stability."*

Colgate-Palmolive corporate statement
Source: **colgatepalmolive.com, Climate Action Commitment**

Utilities

Con Edison | Annual shareholders meeting, May 2024

> *"Never have the effects of climate change been more evident. And never has the need for solutions been more urgent. To meet this moment, Con Edison is moving forward with bold plans to enable clean energy in our region."*

Tim Cawley, Chairman and Chief Executive Officer, Con Edison
Source: **Con Edison, Clean Energy Growth Strategy (May 20, 2024)**

Section 3: Excerpts from Submissions to the SEC

Comment letters submitted to the SEC in 2022 in response to its proposed climate disclosure rule. The full public comment file is available on the SEC's website.

Bank of America | SEC Comment Letter, File No. S7-10-22, 2022

> *"Organizations across markets and geographies will greatly benefit from common measurement tools and disclosure practices, which we believe will help accelerate the transition of the global economy towards lower (and ultimately net zero) carbon emissions. Various stakeholders, including asset owners and asset managers, will benefit from consistent, standardized disclosures addressing climate-related risks and opportunities to help them make decisions on where best to deploy capital in alignment with investor goals."*

Bank of America
Source: **SEC public comment file, S7-10-22 (letter available in the comment index)**

Amazon | SEC Comment Letter, File No. S7-10-22, June 2022

> *“Amazon is committed to fighting climate change. We recognize that this urgent global challenge demands collective action across all industries and sectors. We started investing in sustainability initiatives over a decade ago, and to help meet this global challenge, we co-founded The Climate Pledge in 2019, a commitment to reach net-zero carbon by 2040, 10 years ahead of the Paris Agreement… We support the Commission’s objective of providing ‘consistent, comparable, and decision-useful information’ to investors on public companies’ climate-related risks, initiatives, and metrics.”*

Amazon
Source: **SEC.gov: Amazon comment letter, June 17, 2022 (direct PDF)**

UPS | SEC Comment Letter, File No. S7-10-22, 2022

> *“We recognize that climate-related disclosures are becoming increasingly important to the investment community, and that Greenhouse Gas (‘GHG’) emissions are a focus for many public, private and governmental organizations… we support increased climate-related disclosures through rulemaking that is appropriately designed to achieve the Commission’s objectives of increased transparency and comparability.”*

UPS
Source: **SEC public comment file, S7-10-22 (letter available in the comment index)**

Occidental Petroleum | SEC Comment Letter, File No. S7-10-22, 2022

> *“Occidental was the first U.S. oil and gas company to establish net-zero goals for our total carbon inventory of Scope 1, 2 and 3 emissions, including emissions from the transportation, processing and use of our oil and gas products by consumers… In addition to expanding our voluntary GHG emissions disclosure and interim reduction targets, we have presented our detailed pathway to net zero to our investors.”*

Occidental Petroleum
Source: **SEC public comment file, S7-10-22 (letter available in the comment index)**

Methodology Note

Statements were collected from company news releases, executive speeches and interviews, sustainability reports, corporate websites, SEC comment letters, proxy opposition statements, and financial filings, prioritizing the 2025–2026 period. SEC comment letter excerpts date from the 2022 public comment period on the Commission’s proposed climate disclosure rule and are retained as a standalone category. Quotes were selected for affirmative acknowledgment of climate change as a business consideration; defensive risk-factor boilerplate was deliberately excluded. This compilation does not assess or rank companies on climate performance. Companies included here have in some cases revised targets, missed goals, or faced criticism of their transition plans; for that reason, their inclusion documents acknowledgment, not achievement.

Research support for this post was provided by Tanya Agawal.

Harvard Law School Forum on Corporate Governance

Attacks on ESG Investing are Also Attacks on Company Support for Sustainability

Posted by Timothy Smith, ICCR & Shareholder Rights Group, on Tuesday, May 26, 2026

Tags: Corporate responsibility, Employee benefits, ESG initiatives, Human capital management, Talent retention, Workplace sustainability
More from: Timothy Smith, ICCR

Editor's Note: Timothy Smith is the Senior Policy Advisor at the Interfaith Center on Corporate Responsibility (ICCR). This post is based on his ICCR report.

In the last few years there have been mounting attacks against “woke capitalism” and ESG investing. We are seeing these attacks in state legislatures and Congress, as well as from the White House and conservative investors. While these attacks are part of the American landscape, in Europe, ESG investing and corporate sustainability are widely supported. Interestingly, these public attacks on “woke capitalism” target Walmart as much as BlackRock. Yet, literally thousands of major companies publish annual sustainability and corporate responsibility reports outlining their values, the business case for acting as responsible corporate citizens, and their goals and work on the environment, social issues, and governance.

Some companies work within their industries to promote leadership on issues like methane emissions, human rights in supply chains, reduction of the use of plastic, or reduction of greenhouse gases (GHGs).

The Business Roundtable’s 2019 Statement on the Purpose of a Corporation,[1] endorsed by 181 CEOs, correctly acknowledged that the modern corporation needs to be accountable to all of its stakeholders including its workers, customers, and the communities where it operates.

Sustainability performance for a business may include scores of corporate responsibility issues. The point is not whether every company pursuing sustainability would receive an A+ grade for delivering on each of these issues. This is not a rating exercise. Instead, it is important to see how these companies embrace the compelling business case for sustainability, and its long-term positive impact on shareholder value. They endorse this direction not because they are following a “left wing agenda” or are compelled to do so by outside pressure groups, but because they understand this is a sensible and prudent way to do business.

We believe that visible company commitments to sustainability are a compelling point in ongoing debates in state legislatures and Congressional committees, as bills arise challenging investors’ freedom to integrate sustainability issues into their investment decisions and company engagements.

This is a growing trend in the global business community and is not one that companies are likely to retreat from in a wholesale way. It is important to highlight examples of corporate commitment to sustainability to drive this point home. In the pages that follow, we include a series of quotes from companies making the case for sustainability in their businesses. These quotes represent the tip of a very large iceberg. However, we also acknowledge that our inclusion of a quote from a company does not mean we are necessarily convinced about its commitment or plan to deliver on its sustainability goals.

In conclusion, the attacks on ESG and “woke capitalism” are attacks on the views and sustainability work of thousands of companies that invest capital, make products, and hire employees in the very states that are leading the attacks against ESG. They are misguided, just as the attacks on sustainable investing are fatally flawed.

Company Quotes on the Benefits of Sustainability

Technology

Accenture

a. “As we help our clients advance their environmental, social and governance goals by connecting sustainability to their transformations, we also operate our business with a strong commitment to the environment, ethics and human rights, and we work to create value in society through our communities around the world.” (This is one quote from a page about how they use ESG metrics and how they measure their sustainability: **https://www.accenture.com/us-en/about/corporate-sustainability**.)

Alphabet

a. “At Alphabet, we are making steady progress towards our sustainability ambitions. Our commitment to centralizing and strengthening sustainability efforts demonstrates our dedication to creating impactful change. Transparency is a key focus, highlighted by our new voluntary sustainability report, which underscores our accountability.”

b. “We believe that ESG principles should be woven into every aspect of our business – from service design to decision-making and defining success. Many of our colleagues are already actively contributing to these efforts. Our task is to support and scale these contributions over time, ensuring that sustainability is not a separate track but an integral part of our journey towards creating meaningful impact.” – Andreas Baron, Chief ESG Office Alphabet International (**https://www.alphabet.com/en-ww/sustainability.html**).

Amazon

a. “We combine data and science with passion and invention to drive everything we do. We set big goals and work backward to achieve them. We pledge to apply that same tenacity to how we address some of the world’s biggest environmental and societal challenges, so we can help make every day better for our customers, employees, communities, and planet.” (The sustainability website goes into detail: **https://sustainability.aboutamazon.com/progress#all-topics**.)

