

**PROXY POWER AND PROPOSAL ABUSE:
REFORMING RULE 14A-8
TO PROTECT SHAREHOLDER VALUE**

HEARING
BEFORE THE
COMMITTEE ON FINANCIAL SERVICES
U.S. HOUSE OF REPRESENTATIVES
ONE HUNDRED NINETEENTH CONGRESS
FIRST SESSION
SEPTEMBER 10, 2025

Serial No. 119-39

Printed for the use of the Committee on Financial Services



**PROXY POWER AND PROPOSAL ABUSE: REFORMING RULE 14A-8 TO PROTECT
SHAREHOLDER VALUE**

**PROXY POWER AND PROPOSAL ABUSE:
REFORMING RULE 14A-8
TO PROTECT SHAREHOLDER VALUE**

HEARING
BEFORE THE
COMMITTEE ON FINANCIAL SERVICES
U.S. HOUSE OF REPRESENTATIVES
ONE HUNDRED NINETEENTH CONGRESS
FIRST SESSION
SEPTEMBER 10, 2025

Serial No. 119-39

Printed for the use of the Committee on Financial Services



www.govinfo.gov

U.S. GOVERNMENT PUBLISHING OFFICE

WASHINGTON : 2026

63-034 PDF

HOUSE COMMITTEE ON FINANCIAL SERVICES

FRENCH HILL, Arkansas, *Chairman*

BILL HUIZENGA, Michigan, <i>Vice Chairman</i>	MAXINE WATERS, California, <i>Ranking Member</i>
FRANK D. LUCAS, Oklahoma	SYLVIA R. GARCIA, Texas, <i>Vice Ranking Member</i>
PETE SESSIONS, Texas	NYDIA M. VELÁZQUEZ, New York
ANN WAGNER, Missouri	BRAD SHERMAN, California
ANDY BARR, Kentucky	GREGORY W. MEEKS, New York
ROGER WILLIAMS, Texas	DAVID SCOTT, Georgia
TOM EMMER, Minnesota	STEPHEN F. LYNCH, Massachusetts
BARRY LOUDERMILK, Georgia	AL GREEN, Texas
WARREN DAVIDSON, Ohio	EMANUEL CLEAVER, Missouri
JOHN W. ROSE, Tennessee	JAMES A. HIMES, Connecticut
BRYAN STEIL, Wisconsin	BILL FOSTER, Illinois
WILLIAM R. TIMMONS, IV, South Carolina	JOYCE BEATTY, Ohio
MARLIN STUTZMAN, Indiana	JUAN VARGAS, California
RALPH NORMAN, South Carolina	JOSH GOTTHEIMER, New Jersey
DANIEL MEUSER, Pennsylvania	VICENTE GONZALEZ, Texas
YOUNG KIM, California	SEAN CASTEN, Illinois
BYRON DONALDS, Florida	AYANNA PRESSLEY, Massachusetts
ANDREW R. GARBARINO, New York	RASHIDA TLAIB, Michigan
SCOTT FITZGERALD, Wisconsin	RITCHIE TORRES, New York
MIKE FLOOD, Nebraska	NIKEMA WILLIAMS, Georgia
MICHAEL LAWLER, New York	BRITTANY PETTERSEN, Colorado
MONICA DE LA CRUZ, Texas	CLEO FIELDS, Louisiana
ANDREW OGLES, Tennessee	JANELLE BYNUM, Oregon
ZACHARY NUNN, Iowa	SAM LICCARDO, California
LISA McCLAIN, Michigan	
MARIA SALAZAR, Florida	
TROY DOWNING, Montana	
MIKE HARIDOPOLOS, Florida	
TIM MOORE, North Carolina	