Apple

a. “We reduced our gross greenhouse gas (GHG) emissions across scopes 1, 2, and 3 by more than 60 percent compared with our 2015 baseline year — not including offsets. **In that same time period, revenue grew by more than 65 percent**. We estimate that we’ve avoided 41 million metric tons of emissions this year through reduction efforts like transitioning our supply chain to renewable electricity and sourcing recycled content. (Apple 2025 Environmental Progress Report)

Intel

a. “Underpinning this work is a consistent focus on technology, sustainability, and talent aligned with our long-term goals. At the end of the day, our work in these areas drives innovation and growth—because when great people engineer great products to delight our customers, we strengthen our business and help meet the needs of a changing world.” (2024-25 Corporate Responsibility Report, pp 3)

b. “Our water conservation and use of renewable energy is supporting a resilient and sustainable manufacturing footprint. And our close collaboration with partners across our value chain is helping customers to achieve their own sustainability goals.” (2024-25 Corporate Responsibility Report, pp 3)

c. “As regulatory pressure on sustainability increases, we want to make sure our channel partners meet requirements. By incorporating recycled plastic in our coolers, we help them remain competitive.” (2024-25 Corporate Responsibility Report, pp 48)

Meta

a. “It’s not just about us: the work Meta is doing today connects our collaborators, peers and communities to a reality where we can partner on sustainable solutions. With this work, and alongside our partners, we are:

i. Working with suppliers committed to net zero, procuring clean and renewable energy and developing technology to support a climate resilient global community

ii. Working to restore more water than we consume

iii. Promoting safe, healthy and fair working conditions across the value chain

iv. Restoring native habitats to encourage biodiverse ecosystems" (**https://sustainability.atmeta.com/**)

Microsoft

a. "The Microsoft Climate Innovation Fund has allocated over $793 million in capital to bring new supply to market and accelerate adoption and cost reduction in key target technologies." (2025 Environmental Sustainability Report | Microsoft)

b. "Microsoft signed long-term agreements to procure more carbon removal than all previous years combined…We are committed to helping build the markets we buy from, translating leading science into commercial innovation." (2025 Environmental Sustainability Report Accelerating progress to 2030, pp 5)

c. "We remain pragmatically optimistic because of the promise of new sustainability technologies, innovations in AI, and market solutions that are emerging which can accelerate progress across challenging sectors like steel, concrete, and energy transitions." (2025 Environmental Sustainability Report Accelerating progress to 2030, pp 4)

Financial Services

Bank of America

a. "Bank of America is committed to improving the environment in how we approach our global business strategy, work with partners, make our operations more sustainable, support our employees, manage risks and govern our activities."

b. "Building on our longstanding support for the Paris Climate Agreement, we have a goal to achieve net zero greenhouse gas (GHG) emissions in our financing activities, operations and supply chain before 2050. Our Environmental Business Initiative will deploy and mobilize $1 trillion by 2030 to accelerate the transition to a low-carbon, sustainable economy, as part of a broader $1.5 trillion sustainable finance goal aligned to addressing the United Nation's Sustainable Development Goals (SDGs). Our multi-year financing commitment provides financial capital, along with significant intellectual capital, to develop solutions to climate change and other environmental challenges. It focuses on low-carbon energy, energy efficiency, and sustainable transportation, in addition to addressing other important areas like water conservation, land use and waste."

c. "We also are making our operations more sustainable – including achieving carbon neutrality and procuring 100% renewable electricity in 2019, a year ahead of schedule. We offer programs and benefits that help employees become better environmental stewards."

d. "Since 2007, we have invested more than $200 billion in financing low-carbon and sustainable business activities across the globe through our Environmental Business Initiative. For years, our financing commitment has focused on providing capital that supports innovative solutions to climate change and other environmental challenges. Over the next ten years (2020-2030), we have committed an additional $1 trillion to help advance these efforts and to work toward achieving the United Nation's Sustainable Development Goals (SDGs)."

e. "As one of the world's largest financial institutions, we are committed to communicating to our stakeholders about climate-related risks and opportunities, and how we are managing these within our business." (Corporate environmental sustainability strategy & initiatives)

JPMorgan

a. "At this time, while our efforts continue to be guided by the concept of the greenhouse gas ("GHG") mitigation hierarchy — designed to prioritize actions that 5 avoid, reduce and replace emissions before considering those that remove or compensate for them — we have transitioned from time- and percent-bound targets to a decision framework designed to

evaluate complex carbon management initiatives and help prioritize those with the greatest potential emissions reduction relative to cost." (2024 Sustainability Report, pp 18)

b. As a global financial services firm, we believe we can help to address some of the most pressing environmental and social challenges of our time by running a healthy and vibrant company that creates long-term shareholder value; supporting our clients and customers in achieving their business and financial goals; and fostering an inclusive culture and supporting the development of our employees." (2024 Sustainability Report, pp 7)

c. Racial equity commitment progress through 2024

Wells Fargo

a. "Wells Fargo is also making progress to strengthen our own operational sustainability. Across certain offices and branches, we are installing energy and water efficiency measures and innovative building technologies. We are also procuring renewable electricity to power a number of those facilities. These investments can help lower long-term operating costs and improve the experience of employees and customers, while also supporting the Company's operational sustainability goals." (Sustainability) b. "Our efforts to embed sustainability into our own operations enable us to test and deploy solutions that can lower operating costs, increase resiliency, and connect our teams with emerging innovations. This work is supported by our commitment to a strong risk and control culture, along with governance practices that help us adapt to and manage in a rapidly changing world." (Sustainability)

Energy & Utilities

American Electric Power

a. "Safe, affordable and reliable power has never been more important for our customers and the communities we serve … As we work to achieve our net-zero goal, we're equally committed to working with regulators, policymakers, investors and other stakeholders to balance the transition. We understand the importance of a diverse portfolio of resources, especially during a time of unprecedented growth in 6 electricity demand. We will deliver on purpose and commitment by always prioritizing the needs of our customers and communities." (**https://www.prnewswire.com/newsreleases/aep-releases-2024-corporate-sustainability-report-302133134.html**)

b. "At AEP, we are committed to fostering and sustaining a culture of environ- mental respect. In such a culture, vulnerabilities are eliminated and risks are well managed in all aspects of our business. By promoting energy efficiency, minimizing emissions, controlling all other waste streams, and partnering with local communities, we protect those environments and habitats in which we operate." (**https://docs.aep.com/docs/sustainability/2025-AEP-Sustainability-Report.pdf**)

Chevron

a. Chevron ESG, quotes from every ESG category

b. "At Chevron, we strive to protect the environment through responsible design, development, operations and retirement of assets. By considering potential environmental risks, we aim to enhance our environmental performance around the world. We identify and manage safeguards designed to prevent or mitigate potential environmental impacts. The Operational Excellence Management System (OEMS) environment focus area promotes systematic consideration of business risks and environmental performance alongside stakeholder expectations." (**https://www.chevron.com/investors/esg/environment**)

Con Edison

a. "[A]s the impacts of climate change and extreme weather become more urgent, Con Edison believes that the clean energy transition is critical for New York's future. New York State's ambitious climate law requires the transition to a zero-emission electric grid by 2040, which is why Con Edison is a key partner—working with customers, regulators, policymakers, and other stakeholders—in reimagining energy for the future. The Consolidated Edison, Inc. Clean Energy Commitment represents a blueprint for helping achieve the state's climate and renewable energy goals. Each pillar is comprised of various company initiatives, including building an electric grid that is both more resilient against the impact of climate change

and also cleanenergy ready, helping to accelerate electrification and energy efficiency for customers and increasing access to electric vehicle charging, transitioning away from reliance on fossil fuels, strengthening the renewable jobs pipeline, and improving the quality of life of the neighborhoods we serve and live in, focusing on communities that have been disproportionately impacted by climate change." 7 (**https://www.coned.com/en/our-energy-future/our-energy-vision/our-energy-futurecommitment**)

b. "This [sustainability] report reaffirms Con Edison's commitment to making critical investments that ensure New York has a resilient and reliable grid ready for the future, whether it's transitioning away from fossil fuels or taking on the urgent threat of climate change and extreme weather … We are proud of the work we do to ensure that Con Edison continues to deliver for our customers as part of the clean energy transition, by investing in our system, in our people, and in our customers." (**https://www.coned.com/en/about-us/media-center/news/2024/04-24/con-edisonsustainability-report-details-clean-energy-progress**)

ConocoPhillips

a. "We have been on a journey to integrate sustainability into planning and decision making for decades. Before our first sustainable development (SD) report was published in 2005, **we had implemented a process to identify and manage environmental and social issues and to assess performance**. That process has evolved over the years as the risk and opportunity trends in science, demographics, technology and policy have changed. We published our first SD and climate change positions in 2003. Since then, we have updated those positions and developed positions on water, biodiversity, just transition, and human rights. We also continue to refine our governance structure to manage sustainability risks and opportunities throughout the organization. By design, our systems-based approach includes continuous improvement and internal assurance." (**https://www.conocophillips.com/sustainability/integrating-sustainability/**)

Dominion Energy

a. "To Dominion Energy, operating sustainably means meeting our stakeholders' needs today, while also preparing for the challenges of tomorrow. As a company that's been serving the needs of customers and communities since the early 20th century, we appreciate the value of taking the long view. Today, we are innovating for the future — investing in all forms of energy, improving the customer experience, and exploring new technologies as we carry out our mission to deliver the reliable, affordable, and increasingly clean energy that powers our customers every day … We recognize how important it is to execute our mission sustainably. The impact of our work extends beyond the service we provide, and it can make a difference that lasts for decades and beyond. We are taking the right actions today to ensure the enduring value we provide to customers, protect the health of our communities and the environment, support the well-being of our employees, and secure the long-term 8 resilience of our business." (**https://sustainability.dominionenergy.com/SCR-Report2024.pdf**)

b. "As the need for energy rises, we are growing our generation and delivery systems to meet the increasing demand. Our five-year capital plan, covering 20252029, includes $50 billion of investment opportunity — including 83%, or approximately $41.5B, investment in clean generation or electric transmission and distribution." (**https://sustainability.dominionenergy.com/SCR-Report-2024.pdf**)

c. "Dominion Energy is fully committed to providing reliable, affordable, and increasingly clean energy in an environmentally responsible manner that works to protect public health, the environment, and natural and cultural resources. This includes complying with applicable federal, state, and local environmental statutes, regulations, enforceable agreements, and permits; minimizing risks to the environment from unplanned or unauthorized release of hazardous or harmful contaminants; and striving for continuous improvement in our environmental performance." (**https://sustainability.dominionenergy.com/DE-environmental-policystatement.pdf**)

Duke Energy

a. As I step into the role of chief sustainability officer (CSO) at Duke Energy,I have been inspired by the dedication and commitment of our people and the power of collaboration focused on putting customers' needs first, the results of which are reflected in the pages of this year's Impact Report. This year, we accelerated projects to upgrade our existing generation fleet, extracting even more value from today's assets while building for tomorrow's needs. Our robust system planning allows us to bring on more than 13 gigawatts of new capacity through 2030, enough to power more than 10 million homes, while

upgrading hundreds of thousands of miles of power lines for greater efficiency and reliability." (message from CSO, **https://s201.q4cdn.com/583395453/files/doc_downloads/2025/10/20/242141-impactreport-2024-final-2.pdf**)

EOG Resources

a. "EOG's value proposition is to create sustainable value through industry cycles. Our strategy of capital discipline, operational excellence, sustainability, and culture is at the core of our success as a company. We believe we will continue to create shareholder value by focusing on being a high-return, low-cost producer, committed to strong environmental performance, and will play a significant role in the long-term future of energy. In order to find and develop low-cost reserves, EOG emphasizes 9 the exploration and drilling of internally generated prospects. This strategy is intended to consistently deliver cost-effective crude oil and natural gas production that enhances the generation of cash flow and earnings from each unit of production, allowing the company to deliver long-term growth in shareholder value while maintaining a strong balance sheet. Our employees drive our unique culture — our returns-focused, best-in-class exploration; technology leadership; collaborative; multidisciplinary innovation; and commitment to responsible operations." (**https://eogresources.s3.us-east2.amazonaws.com/EOG_2024_Sustainability_Report.pdf**)

Exxon

a. "ExxonMobil is committed to improving quality of life by meeting the needs of society. That's what we've done throughout our history. As the world evolves, so do we. We are constantly working to meet the changing needs of our customers and stakeholders. This ability to adapt has been the key to creating long-term shareholder value and will be critical to continued success in the years to come. Sustainability at ExxonMobil is integrated into what we do and core to our corporate strategy." (**https://corporate.exxonmobil.com/sustainability-andreports/sustainability#Aboutthereport**)

b. *"Protect Tomorrow. Today*. is the guiding principle behind our approach to sustainability. It drives our mindset to be the most responsible operator in our industry. We're pursuing up to $30 billion in lower-emission investments between 2025 and 2030 – and we're on track with our 2030 emission-intensity reduction plans, which we actively steward as part of our business plans. Supportive technology and stronger policies are critical to reach net-zero by 2050. Rational and constructive policies that encourage the full range of technologies are key to lowering global emissions and meeting society's needs for critical products and services. We pursue environmental excellence every day, because we know it's not just what we do that matters, but also how we do it. We have a century-old legacy of growing local economies, supporting communities, developing our workforce, and maintaining a constant focus on keeping people safe." (**https://corporate.exxonmobil.com/sustainability-andreports/sustainability#Aboutthereport**)

Occidental Petroleum

a. "These principles, approved by our Board of Directors in 2022, are designed to unify our workforce around key actions, frame our engagement with stakeholders and exemplify our core values in practice. 10

i. Design and conduct safe, reliable and sustainable operations that promote worker and public health and safety, product stewardship and environmental quality.

ii. Respect the laws and values of communities where we operate and participate constructively in legislative and regulatory development.

iii. Conserve natural resources, including biodiversity, wildlife, habitat, water and energy, and manage resources responsibly.

iv. Advance the circular economy through waste minimization, reuse and recycling and extending the productive lives of our property, plants and infrastructure.

v. Evaluate and mitigate potential risks and impacts to people and the environment.

vi.Pursue our ambitious goals of net-zero greenhouse gas emissions in our operations and products to further the climate goals of the Paris Agreement.

vii. Report on our performance and engage with shareholders and other stakeholders to enhance HSE and sustainability programs.

viii. Collaborate with host communities to contribute to their vitality in the transition to a net-zero future.

ix. Provide innovative products, services and solutions to help host governments, partners, suppliers and customers address global challenges, achieve net-zero goals, and advance the UN Sustainable Development Goals." (**https://online.flippingbook.com/view/1010916063/7/**, pp 4)

Southern Company Gas

a. "Energy connects people, businesses and future generations to growth, possibility and opportunity. Driven to realize this potential, Southern Company continues to build the future of energy for the advancement of our customers and communities. Our company has been in existence for more than a century, and as we move toward a new energy future we will build on our solid foundation to help ensure the sustainability of our business for many years to come." (**https://investor.southerncompany.com/esg/sustainability-esg/default.aspx**)

b. "For our company, sustainability means effectively engaging with a broad range of stakeholders to develop strategic solutions that will enable our transition to a new energy economy and create long-term value. Critical to our continued success is an unwavering commitment to delivering clean, safe, reliable and affordable energy while maintaining exceptional service." (Sustainability)

Consumer Goods & Retail

Coca-Cola

a. "Coca-Cola Mission 2025: Our Mission 2025 commitments on climate, packaging, water, ingredients, nutrition, people and communities set measurable targets. We aim to achieve net zero emissions by 2040 and have a net positive impact on biodiversity in critical areas of our value chain by 2040. 2025 will be the final year of our Mission 2025 goals and we have already reached 9 out of our 18 targets, ahead of the target year." (https://www.coca-colahellenic.com/en/a-more-sustainablefuture)

General Mills

a. "As a food company, General Mills depends on the health and well-being of our planet, and we are investing in landscapes and ecosystems to build resilience for nature, climate and communities. In 2024, we continued to make progress on our priority planetary commitments, including regenerative agriculture, climate action, and recyclable or reusable packaging. We also advanced our commitment to no deforestation across palm, cocoa and fiber supply chains by the end of 2025. By partnering with farmers and local organizations, we have engaged more than 600,000 acres in programming designed to advance regenerative agriculture in our key sourcing regions. In 2024, we announced a collaboration with Ahold Delhaize USA to help advance regenerative agriculture management on more than 70,000 acres of farmland, helping to reduce greenhouse gas emissions across our shared value chain … In our 55th year of reporting social and environmental performance to stakeholders, we remain committed to disclosing our progress, as well as our challenges. While we have much more to do, I am energized by what we have done and the strategies in place to continue to provide families food they love and stand for good — for people, planet and our business." (**https://www.generalmills.com//media/project/gmi/corporate/corporate-master/files/about-us/commitments/generalmills-global-responsibility-report.pdf?rev=2ba07bb7454c4885a153008bbc57bfdd**)

b. "General Mills is committed to reducing our impacts on climate change. Changes in climate not only affect global food security but also impact General Mills' raw material supply, which, in turn, affects our ability to deliver quality, finished products to our consumers and ultimately, value to our shareholders. Our Climate Policy addresses our entire value chain. Effectively addressing greenhouse gas (GHG) 12 emissions, reducing and adapting to climate change impacts, and doing our part to tackle food security challenges will require an innovative, holistic system approach. Agriculture presents a complex challenge, given volatile externalities like weather, market demand and viable adaptation choices. Risks vary according to crops, growing regions and local markets. An effective approach will require continuous learning and

adjustments, as well as balancing multiple interests such as environmental impacts, food security and farmer livelihoods. Our Climate Policy establishes the broad framework from which specific targets and action plans flow." (**https://www.generalmills.com/-/media/project/gmi/corporate/corporatemaster/files/about-us/commitments/general-mills-climatepolicy.pdf?rev=033417d438234f4d8eff26f0ea0790ba**)

Kimberly-Clark

a. "We believe that sustainability is core to healthy and resilient businesses and communities." (2024 Sustainability Report, pp 12)

b. "Our collective sustainability efforts position us to deliver more value to our stakeholders while working to address the complex sustainability challenges that impact our business today and in the future." (2024 Sustainability Report, pp 5)

c. "Our sustainability strategy helps enable our enterprise strategy through four pillars: Better Products, Better Planet, Better Workplace, and Better Society." (2024 Sustainability Report, pp 8)

d. "We focus on managing sustainability-related risks, enhancing resource efficiency, and innovating to deliver high-performing, more sustainable products. We believe that these efforts strengthen our ability to meet complex sustainability challenges while delivering greater value to consumers, customers, employees, and stakeholders." (2024 Sustainability Report, pp 8)

e. "Optimize Our Margin Structure" (2024 Sustainability Report, pp 9).

f. "As part of our Powering Care strategy, we are advancing more efficient and productive use of raw materials and pioneering new approaches to sourcing so that we increase the resilience of our supply chain." (2024 Sustainability Report, pp 11)