Ben Johnson, *Staff Director*

C O N T E N T S

Wednesday, September 10, 2025

	Page
OPENING STATEMENTS	
Hon. French Hill, Chairman of the Committee on Financial Services, a U.S. Representative from Arkansas	1
Hon. Maxine Waters, Ranking Member of the Committee on Financial Services, a U.S. Representative from California	2
STATEMENTS	
Hon. Brad Sherman, Ranking Member of the Subcommittee on Capital Markets, a U.S. Representative from California	4
WITNESSES	
Mr. James Copland, Senior Fellow & Director of Legal Policy, Manhattan Institute	4
Prepared Statement	6
Mr. Ferrell Keel, Partner, Jones Day	37
Prepared Statement	39
Mr. Ron Mueller, Partner, Gibson Dunn & Crutcher LLP	48
Prepared Statement	50
Mr. Brad Lander, Comptroller, City of New York	73
Prepared Statement	75
APPENDIX	
MATERIALS SUBMITTED FOR THE RECORD	
Hon. Ayanna Pressley:	
Gibson Dunn: Diversity & Inclusion	142
Jones Day: Inclusion	144
New York City Comptroller Brad Lander, Public Advocate Williams, Rev. All Sharpton, Pension Fund and Investment Leaders Celebrate “Emerging Managers Week” and Commit to Staying the Course on Diversity, Equity, and Inclusion Despite Federal Attacks and Misinformation	147
Hon. Rashida Tlaib:	
Fact Sheet: Manhattan Institute	151
Hon. Zachary Nunn:	
The American Securities Association (ASA)	152
Hon. Scott Fitzgerald:	
National Association of Manufacturers	155
Hon. Maxine Waters:	
AFL-CIO	165
Friends Fiduciary Corporation (FFC)	167
Interfaith Center on Corporate Responsibility	170
Americans for Financial Reform	175
Shareholder Proposals: An Essential Investor Right	183
Shareholder Rights Group	211
United Church Funds	223

IV

RESPONSES TO QUESTIONS FOR THE RECORD

	Page
Written responses to questions for the record from Mr. James Copland	
Representative Marlin Stutzman	227
Representative Monica De La Cruz	230
Representative Maxine Waters	233
Written responses to questions for the record from Mr. Ron Mueller	
Representative Marlin Stutzman	234
Representative Monica De La Cruz	235
Representative Maxine Waters	236
Representative Bryan Steil	238
Representative John W. Rose	241
Representative Janelle Bynum	243
Written responses to questions for the record from Mr. Brad Lander	
Representative Monica De La Cruz	246
Representative Maxine Waters	246

LEGISLATION

H.R. 4098, the Stopping Proxy Advisor Racketeering Act	248
H.R. 3402, a bill to amend the Securities Exchange Act of 1934 to require certain disclosures by institutional investment managers in connection with proxy advisory firms, and for other purposes	253
H.R. ———, a bill to amend the Securities Exchange Act of 1934 to provide for the registration of proxy advisory firms, and for other purposes	258
H.R. ———, the Mandatory Materiality Requirement Act of 2025	282
H.R. ———, the Empowering Shareholders Act of 2025	287
H.R. ———, the Public Company Advisory Committee Act of 2025	294
H.R. ———, the Performance over Politics Act	301
H.R. ———, the Businesses Over Activists Act	303
H.R. ———, Protecting American's Savings Act	305
H.R. ———, a bill to clarify that an issuer may exclude a shareholder proposal pursuant to section 240.14a-8(i) of title 17, Code of Federal Regulations, without regard to whether such proposal relates to a significant social policy issue	308
H.R. ———, a bill to authorize the exclusion of shareholder proposals from proxy or consent solicitation material if the subject matter of the shareholder proposal is environmental, social, or political	310
H.R. ———, the Corporate Governance Examination Act	312
H.R. ———, a bill to amend the Securities Exchange Act of 1934 to require the Securities and Exchange Commission to disclose and report on non-material disclosure mandates, and for other purposes	318
H.R. ———, a bill to amend the Securities Exchange Act of 1934 with respect to prohibitions relating to the solicitation and influence of proxies	320
H.R. ———, a bill to amend the Securities Exchange Act of 1934 to provide for liability for certain failures to disclose material information in connection with proxy voting advice, and for other purposes	323

**PROXY POWER AND PROPOSAL ABUSE:
REFORMING RULE 14A-8
TO PROTECT SHAREHOLDER VALUE**

Wednesday, September 10, 2025

U.S. HOUSE OF REPRESENTATIVES,
COMMITTEE ON FINANCIAL SERVICES,
Washington, D.C.