Kroger

a. "Inward impact: Topics or matters that may affect a company's ability to operate and deliver business value in the future. For example, changing weather patterns and temperatures may pose potential risks to the company's business operations over time." (2024 Environmental, Social & Governance Report, pp 10)

b. "We see this coming to life by including more local products on our shelves, donating surplus food to food banks and finding new ways to run our business that ensure our food system and supply chain is secure for years to come." (2024 Environmental, Social & Governance Report, pp 3)

c. "At nearly 2,100 stores implementing a new End-to-End Produce program, we see higher sales in the Produce department and across the entire store." (2024 Environmental, Social & Governance Report, pp 8)

McDonald's

a. "Our key strategic areas—Menu & Value, Restaurant Portfolio & Digital, and Sustainability & People—do not operate in isolation. Rather, they are mutually reinforcing pillars that work in concert to deepen trust in our brand and drive the creation of sustainable long-term corporate value." (McDonald's Sustainability Report 2025, pp 3)

b. "In addition to the direct damage that extreme weather events may inflict on our restaurants, adverse growing conditions for key raw materials (wheat, feed grains, vegetables, etc.) could result in higher procurement costs, reduced supply volumes, and diminished quality." (McDonald's Sustainability Report 2025, pp 6)

c. We constantly consider and take action to reduce environmental impact in our business activities." (McDonald's Sustainability Report 2025, pp 2)

Mondelez International

a. "Our distinctive approach has a number of key pillars: leading in more sustainably sourced key ingredients, pioneering approaches that holistically tackle root issues, driving sector-wide transformation through collaboration, and sharing & learning from impact data assessing the positive progress made by our programs. We have signature raw material

sustainable sourcing programs across cocoa (Cocoa Life), wheat (Harmony and North America Wheat), dairy and palm oil. We're doubling 14 down on signature sourcing programs that we know have positive lasting impact on communities and the environment and provide the security of supply our business depends on. In addition, we lead sector-wide transformation through our work with the Consumer Goods Forum in advancing a Forest Positive future and promoting Human Rights. We have gathered meaningful data confirming our approach is delivering the type of change we're aiming for and can be scaled for greater impact." (**https://www.mondelezinternational.com/snacking-made-right/esgtopics/sustainability/**)

P&G

a. "P&G is a founding member of the Renewable Thermal Collaborative (RTC), formed in 2017 with the World Wildlife Fund, manufacturers, and local governments to identify and scale renewable, cost-competitive thermal energy solutions. P&G is engaged in several of the RTC's working groups to develop innovations required to scale solutions for technologies such as solar thermal, thermal storage, ENVIRONMENTAL SUSTAINABILITY biomethane, and green hydrogen. Likewise, P&G recently supported the development and launch of the RTC's Heat Pump Decision Support Tools to enable adoption of heat pumps across industries. The RTC also plays a pivotal role towards influencing policy to accelerate thermal decarbonization solutions." (2023 P&G Citizenship Report)

Patagonia

a. Numeric goals/accomplishments

b. We've built robust environmental and animal welfare responsibility programs to guide how we make our materials and products. Over 80% of our line – by weight – is made by preferred materials (**https://www.patagonia.com/our-footprint/**).

c. From Spring 2025 and onward, 100% of our new styles are made without intentionally added PFAS (**https://www.patagonia.com/our-footprint/**).

d. Apparel workers are among the lowest-paid employees in the world. Much of the clothing industry has lax social standards that can lead to unsafe working conditions, long hours, low pay and job discrimination for the workers who are predominantly women. The continual demand for fast fashion exacerbates this problem every day. (https://www.patagonia.com/social-responsibility/).

e. But this is not the case across the board. Over the years, Patagonia has built a robust social-responsibility program that analyzes and manages the impacts our business has on the workers and communities in our supply chain. Our goal is to not only minimize harm, but also create a positive benefit for the lives that we touch through our business (**https://www.patagonia.com/social-responsibility/**).

PepsiCo

a. "We clearly are about growth. So, growth is our business model, but growth for the long term means that we need to generate this growth without depleting the resources that will give us future growth." (Food Dive)

b. "PepsiCo Positive (pep+) is not just a sustainability strategy. It's an ongoing transformation that powers our whole business, from innovation to production, marketing to distribution." (**https://www.pepsico.com/esg-topics#EnvironmentalImpact**)

Walmart

a. Q: Can you talk about how you see the next five years in this journey, where you see green premiums and innovation or policy support that can help you advance this mission? A: "Another one, onsite generation. We have one of the largest onsite fleets I think in the country of solar, utilizing our rooftops. There's a lot of untapped real estate that we have. That's a big advantage for Walmart. We can leverage that. And again, if you think about energy security, energy affordability, it makes sense for us to do that. Tax equity deals, community solar, those are also really interesting. Allow us to provide affordable, clean energy added to the grid for lower income communities, that's a bonus as well. So, these are core business strategies that are run deep in our operations unit. They don't report direct to me. They're part of our operations and it's sort of dotted

line to me, and we run it in this really integrated kind of way. So, that's Scope 1 and Scope 2" (2023 Goldman Sachs Sustainability Forum).

b. "Walmart's sustainability efforts focus on enhancing the resilience of our operations and product value chains to enhance surety of supply, catalyze innovation and growth, maintain everyday low cost, and build stakeholder trust. Our priorities include reducing greenhouse gas (GHG) emissions, regenerating natural resources, reducing product and packaging waste, and supporting people who work in supply chains through responsible sourcing and the creation of inclusive economic opportunity" (**https://corporate.walmart.com/purpose/sustainability**).

c. "Climate change is one of the greatest challenges of our time. To avoid the worst effects, we all need to act now to sharply reduce greenhouse gas emissions. And business is an essential part of the solution. In 2016, Walmart was the first retailer to announce a science-based target to align with the Paris Climate Agreement, which we recently upgraded to the highest 1.5o C-degree level of ambition … For the long term, we are targeting zero emissions across our global operations by 2040, without relying on carbon offsets … Walmart will continue transparently reporting our climate-related risks and strengthening business resilience to help prepare for the effects of climate change." (**https://corporate.walmart.com/policies#climate-policy**)

Industrial & Manufacturing

Ford

a. "We believe that everyone should experience the benefits of clean air, clean water, and carbon-neutral transportation, which is why we are taking action to achieve carbon neutrality no later than 2050." (**https://corporate.ford.com//socialimpact/sustainability/**)

General Motors

a. "As part of our strategy to help reduce emissions, we have secured the contracts needed to match 100% of GM's electricity use for our U.S. facilities with renewable energy by the end of 2025, and we are working to do so globally by 2035" (**https://www.gm.com/content/dam/company/docs/us/en/gmcom/company/2024_TCF D_Report.pdf**, Climate-related Financial Disclosures).

b. In 2024, we implemented a heat pump pilot at Lockport Operations that uses 100% clean hydropower instead of natural gas, reducing annual energy use by over 3,600 MMBtu and avoiding more than 480 metric tons of CO2 emissions. Projects like this are informed by internal audits and ENERGY STAR Treasure Hunts—in 2024 alone, 20 of these events were conducted globally, identifying more than $11 million in potential utility cost savings." (**https://www.gm.com/content/dam/company/docs/us/en/gmcom/company/2024_TCF D_Report.pdf**, Climate-related Financial Disclosures)

Honeywell

a. "Building Automation, Energy and Sustainability Solutions and Industrial Automation business segments that help make the world smarter, safer, as well as more secure and sustainable." (2025 IMPACT REPORT, pp 6)

b. "Sustainability-oriented offerings are solutions that help improve safety, environmental impact, health, security, resilience and accountability." (2025 IMPACT REPORT, pp 11)

c. "At Honeywell, we recognize the critical importance of biodiversity in maintaining the health of our planet and supporting sustainable development. Biodiversity is essential for ecosystem resilience, and is crucial for human well-being, economic prosperity and environmental health. As a global leader in industrial technology, Honeywell is integrating biodiversity conservation into our business operations and sustainability strategies." (2025 IMPACT REPORT, pp 24)

d. "Honeywell Energy and Sustainability Solutions (ESS) safety programs provide a comprehensive framework to drive continuous improvement in product safety and stewardship." (2025 IMPACT REPORT, pp 51)

e. "Increase revenue through demand for sustainability oriented products" (2025 IMPACT REPORT, pp 60).

f. “There have been more than 6,800 sustainability-oriented projects implemented since 2010 with an estimated annualized savings of more than $100 million.” (2025 IMPACT REPORT, pp 60)

g. “Reduced operating costs through efficiency gains and cost reductions by moving to more efficient buildings.“ (2025 IMPACT REPORT, pp 60)

h. “Our Government Relations team identifies and assesses emerging trends and advocates for favorable policies, legislation and regulation globally to promote clean energy and energy efficiency. Changes in regulations, increases in the demand for advanced building controls and energy efficient products, and the transition to a lower-carbon economy support demand for our products in this field.” (2025 IMPACT REPORT, pp 60) i. “Better competitive position to reflect shifting consumer preferences, resulting in increased revenues.” (2025 IMPACT REPORT, pp 60)

Nucor

a. “The green economy is being built with steel and the steel it’s built with matters. Together with our partners, Nucor is leading the charge across industries to create a more sustainable, carbon-free future at the scale of industry.” (**https://nucor.com/sustainability**)

b. “As North America’s leading steelmaker, we recognize our responsibility to also be the leader in sustainability.” (Sustainability Report 2024)

c. “Wind and solar energy are important tools in the transition from carbon-emitting fuels. But in their current form, they don’t generate sufficient baseload power for large-scale industrial operations and energy-consumptive businesses. While these renewables represent the start of a broader clean energy transition, critical businesses like transportation, steelmaking and commercial data centers require new clean energy sources at industrial scale.” (Scaling clean energy to meet growing industry and community needs demands impactful investments)

US Steel

a. “Sustainability. Corporate citizenship. Corporate social responsibility. ESG issues. Every company defines these phrases a bit differently, but U. S. Steel views them through a simple lens: Sustaining lives and livelihoods by creating a more sustainable future, for our company and the stakeholders who depend on us, is not only the right thing to do, it’s also essential to our long-term success. To realize this future, we have fully integrated sustainability into our larger strategy to transform our company into a sustainable, competitive business, enabling us to remain a pillar of our communities, a source of pride for our employees, and the bedrock of sustainable manufacturing for generations to come.” (**https://www.ussteel.com/sustainability/overview**)

Transportation & Logistics

Norfolk Southern

a. “Our goal is to create a more sustainable world, a brighter future for our employees and communities, and help our customers achieve their sustainability goals. Our latest Forging a Better Tomorrow report highlights all we do to drive sustainability, support our people and more.” (**https://www.norfolksouthern.com/en/commitments/sustainability**)

b. RESULTS

i. We invested $1.5 billion in our locomotives, freight cars, and tracks to serve you better.

ii. Moving freight by rail instead of truck reduces greenhouse gas emissions 75% on average.

iii.Trains are up to seven imes more fuel-efficient than trucks (**https://www.norfolksouthern.com/en/commitments/sustainability**)

Union Pacific

a. “Environmental sustainability gives us a competitive edge, and we continue to invest in new tools and technologies to further reduce our emissions. For instance, we are fostering the growing U.S. market for biofuels, including their use in our locomotives. In 2024, we became the first Class I railroad to join the Clean Fuels Alliance and received their Industry Partnership Award. We also deployed our first diesel battery hybrid locomotive for testing and continue to modernize our fleet for better reliability and fuel efficiency.” (Sustainability Metrics 2024)

b. “Our strategy extends beyond our operations to improving sustainability throughout our supply chain. We focus on resilience, supplier diversity and ongoing supply chain management to ensure the long-term success of our business, while minimizing risks and uncovering opportunities.” (Sustainability Metrics 2024)

UPS

a. “We believe that sustainability and operational efficiency go hand in hand. We make smarter decisions and invest in innovative technologies and alternative fuels that reduce emissions for our business and our customers.” – Scott Childress, Chief Sustainability Officer (UPS 2024 Sustainability Report)

b. “At UPS, our giving goes far beyond the dollar – we combined our logistics expertise, transportation assets and charitable donations with our employees’ skills, passion and time to make a measurable impact in society.” – Nikki Clifton, President, Social Impact and the UPS Foundation (UPS Sustainability and Social Impact Report / Delivering For Our Communities)

Telecommunications

Charter Communications

a. “As a leading broadband connectivity company and cable operator, we create longterm value for our stakeholders through the efficient delivery of our services across our footprint. We recognize that by investing in a highly skilled workforce, we are able to deliver superior products and services over an advanced network to bring sustainable connectivity to our customers and their communities. A Highly Skilled Workforce, a Superior Network and Connected Communities underpinned by strong governance constitute our ESG framework. These three-pillars define our ESG priorities, set a foundation for our ESG goals and reflect important aspects of our overall business strategy.” (Environmental, Social and Governance (ESG) at Charter)

Verizon

a. “We are committed to reducing energy use across our networks, building portfolio and fleet to mitigate certain risks arising from the transition to a low-carbon economy and to lower operating costs now and into the future.” (Verizon 2025 TCFD Report, pp 9)

b. “Improving the operating and energy efficiency of our network, fleet and buildings, transitioning to low-carbon or other substitute technologies, such as EVs or fiber technologies, and shifting to low-carbon suppliers may result in reduced costs, emissions and/or water usage.” (Verizon 2025 TCFD Report, pp 12)

c. “Extreme weather events (e.g., hurricanes, heavy rain, high wind, wildfires, blizzards and heat waves) may disrupt our direct or value chain operations and result in negative financial, operational and reputational impacts.” (Verizon 2025 TCFD Report, pp 11)

d. “Verizon’s device trade-in program supports our circular economy approach to extending the lifespan of mobile devices and accessories. We strive to reuse, resell or recycle all mobile phones —from any brand or carrier, in any condition—that are returned to Verizon. Our processes are designed to keep the mobile phones and related accessories received through our product take-back program out of landfills. The program enables both Verizon and non-Verizon consumers to return qualifying, pre-owned devices in exchange for a Verizon credit or gift card. We repair, repurpose and resell these devices before pursuing responsible recycling at the end of their useful life. We refurbish and redistribute our home internet devices for 4G and 5G fixed wireless access and Fios service to customers. Consumers can also 21 return obsolete devices for responsible recycling.” (Verizon’s 2024 Responsible Business Update)

Healthcare & Pharmaceuticals

Novartis

a. “Environmental, social and governance (ESG) matters remained high on our agenda. We deepened our commitment to vital topics: improving access to medicines, taking further measures in our fight against climate change and strengthening our ethics framework, among other things. Our efforts have been recognized by leading independent agencies and are reflected in consistently high rankings.” – Joerg Reinhardt, Chair of the Board of Directors (Novartis in Society Integrated Report 2024)

b. “We remain committed to environmental, social and governance (ESG) matters. We rank highly among industry peers in a range of key ESG ratings, and were honored to rank number one in the 2024 Access to Medicine Index.” – Vas Narasimhan, Chief Executive Officer (Novartis in Society Integrated Report 2024)

Pfizer

a. “**Pfizer Foundation**: Proceeds from the March 2020 Sustainability Bond are being used to support the company’s work to increase access to Pfizer’s medicines and vaccines, especially among underserved communities, and strengthen healthcare systems. Pfizer has allocated $280 million of the Sustainability Bond proceeds to The Pfizer Foundation, a charitable organization established by Pfizer Inc., that works to help address the challenges of a complex and evolving global health landscape. The Pfizer Foundation is a separate legal entity from Pfizer Inc. with distinct legal restrictions. The Pfizer Foundation is focused on accelerating innovative solutions and improving health systems to help improve the health of communities around the world. Through its programs, The Foundation aims to help reduce the impact of infectious disease and improve access to healthcare for underserved patients around the world.” (Pfizer’s 2022 Environmental, Social, & Governance Report, pp 60)

[1] **https://www.businessroundtable.org/business-roundtable-redefines-the-purpose-of-a-corporation-topromote-an-economy-that-serves-all-americans**
(go back)

Harvard Law School Forum on Corporate Governance

Corporate Support for DEI Continues Among Investors and Companies

Posted by Timothy Smith (ICCR) , on Sunday, August 17, 2025

Tags: **Anti-DEI**, **Corporate governance**, **dei**, **Proxy season**
More from: **Timothy Smith**, **Interfaith Center on Corporate Responsibility**

Editor's Note: Timothy Smith is the Senior Policy Advisor at the Interfaith Center on Corporate Responsibility (ICCR). This post is based on an ICCR memorandum by Mr. Smith and Max Homans.

During this proxy season, companies faced a wave of shareholder resolutions attacking diversity, equity, and inclusion (DEI) programs and calling for their eradication. This campaign expanded last year's anti-DEI attacks, tracked in our 2024 paper, Championing Diversity in Corporations, **[1]** which also provided quotes from numerous companies strongly defending their diversity programs. This year's anti-DEI resolutions built upon growing attacks on DEI by various government agencies and right-wing critics, who argued that company diversity programs were on the way out. Interestingly, these anti-DEI resolutions conveyed the exact opposite message, demonstrating that investors and companies alike believe that diversity has a positive impact on employees and long-term shareholder value.

In fact, in this proxy season approximately 98% of the shares voted to maintain current corporate diversity, equity, and inclusion programs. 32 companies (listed in the appendix) including Disney, Costco, Visa, Apple, Deere, Boeing, Goldman Sachs, Levi's, AMEX, Coca-Cola, Berkshire Hathaway, Bristol Myers, and Gilead Science saw near-unanimous votes, averaging a mere 2% shareholder vote supporting these resolutions, sending a clear message to the boards that shareholders support the business case for non-discrimination in employment and a diverse workforce. **[2]**

Many of these companies under attack remained publicly committed to their longstanding DEI programs. Corporations like Costco, JPMorganChase, Delta Air Lines, American Airlines, Southwest Airlines, and Apple continue to view diversity as a cornerstone of their workforce strategies, refusing to back down despite mounting pressure from conservatives and the White House. **[3]**

These companies fully understand the benefits of having diverse teams and leadership. For example, a review by As You Sow and Whistle Stop Capital of over 1,600 companies found that manager diversity is positively associated with key financial performance indicators, including return on equity and invested capital, revenue growth, and share price performance. **[4]** Similarly, a recent investor brief by the Canadian organization SHARE found that diversity, equity and inclusion add to company performance and, therefore, shareholder value. **[5]** If a company eliminates or dilutes efforts to promote diversity, they are neglecting that benefit and adding risk for investors. Simply stated, the data shows that diversity is good for business.