The committee met, pursuant to notice, at 10:04 a.m., in room 2128, Rayburn House Office Building, Hon. French Hill [chairman of the committee] presiding.

Present: Representatives Hill, Lucas, Sessions, Huizenga, Wagner, Barr, Williams of Texas, Loudermilk, Davidson, Rose, Steil, Timmons, Stutzman, Norman, Meuser, Kim, Donalds, Garbarino, Fitzgerald, Flood, Lawler, De La Cruz, Ogles, Nunn, McClain, Downing, Haridopolos, Moore, Waters, Velázquez, Sherman, Meeks, Scott, Green, Foster, Beatty, Vargas, Gottheimer, Casten, Pressley, Tlaib, Torres, Garcia, Williams of Georgia, Pettersen, Bynum, and Liccardo.

Chairman HILL. The Committee on Financial Services will come to order.

Without objection, the chair is authorized to declare a recess of the committee at any time.

Today's hearing is titled, "Proxy Power and Proposal Abuse: Reforming Rule 14a-8 to Protect Shareholder Value."

Without objection, all members will have 5 legislative days within which to submit extraneous materials to the chair for inclusion in the record.

I now recognize myself for 5 minutes for an opening statement.

**OPENING STATEMENT OF HON. FRENCH HILL, CHAIRMAN OF
THE COMMITTEE ON FINANCIAL SERVICES, A U.S. REP-
RESENTATIVE FROM ARKANSAS**

Good morning. Welcome to our committee today. As our securities laws were being considered during the Great Depression and the years after, corporate governance policymakers sought to ensure that stockholders had an active voice over any entrenched management, inattentive directors, or a controlling group. The intent was that all shareholders could assert their ownership rights around key components of running the business and capital allocation. Thus, while our proxy access process was originally designed to empower shareholders and provide them with a voice in company oversight, in recent years, it has increasingly become co-opted by activist investors, whose primary focus often lies not in maxi-

mizing shareholder value, but in pushing narrow political, social, or personal agendas. We have seen the shareholder proposal process diverted away from that critical business strategy focus and instead become a tool for advancing proposals to distract from companies' missions, leading to an erosion of shareholder value, and additionally, costly burdens on companies that are working to navigate today's complex business conditions and global competition.

As we examine the shareholder proposal process, we also must consider the role of proxy advisory firms on capital markets as a whole. While these firms can offer valuable perspective, over the past 2 decades, their influence on corporate governance and voting on particular shareholder proposals has grown significantly. We must ask ourselves if these firms are still fulfilling the intended purpose of serving in the best interests of shareholders or if they are distracting from the primary goal of enhancing long-term shareholder value.

As we evaluate the current landscape surrounding Rule 14a-8 at the Securities and Exchange Commission (SEC), it is essential that we assess the impact of recent regulatory interpretations and guidance and how these have led us to where we are today. Particularly, we want to look at SEC's Staff Legal Bulletins 14L and 14M, which have had a significant impact on influencing how companies and shareholders engage with the proposal process. Staff Legal Bulletin 14L, issued in November 2021 under then SEC Chairman Gensler, shifted the focus from shareholder proposal review, from the proposal's relevance to a specific company, to whether the proposed issue had broad societal impact. Expanding what counts as a relevant proposal makes it harder for companies to block items unrelated to their particular business, letting activists push measures that are disconnected and immaterial from the company's performance. As a result, we have seen an uptick in proposals that prioritize social or political issues over shareholder returns, which can divert attention from the fundamental goal of maximizing value for all investors. As we look at these recent developments, it is crucial to consider how we can reform the regulatory framework to restore balance and ensure that the proposal process serves its original intent and I would argue that I hear from directors of public companies on all sides of the political perspective who share the view—who share the view—that this process has gotten away from that core tenet of the 1930s and 1940s of preserving long-term shareholder value.