The following is a series of excerpted quotes from public statements, 2025 proxy statements, or quotes from Senior executives on DEI. This is a small snapshot of company statements, but it clearly demonstrates the fact that numerous leading corporations strongly resist these attacks and stand behind their commitment to nondiscrimination and diversity. At the end we also include relevant articles.

Companies are listed in alphabetical order.

AMAZON

In Dec. 2024, Candi Castleberry, Amazon's VP of Inclusive Experiences and Technology, told employees that the company was undergoing "evolution" of its DEI programs. She wrote: "we also aim to foster a more truly inclusive culture." **[6]**

APPLE

Apple's leadership similarly rejected proposals to scale back DEI, labeling such measures as attempts to "micromanage" the company's operations. The board stated, "Apple has a well-established compliance program and the proposal inappropriately attempts to restrict Apple's ability to manage its own ordinary business operations, people and teams, and business strategies," their 2025 proxy stated. **[7]**

AMERICAN EXPRESS:

"We Embrace Diversity: We believe that diversity of experiences, perspectives, and backgrounds enables us to be our best."

"We Stand for Equity and Inclusion: We are committed to rewarding and providing opportunities for colleagues equitably, based solely on merit, and we believe in having a workplace where everyone feels included and valued."**[8]**

BEST BUY

Best Buy's Board wrote in its proxy statement, urging shareholders to vote against the anti-DEI proposal, saying that the company is dedicated to "understanding the needs of our diverse global workforce and inclusive culture as part of its day-to-day operations."**[9]**

BOEING

"Boeing remains committed to recruiting and retaining top talent and creating an inclusive work environment where every teammate around the world is respected, valued, and empowered to succeed" and defended its "culture of nondiscrimination, inclusion, and meritocracy." **[10]**

BRISTOL MYERS SQUIBB

In its proxy statement, the BMS Board said the anti-DEI proposal from the National Legal and Policy Center "mischaracterizes the Company's inclusion efforts," stating "Our culture of inclusion enables us to create a respectful and welcoming work environment where all decisions are merit-based."**[11]**

COCA-COLA

"Creating a culture of diversity, equity and inclusion. Diversity, equity and inclusion are at the heart of our values and our growth strategy and play an important part in our company's success." **[12]**

COSTCO

"Our success at Costco Wholesale has been built on service to our critical stakeholders: employees, members, and suppliers," the board said in a statement reported by Forbes in a January 2025 article. **[13]** "Our efforts around diversity, equity, and inclusion follow our code of ethics. These efforts remind and reinforce with everyone at our company the importance of creating opportunities for all."

DELTA AIR LINES

Peter Carter, Delta's Chief External Affairs Officer told investors during the carrier's 4th quarter earnings call last month: "We are steadfast in our commitments because we think that they are actually critical to our business. Sustainability is about being more efficient in our operations, and really DEI is about talent and that has been our focus. The key differentiator at Delta is our people."**[14]**

E.L.F. BEAUTY

“I’ve yet to meet a CEO who isn’t committed to fostering a high performing and diverse workforce. At e.l.f., we believe the diversity of our team is one of our greatest strengths, contributing to 23 consecutive quarters of net sales and market share growth. Alicia Keys, who is part of the e.l.f. family through our Keys Soulcare brand, beautifully captured this sentiment at the GRAMMY’s: ‘DEI is not a threat, it’s a gift. The more voices, the more powerful the sound.’ We wholeheartedly believe in the power of diverse voices and perspectives.”**[15]** Tarang Amin, Chairman and CEO, e.l.f. Beauty

FERRERO GROUP

“Diversity, Equity & Inclusion is not only a responsibility, it is a business driver and a key enabler for our success in the coming years. Strengthening inclusion increases the sense of belonging and our competitive advantage.”**[16]** Lapo Civiletti, CEO, Ferrero Group

FORD

In its 2025 proxy statement,**[17]** Ford wrote: “We are committed to our employees and support equal opportunity and equal pay. We know that leveraging diverse teams is not only the right thing to do, it is smart business, and that requires us to create and protect a culture in which all team members can do their best work.”

“Our values — the values that have defined our dedication to our teams, customers, communities and the planet for over a century — including our commitment to supporting our diverse, global workforce in an inclusive and safe work environment, are as steadfast today as they have been throughout our history.”

GOLDMAN SACHS

“We run an inclusive organization, and we’re going to continue to run an inclusive organization.”**[18]** David Solomon, CEO, Goldman Sachs

JPMORGANCHASE

“We will continue to reach out to the Black community, the Hispanic community, the veteran’s community, and LGBTQ. We have teams with second chance initiatives — governors in blue states and red states like what we do.” CEO Jamie Dimon in a CNBC interview.**[19]**

LEVI STRAUSS & CO

“We’ve been committed to diversity and inclusion for literally decades, and it’s the core to who we are. So, our commitment remains unchanged. We will do what’s right for our people, for our business. And at the end of the day, building a diverse and inclusive workplace helps us deliver stronger results.”**[20]** Michelle Gass, President and CEO, Levi Strauss & Co.

MARIOTT INTERNATIONAL

“The winds blow, but there are some fundamental truths for those 98 years. We welcome all to our hotels and we create opportunities for all—and fundamentally those will never change. The words might change, but that’s who we are as a company.”**[21]** Anthony Capuano, CEO, Marriott International

MCDONALDS

McDonald’s commitment to inclusion and diversity:**[22]** “McDonald’s commitment to Inclusion is part of our heritage – we strive to be a place where access to opportunity abounds – no matter who you are or where you’re from. Our success in the future builds on our history of embracing diversity as a competitive advantage.” Desiree Ralls-Morrison, EVP & Chief Legal Officer, McDonald’s

MERCK

“Our company has a longstanding commitment to diversity and inclusion. It’s at the core of who we are, our values, and how we operate as a company. It’s also a strategic imperative. We remain dedicated to providing fair, equal and merit-based

opportunities, preventing bias and ensuring we have a vibrant and inclusive workplace. This commitment enables us to fully execute on the scientific method and catalyze contributions and innovations from across the enterprise. In turn, this allows us to fulfill our mission. As George Merck notably said in the following quote: 'We try never to forget that medicine is for the people. It is not for the profits. The profits follow.' And if we have remembered that they have never failed to appear. This is how the company has been run for over 130 years and ultimately creates shareholder value as well as value for all of our stakeholders and a healthy future for people and communities everywhere."**[23]**

Rob Davis, Chairman and CEO, Merck & Co.

MICROSOFT

"If ever there were a critical time for the business case for diversity and inclusion in the workplace, it is now… Our innovation has come from our commitment to Diversity and Inclusion (D&I), and our future innovation depends on D&I."**[24]** Lindsay-Rae McIntyre, Chief Diversity Officer and Corporate Vice President, Talent and Learning, Microsoft

MORGAN STANLEY

"The data suggest that sustainability remains central to long-term value creation. Companies around the world report an alignment between corporate strategies and sustainability priorities as they seek to build resilient, future-ready businesses."**[25]**

Jessica Alsford, Chief Sustainability Officer and Chair of the Institute for Sustainable Investing, Morgan Stanley

NETFLIX

Netflix on inclusion: "In order to entertain the world, we need a company that reflects the world. Our members also want to see their cultures and lives reflected on screen. We employ people in multiple countries across the globe and work hard to ensure our workforce is as diverse as the members we serve."**[26]**

REDDIT

"I think that the biggest sham is that we have somehow identified these types of [DEI] goals with not being meritocratic. Those of us who've been out here building multibilliondollar companies with an eye towards have diversity, equity, and inclusion, were hiring for greatness. That never stopped."**[27]** Alexis Ohanian Sr., Co-founder, Reddit REI "In a time when our public lands and values like diversity, equity and inclusion are under threat, I want you to hear from me that

REI

believes these are essential to our business."**[28]**

Mary Beth Laughton, President and CEO, REI Co-op

SPOTIFY

Spotify states that "our goal is to ensure equity is part of the industry's DNA and Spotify's ecosystems for years to come." Racial and identity-based DEI policies are "central to who we are," declares the Swedish company, which also writes that it is focused on "achieving equity outcomes."**[29]**

STARBUCKS

"Diversity is going to continue to be a key strength of our business and frankly, helps us connect with our customers at another level."**[30]** Brian Niccol, CEO, Starbucks

STELLANTIS

"At Stellantis, we recognize that diversity and inclusion are part of our core values and pivotal drivers of our success, so we're proud to be recognized by Fair360 for our efforts. Rather than settling for the status quo, we remain committed to

dismantling barriers and positioning ourselves at the forefront of the industry. Our leadership team's unwavering support and the enthusiasm across the company fuel our pursuit of excellence."**[31]**

Lottie Holland, Vice President of diversity, inclusion, engagement and EEO compliance, Stellantis North America

WALMART

In its 2025 proxy statement,**[32]** Walmart writes in opposition to an anti-DEI proposal: "Our 2.1 million associates play a key role in delivering on our strategy to help people save money and live better; we believe that a company culture where associates feel welcome and valued helps us attract and retain the talent that drives our business."

YUM! BRANDS

"The Company is committed to fostering a culture of community and belonging, where all employees can be their best, authentic selves, which includes authentic expression of their religious beliefs. To that end, we aim to reflect the customers and communities we serve across our global business and remove barriers to opportunity for our teams. This includes increasing engagement in our communities of belonging (COBs), which are company-sponsored groups that bring people together to learn, share, develop and connect." **[33]**

LIST OF COMPANIES RECEIVING ANTI-DEI RESOLUTIONS IN 2025:

- Alphabet/Google
- Amazon
- American Airlines
- American Express Company
- Apple Inc.
- AT&T
- Berkshire Hathaway
- Best Buy
- The Boeing Company
- Bristol-Myers Squibb Company
- Caterpillar
- Coca-Cola Company
- Costco Wholesale Corporation
- John Deere & Company
- DICK'S Sporting Goods
- General Motors
- Gilead Sciences, Inc.
- GoDaddy Inc.
- Goldman Sachs Group, Inc.
- International Business Machines Corporation (IBM)
- JPMorganChase
- Levi Strauss
- Lockheed Martin Corporation
- Lululemon Athletica
- Mastercard

- McDonald's Corporation
- Merck & Co., Inc.
- Netflix Inc.
- PayPal
- Pfizer Inc.
- Southern Company
- Target
- Uber Technologies, Inc.
- Verizon Communications, Inc.
- Visa Inc.
- Walmart
- Walt Disney Company
- Yum! Brands

ARTICLES FOR FURTHER READING:

We thought these articles provided a helpful analysis of the proxy season, putting the attacks in a broader context.

1. **Shareholders of 30 Companies Worth $13 Trillion Vote 30-0 to Defeat Anti-DEI Proposals** (Also covered by **Impactivize**, **AP News**, **PR Newswire**)
2. **Impactivize Employers of the Day™** (Another list of companies with public commitments to diversity, equity, inclusion, and accessibility)
3. **More than 99% of Walmart, Netflix Shareholders Reject Anti-DEI Proposals** (ESG Today)
4. **What Law Firms Can Learn from Big Brands on DEI — and Why Reputation is at Stake** (Reuters)
5. **The Anti-DEI Movement Has Made Corporate Diversity Stronger** (Fortune, by Andy Behar)
6. **Championing Diversity in Corporations.** We want to draw special attention to this ICCR publication from Fall 2024 which includes an array of company quotes championing DEI and a tracker of companies that made changes to their diversity programs in 2024. This is an additional tool for those investors and allies who will use these excerpts to illustrate that corporate work on diversity continues to stand firm.
7. **6 in 10 Companies That Eliminated DEI Since Trump's Reelection Are Hiring Fewer Diverse Employees** (Key Takeaway: 80% of companies have not eliminated their DEI programs since Trump's reelection)
8. **Conservative Shareholders Ramp Up as ESG Proposals Dip** (Bloomberg Law)
9. **88% of Companies See Sustainability as a Value-Creation Opportunity: Morgan Stanley Survey**
10. **DEI Rollbacks Are Slowing Down, According To A New Study** (People of Color in Tech)
11. **Backlash to the Backlash: Why DEI Isn't Going Anywhere** (Sustainable Brands)
12. **Which Global Companies Have Rejected Anti-DEI Proposals?**
13. **Companies Quietly Recast DEI to Duck Backlash** (The Wall Street Journal)
14. **Evolving DEI Disclosure Practices in SEC Filings** (Harvard Law School Forum on Corporate Governance)

Max Homans, Shareholder Advocacy Associate at Mercy Investment Services provided key research for this compilation

[1] ICCR, https://www.iccr.org/reports/championing-diversity-in-corporations/

[2] As You Sow, Newsletter

[3] The Washington Informer, https://www.washingtoninformer.com/trump-administration-dismantling-dei/

[4] As You Sow, https://www.asyousow.org/report-page/2023-capturing-the-diversity-benefit

[5] SHARE, https://share.ca/wp-content/uploads/2025/06/25-06-11-DEI-investor-brief.pdf

[6] https://lnkd.in/gps4AWJb

[7] https://d18rn0p25nwr6d.cloudfront.net/CIK-0000320193/d5ac8341-3708-4b1d-89f5-6a0dcec45aa0.pdf#page=89

[8] https://www.linkedin.com/posts/nancy-levine-stearns-a753782_breaking-american-express-shareholders-activity-7322972712698597376-

[9] https://www.impactivize.org/impactivizereporting/best-buy-shareholders-voted-to-reject-an-anti-dei-proposal-at-their-annual-meeting-today-

[10] https://www.linkedin.com/posts/nancy-levine-stearns-a753782_boeing-shareholders-voted-yesterday-to-

[11] https://www.linkedin.com/posts/nancy-levine-stearns-a753782_breaking-bristol-myers-squibb-shareholders-

[12] https://www.linkedin.com/posts/nancy-levine-stearns-a753782_breaking-the-coca-cola-company-shareholders-

[13] https://www.forbes.com/sites/pamdanziger/2025/01/01/costco-is-caught-in-the-crosshairs-of-the-dei-/

[14] https://liveandletsfly.com/delta-dei-commitment/

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[20] https://wwd.com/business-news/business-features/levi-shareholders-reject-dei-removal-proposal-1237101250/

[21] https://fortune.com/article/marriott-ceo-best-companies-work-for-interview/

[22] https://corporate.mcdonalds.com/corpmcd/our-purpose-and-impact/jobs-inclusion-and-empowerment/commitment-to-inclusion.html

[23] https://www.merck.com/events/merck-co-inc-2025-annual-meeting-of-shareholders/

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[29] https://www.lifeatspotify.com/equity-diversity-impact/our-inclusive-workplace

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APPENDIX C

We believe it would be valuable to the SEC to study these publications by the Interfaith Center on Corporate Responsibility. These articles underline specific points about why the abolition of 14a-8 is not an investor's interests.

The first article focuses on individual investors who have filed resolutions and have had a significant and impactful role in encouraging good corporate governance. This article was published by the *Harvard Law School Forum on Corporate Governance* and describes, with detailed data, how resolutions filed by one shareholder garnered significant votes, and in some cases majority votes, for specific governance reform resolutions. Numerous resolutions were also withdrawn because of agreements with companies leading to changes in corporate governance. We believe that the action by the SEC to eliminate 14a-8 will make it virtually impossible for individual shareholders like this to sponsor constructive resolutions.

The second article focuses on how shareholder proposals have served as an early warning system for corporations and investors alike. It describes how a number of companies ignored concerns raised by investors, which ultimately proved to be extremely costly for the companies and their shareholders because litigation and enforcement actions arose from the issues shareholders had highlighted. Shareholders recognized the materiality of these risk factors earlier than management did, and shareholder proposals submitted via Rule 14a-8 provided companies with extremely valuable early warnings of unidentified risk.

Harvard Law School Forum on Corporate Governance

Individual Investors Filing Shareholder Resolutions Have Had A Significant and Impactful Role in Encouraging Good Corporate Governance

Posted by Timothy Smith, ICCR, on Thursday, September 10, 2026

Tags: Corporate governance, Institutional Investors, investors, SEC
More from: Timothy Smith, ICCR

Editor's Note: Timothy Smith is the Senior Policy Advisor at the Interfaith Center on Corporate Responsibility (ICCR). This post is based on his ICCR memorandum.

There has been considerable attention to the shareholder resolution process in the last months. Institutional investors, religious investors, pension funds, have all been speaking out about protecting the right of shareholders to engage companies by filing resolutions. Yet the role and the impact of the small individual investor has been underplayed. In fact, two individual investors have had a significant impact on the policies and practices of governance in corporate America. They are John Chevedden and James McRitchie. They have filed thousands of resolutions with companies engaging them to improve their governance practices. And many institutional investors vote for these reforms, whether they are sponsored by an individual shareholder or by a widely known institutional investor. Some proposed governance reforms have become established practices embraced by many businesses, while others are still controversial items open for debate. We do not argue that every proposed reform presented to a company is necessary and wise governance for that company. But they do deserve thoughtful scrutiny and consideration.