With that, I yield back, and I recognize my friend, the ranking member from California of the full committee, Ms. Waters, for a 4-minute opening statement.

OPENING STATEMENT OF HON. MAXINE WATERS, RANKING MEMBER OF THE COMMITTEE ON FINANCIAL SERVICES, A U.S. REPRESENTATIVE FROM ARKANSAS

Ms. WATERS. Good morning. Thank you very much, Mr. Chairman. For years, this committee has proudly championed the values of capitalism and the free market, but Donald Trump's actions with companies like NVIDIA, Intel, and U.S. Steel is not capitalism by any definition of the word. To be clear, I do think it is appropriate for the taxpayers and the citizens of this country to have upside

when taxpayer investments generate profits for corporations and their shareholders. If we appropriately tax corporations, especially those that receive substantial government subsidies, we, the taxpayers, would benefit, but we do not. Yet, what Trump is doing is not growing the economy or protecting workers.

His chaotic interference in private markets and the misuse of government tools is only to give Trump more ways to bully the American people. He has used the government to attack cities like Los Angeles and Washington; universities like Harvard, Columbia, and Brown; nonprofits like the National Endowment for the Arts; news organizations like NPR and PBS; former government officials and law firms. Now he is attacking corporations and by the way, Trump promised that tariffs would bring American manufacturing back, but the latest job numbers show that the U.S. lost 42,000 manufacturing jobs since April, and businesses continue to pass off the cost of tariffs to consumers. This is the kind of sweeping authoritarian-style communist takeover that China's leadership would applaud. Just like in China, Trump is not doing this to help working-class families. It is simply about control, consolidating power, punishing his enemies, rewarding political loyalty, and retaliating against those who refuse to bend to his will.

As Trump tramples on American capitalism and our democracy, I am absolutely appalled as I look at Republicans who claim to be strong capitalists and tout the businesses they own. For example, Mr. Huizenga, are you ready to hand over 10 percent of your gravel business to Trump? Of course not. Instead of speaking out in defense of capitalism and democracy, Republicans are working with Trump's SEC to advance legislation that will further his anti-capitalist agenda by silencing the voice of shareholders. They want companies to ignore legitimate concerns from shareholders about climate change and other risks simply because those concerns do not align with Trump's political agenda.

If you want a case study in why shareholder rights matter, look at Tesla. After Delaware's Chancery Court voided Mr. Musk's \$56 billion award for a flawed process, the company reincorporated in Texas and is now proposing to award Mr. Musk with the obscene and outrageous pay package that will exceed \$1 trillion. If Republicans get their way by silencing investors and remaking their boards to no longer be independent, public companies may experience a fate similar to that of Enron or WorldCom, and we all know what happened to them.

As Trump operates as a communist and uses his government to control the economy, Democrats will fight to ensure that workers, not just the corporate elite, see and feel the benefits. We will also fight to ensure Congress, and not the President, determines how the government spends taxpayer resources on things that truly benefit taxpayers, like building housing, supporting healthcare, and caring for those in need. Anything less is unacceptable. I yield back.

Chairman HILL. The gentlewoman yields back. I now recognize the ranking member of the Subcommittee on Capital Markets, Mr. Sherman, for a 1-minute opening statement.

**STATEMENT OF HON. BRAD SHERMAN, RANKING MEMBER OF
THE SUBCOMMITTEE ON CAPITAL MARKETS, A U.S. REP-
RESENTATIVE FROM CALIFORNIA**

Mr. SHERMAN. Under capitalism, if by the sweat of your brow and the frugality of your spending, you accumulate capital, if you have the courage to invest, you become a shareholder, and shareholders should be in control, not managers. Once again, the Democratic Party rises to the defense of capitalism against its greatest enemies: crony capitalism and their handmaidens in Washington. The chair points out that corporate managers have said, "These damn shareholders have gotten out of hand, and we have got to stop them," and that is what the bills in front of us are designed to do. This is not just theoretical. We know which side of capitalism the Chinese Communist Party is on. They are going to want to buy the technology behind artificial intelligence. They are going to want to control it. They are going to offer corporations huge amounts of money, and when those transactions close, the board gets huge bonuses and they do not want shareholders to have a vote, and we will be told, "Shareholders, get out of the way. It is a big pay day." That is shareholder value. No, that is selling out America to the communists. I yield back.