Some companies are definitely not fans of individual proponents who bring issues to their proxies year after year and react dismissively while others respectfully acknowledge the role they play and engage with them. James McRitchie and John Chevedden report that many companies respond positively and at least make partial governance changes in response to the issues they raised through the resolution process. However other companies aggressively oppose these proponents challenging their resolutions at the SEC, seeking to omit them from their proxies. In fact, Paul Atkins, the chair of the SEC, in a recent speech to a company trade association, openly disparaged an individual investor who he noted had filed over 200 resolutions, as if this was somehow questionable and offensive action.

Yet even skeptics grant that Chevedden has become one of the most influential U.S. shareholder activists. In 2013, James Copeland of the Manhattan Institute, a free-market think tank, said that Chevedden is “leading the intellectual curve, getting proposals out there before they start to get traction.”

See also this article on Jim McRitchie: https://www.iccr.org/the-power-of-individual-investors-to-catalyze-change/ and this article by Jim McRitchie commenting on Mr. Chevedden: https://www.corpgov.net/2025/08/john-chevedden-economy-class-investor-advocate/ See as well as another commentary by McRitchie emphasizing the value of individual shareholders: https://www.corpgov.net/2026/05/three-individual-shareholder-advocates/. These articles all highlight the issues they address as well as the constructive impact on the thinking and policies of many companies.

And it is remarkable the significant votes that these proposals often receive. For example, in 2026 Mr. Chevedden filed over 200 shareholder resolutions. A number were challenged and lost at the SEC or were the withdrawn after discussions with management. But 125 companies received votes of over 25% with a few over 50%. (see charts below). 25% is a

significant vote and sends a strong message to management and boards. It indicates that many investors support the given reform, and it should be addressed by the Board.

The SEC has discussed and some company trade associations have argued, that any shareholder filing a resolution should have a significant number of shares to do so. The state of Texas even passed legislation which allows companies to require investors to have $1,000,000 worth of shares before they file a resolution. This of course would be a significant attack on small retail investors who use the shareholder resolution process. As one investor commented, to dismiss the role of individual investors is to argue that only large institutional holders of stock have worthy ideas for companies to consider. In fact, over the decades these small individual shareholders have raised issues that became positive norms in governance.

The voting results highlighted in the charts, with data helpfully provided by Mr. Chevedden and cross-checked with ICCR's database, indicate that 125 resolutions were supported by a wide range of shareowners with votes over 25% and ranging to 97%.

This demonstrates the important role small investors play using the shareholder resolution route. This role should be protected, not eradicated. Timothy Smith, Senior Policy Advisor, ICCR, with research assistance by Sehr Khaliq, ICCR's Director of Evaluation.

The full commentary, including the data charts, is available **here**. Research assistance was provided by Sehr Khaliq, ICCR's Director of Evaluation.

Harvard Law School Forum on Corporate Governance

Shareholder Proposals as an Early Warning System for Corporate Risk, and the Cost of Ignoring Them

Posted by Timothy Smith and Sehr Khaliq, Interfaith Center on Corporate Responsibility, on Thursday, October 8, 2026

Tags: Corporate governance, FTC, settlement, Shareholder proposals
More from: Sehr Khaliq, Timothy Smith, ICCR

Editor's Note: Timothy Smith is the Senior Policy Advisor and Sehr Khaliq is the Director of Program Evaluation at the Interfaith Center on Corporate Responsibility (ICCR). This post is based on their ICCR memorandum.

Much has been written about the significance of the **$5 billion historic penalty and privacy reforms imposed by the FTC on Meta**, but press surrounding the incident rarely references the fact that this risk was something shareholders had already warned management about through shareholder filings.

In **2018,** shareholders filed a proposal at Meta asking the company to issue a report discussing the merits of establishing a Risk Oversight Board Committee to address privacy/data risks that could threaten shareholder value. The Board opposed the proposal, arguing that the Board's audit committee offered sufficient oversight. Since Meta is a dual class share company with CEO Mark Zuckerberg owning 99.7% of the outstanding Class B shares that represent only 13% of the economic ownership but grant him **61% of the voting power,** the proposal got only **11.55%** of the vote, which represented **45%** support among non-insider shares.

However, the very next year the FTC fined the company $5 billion and required it to establish an independent privacy committee with unfettered control over decisions affecting user privacy. The order required the company to designate compliance officers who will be responsible for Facebook's privacy program and will report to the new Board privacy committee and can be removed only by that committee. In an ironic twist the FTC order enhanced the demands of the 2018 shareholder proposal but with a $5 billion fine attached. **This was not even the first case of a company being fined or being forced to pay damages in billions of dollars on an issue that shareholder proponents had asked them to consider – we've had multiple this year alone!**

On **July 27th, 2026 it was announced that Johnson and Johnson would pay $5.5 billion to settle talcum powder-related cancer lawsuits.** In 2022, shareholders **had filed a resolution asking J&J to discontinue global sales of its talc-based baby powder,** citing cancer litigation, asbestos concerns and growing financial risk, but management had dismissed their concerns about its talcum powder arguing that "decades of science have reaffirmed its safety" and that the company had taken adequate measures against litigation. With the Board opposing the proposal it received only **15.6%** of the vote. Now the **settlement may cost the company and shareholders $7 billion depending on participation**. But even that is not the largest settlement this year.

In February 2026 Monsanto announced a Roundup™ class settlement agreement to resolve current and future claims for up to $7.25 billion. Shareholders had repeatedly asked Monsanto to report on the risks associated with glyphosate (including in **2015**, **2016,** and **2018**) but the Board had opposed the proposals each time arguing that "the purported harms suggested in the proposal are simply unsubstantiated and unproven assertions improperly characterized as risks", thus the requested risk analysis was speculative and unnecessary.

The largest settlement in 2026 (to date) came in August when **Meta announced it would be paying $18 billion to settle U.S. lawsuits over children's social media addiction**. The **settlement represents 9% of the company's**

annual revenue and follows $2.4 billion in legal-proceeding charges recorded during the second quarter, when total costs and expenses increased 55% to $42.03 billion.

Shareholders had repeatedly filed shareholder proposals asking the company to address risks related to child safety online since 2020. In **2020** a proposal asked the company to publish a report to address potential adverse impacts to children (18 years and younger) and to the company's reputation or social license, and assess the impact of limits to detection technologies and strategies. The Board opposed the proposal arguing that it was "unnecessary and not beneficial to our stockholders". The proposal got **12.4%** of the vote. Shareholders refiled the proposal in **2022** and despite Board opposition it got 56.7% of the independent vote (because of the company's dual class share structure the actual vote was **17.3%**). The same year, Meta was **fined $400 million** for failing to safeguard children's information on Instagram. Shareholders continued to file on the issue with the company in **2023, 2024** and **2025** but each time the Board opposed the ask, and the dual class share voting structure obstructed the voice of independent shareholders. Could being more responsive to these shareholder proposals have saved the company and shareholders, not to mention the victims, from harm? We will never know, but **those arguing about the costs and benefits of shareholder proposals need to consider the value of these shareholder proposals as an early warning system that when unheeded causes real harm to people, planet, shareholders and the bottom line.**

These examples (captured in the table below) cost the 3 companies involved, and their shareholders, over $30 billion in damages and fines this year alone – a representation of the very real cost of ignoring shareholder proposals. And these examples are simply recent illustrations of investors raising important and material issues with Boards and management that get easily dismissed but build as issues of public importance, resulting in costly penalties and settlements. They are a reminder of the value of shareholder resolutions as an early warning system identifying material corporate risks, which seek to preserve shareholder value and deserve more thorough scrutiny by Boards.

Company/Risk	Shareholder proposal(s) / warning	Board response to proposal(s)	Financial consequence recorded in 2026
Johnson & Johnson – product safety	**2022: Shareholders asked J&J to discontinue global sales of talc-based Baby Powder**, citing cancer litigation, asbestos concerns and growing financial risk.	**OPPOSED**. **J&J said** its talc was safe, and that existing litigation/risk-management processes were adequate.	**~$5.5B proposed settlement in 2026**, with potential total exceeding $7B depending on participation.
Monsanto/Bayer – Glyphosate/ human-health & regulatory risk	**2015–18: Shareholders repeatedly asked Monsanto to report on the risks associated with glyphosate** (**2015**, **2016**, **2018**) including the potential financial consequences of restrictions following its classification by IARC/WHO as "probably carcinogenic."	**OPPOSED**. Monsanto said glyphosate had a 40-year safety record; that regulatory authorities had repeatedly found it safe, and that the requested risk analysis was speculative and unnecessary. **Bayer acquired Monsanto in 2018** and inherited the Roundup litigation.	**$7.25B** proposed nationwide Roundup settlement in 2026; earlier settlements and judgments added billions more.
Facebook/Meta – Child Safety Online	Shareholders repeatedly asked the company to address risks related to child safety online including in **2020**, **2021**, **2022**, **2023**, **2024** and **2025**	**OPPOSED**. The Board argued that the shareholder proposals were "unnecessary and not beneficial to our stockholders". Despite Board opposition, the **2022 filing** got majority support from independent shareholders with **56.7% of the independent vote** (because of dual class share the actual vote was **17.3%**)	**$18 billion** to settle US lawsuits over children's social media addiction in 2026.