Chairman HILL. The gentleman yields back. Today, we welcome the testimony of Mr. James Copland, senior fellow and director of legal policy at the Manhattan Institute; Mrs. Ferrell Keel, partner at Jones Day; Mr. Ron Mueller, partner at Gibson Dunn & Crutcher, LLP; and Brad Lander, the comptroller of the city of New York. We welcome all of you, and we thank you for being with us, taking your time to share your views with the committee.

Without objection, each of you will be recognized for 5 minutes to give an oral presentation, and your written statement will be made part of the record.

Mr. Copland, we are going to start with you. You are recognized for 5 minutes.

**STATEMENT OF JAMES COPLAND, SENIOR FELLOW &
DIRECTOR OF LEGAL POLICY, MANHATTAN INSTITUTE**

Mr. COPLAND. Thank you, Mr. Chairman. Is this on? Chairman Hill, Ranking Member Waters, members of the committee, thank you for the opportunity to testify. My name is James R. Copland. Since 2003, I have been affiliated with the Manhattan Institute for Policy Research, a nonprofit public policy think tank in New York City, where I have served as senior fellow and directed the institute's legal policy research. Although my comments draw on work conducted for my employer, my statement today is solely my own.

I am pleased that the committee is examining how the Securities and Exchange Commission oversees the submission and voting of shareholder proposals under Rule 14a-8. I have studied this process for more than 15 years alongside related issues in securities regulation, including the role of proxy advisory firms and the voting practices of large index fund families. I address those topics at length in my written testimony. In this opening statement, I will focus on three brief points.

First, U.S. capital markets continue to lead the world. Our markets efficiently allocate capital and have enabled firms founded

within the last few decades to become global leaders. That dynamism helps explain why U.S. per capita growth has outpaced most other developed nations over the last 30 years. Second, public listings, however, have fallen by more than half since the mid-1990s. Many factors contribute, but a significant one is the increased cost and complexity of being a public company in the United States. That reality discourages listings and impedes capital formation. Third, part of the rising cost of public ownership has been spurred by congressional actions, including well-intentioned, but in some cases, overreaching legislative responses to the collapse of the dot-com bubble and the 2008 financial crisis. Other costs of public ownership, however, have flowed from regulatory decisions by the SEC and other agencies without clear congressional mandate. Chief among these is the SEC's use of Rule 14a-8 to compel inclusion of shareholder proposals on corporate proxy ballots in ways that, in practice, override State corporate law.

My conclusion, which I stated before this committee 2 years ago, remains. The SEC's shareholder proposal regime exceeds Congress's statutory mandate, displaces State corporate law without authorization, and impedes the efficiency and capital formation Congress has instructed the agency to prioritize. Congress should clarify that shareholder board interactions are matters of State law and remind the SEC that its role lies in facilitating disclosure, not dictating the substance of corporate governance.

Two developments have magnified the costs of the SEC's longstanding error. First, proxy advisory firms. Two firms control virtually the entire proxy advice market. Each is foreign owned, and these two firms have often favored environmental and social campaigns in shareholder engagement. Federal policy choices helped fuel the rise of this industry, and the shareholder proposal process has increased its leverage over U.S. companies. Second, passive index fund concentration and voting. Passive investing has been a boon to ordinary investors, including myself, but the three fund families that dominate this market now control a large and growing share of all shareholder voting. For various reasons, the big three index fund families, like the proxy advisors, have often supported shareholder proposals advancing social and environmental objectives not aligned with the interests of the average shareholder. In sum, two dominant foreign owned proxy advisory firms and the big three passive index fund families hold extraordinary sway over the governance of all publicly traded corporations in the United States, and the committee is well advised to consider the SEC-dictated process over proxies in light of this reality.

The 15 bills noticed for this hearing move in the right direction, though several warrant refinements, as I discuss in my written submission. I applaud the committee for tackling an issue vital to the American economy and to workers' retirement savings. I welcome your questions and look forward to working with members and staff on this important subject. Thank you, Mr. Chairman.

[The prepared statement of Mr. Copland follows:]



Statement to the House Committee on Financial Services

Hearing:

*Proxy Power and Proposal Abuse:
Reforming Rule 14a-8 to Protect Shareholder Value*

September 10, 2025

10:00 a.m.

Rayburn House Office Building, Room 2128

**Problems with the Shareholder Proposal Process:
ESG, Passive Investing, and Proxy Advisors—A Case for Reform**

James R. Copland
Senior Fellow and Director, Legal Policy
Manhattan Institute for Policy Research
52 Vanderbilt Avenue
New York, NY 10017

The Manhattan Institute for Policy Research does not take institutional positions on legislation, rules, or regulations. Although my comments draw upon my long-running research on shareholder regulation and corporate governance as an Institute scholar, my statement before the subcommittee is solely my own, not my employer's.

Written Statement

Chairman Hill, Ranking Member Waters, and Members, thank you for opportunity to testify again before this Committee. My name is James R. Copland. Since 2003, I have been affiliated with the Manhattan Institute for Policy Research, a nonprofit public-policy think tank in New York City, where I have long been a senior fellow and directed the Institute's legal policy research. Although my comments draw upon such research conducted for my employer, my statement before the Committee is solely my own.

I am very pleased that the Committee is looking carefully at the way the SEC oversees the process of introducing and voting on shareholder proposals at publicly traded corporations' annual meetings, asserted through the agency's oversight of corporate proxy statements and currently formalized in the Commission's Rule 14a-8.¹ I have been studying the shareholder-proposal process for more than fifteen years. In 2011, under my leadership, the Manhattan Institute launched our Proxy Monitor database,² which contains current and historical data on shareholder proposals introduced at America's largest publicly traded companies, dating back to 2006. I first testified about this particular subject matter before the Committee's Capital Markets and Government-Sponsored Enterprises Subcommittee back in 2016,³ and I gave the full Committee an update on my views—and intervening trends—in summer 2023.⁴

Some of the material in this testimony is excerpted from prior Congressional testimony, regulatory comment letters, and other writings I have authored, in some cases without self-attribution. I have included a fuller list of relevant writings at the end of this statement.

I. Introduction

Overall, U.S. capital markets continue to lead the world.⁵ But we have seen the number of companies listed on U.S. public exchanges decline more than 50% since the mid-1980s.⁶ And to the extent that companies are less likely to access the public markets today due to

¹ See 17 C.F.R. § 240.14a-8.

² See ProxyMonitor.org.

³ See James R. Copland, "SEC Rule 14a-8: Ripe for Reform," Testimony before the House Financial Services Subcommittee on SEC Rule 14a-8, Sept. 21, 2016, available at <https://media4.manhattan-institute.org/sites/default/files/T-JC-0916.pdf> (arguing that "the SEC's outdated and overly permissive standards" had enabled activists "to push policy agendas . . . in an effective end-run around Congress").

⁴ See James R. Copland, "The Rise of ESG Investing and the Appropriate Regulatory Responses," Hearing before the House Committee on Financial Services: Protecting Investor Interests: Examining Environmental and Social Policy in Financial Regulation, July 12, 2023, available at <https://media4.manhattan-institute.org/wp-content/uploads/Copland-Testimony-House-Financial-Services-7-12-2023-fin-rev.pdf>.

⁵ See, e.g., Ron Surz, *U.S. Stock Market Is Biggest & Most Expensive In World, But U.S. Economy Is Not The Most Productive*, NASDAQ.COM, Apr. 2, 2018, <https://web.archive.org/web/20250801221904/https://www.nasdaq.com/articles/us-stock-market-biggest-most-expensive-world-us-economy-not-most-productive-2018-04-02>.

⁶ See, e.g., Nicole Goodkind, *America has lost half its public companies since the 1990s. Here's why*, CNN BUSINESS, June 9, 2023, available at <https://www.cnn.com/2023/06/09/investing/premarket-stocks-trading/index.html> (observing decline in U.S. number of publicly listed companies on American exchanges to approximately 3,700 from peak of 8,000 in 1996).

inefficient regulatory barriers idiosyncratic to American markets, it impedes capital formation and economic efficiency, to the broader public's detriment.

Unfortunately, there is little doubt that U.S. companies' modern tendency to avoid public offerings has much to do with unique features of the American regulatory landscape. Almost twenty years ago, I began to explore these trends.⁷ Many of the factors that have discouraged public stock offerings remain as significant today as they were then, including heightened reporting standards under the Sarbanes-Oxley Act of 2002 and America's singular litigation landscape that imposes a "tort tax" on public corporate offerings, mergers, and disclosures. In addition, the last twenty years have witnessed a confluence of trends in shareholder ownership and voting that have exacerbated the costs of publicly traded equities, including:

- Increasing influence by proxy advisory firms that have historically shown a tendency to support various environmental and social causes in shareholder engagement;⁸
- Increasing concentration of ownership in large passive index fund families that have historically taken "shareholder engagement" stances, especially on environmental or social-policy issues;⁹ and
- A relatively new and sizable share of the market invested into ESG (environmental, social, and governance) investment vehicles that exist principally to influence corporate behaviors away from a strict focus on shareholder wealth maximization.

Until 2017, not a single environment-related shareholder proposal received majority shareholder support over board opposition at one of the 250 largest publicly traded U.S. companies (dating back to 2006, the first year tracked in the Manhattan Institute's Proxy Monitor database¹⁰). As recently as 2023, however, two of the three largest index-fund managers had been supporting a *majority* of ESG-related shareholder proposals.¹¹

⁷ See, e.g., James R. Copland, "The Capital Market Crackup," *Chief Executive*, Dec. 1, 2006, available at <https://manhattan.institute/article/the-capital-market-crackup>; James R. Copland, "Are U.S. IPOs DOA?," *WashingtonPost.com*, Apr. 12, 2007, available at <https://www.washingtonpost.com/wp-dyn/content/article/2007/04/11/AR2007041101723.html>.

⁸ See, e.g., Paul Rose, *Proxy Advisors and Market Power: A Review of Institutional Investor Robovoting* (Manhattan Institute 2021), available at <https://manhattan.institute/article/proxy-advisors-and-market-power-a-review-of-institutional-investor-robovoting>; James R. Copland, David F. Larcker & Brian Tayan, *Proxy Advisory Firms: Empirical Evidence and the Case for Reform* (Manhattan Institute 2018), available at <https://manhattan.institute/article/proxy-advisory-firms-empirical-evidence-and-the-case-for-reform>.

⁹ See, e.g., James R. Copland, *Index Funds Have Too Much Voting Power: A Proposal for Reform* (Manhattan Institute 2024), available at <https://manhattan.institute/article/index-funds-have-too-much-voting-power-a-proposal-for-reform>.

¹⁰ See Proxy Monitor, <https://www.proxymonitor.org/>.

¹¹ See Theo Andrew, "Vanguard Lags BlackRock and State Street in Support of ESG Issues," *EFT Stream* (blog), June 15, 2023, <https://www.etfstream.com/articles/vanguard-lags-blackrock-and-state-street-in-support-of-esg-issues>.

- BlackRock supported 55% of all “key” ESG-related shareholder proposals as rated by Morningstar advisors, including 70% related to civil rights and racial equity, 57% related to the environment, and 55% related to other social issues.
- State Street Global Advisors supported 60% of ESG proposals, including 90% related to civil rights and racial equity, 61% related to the environment, and 60% related to other social issues.
- Vanguard supported 28% of ESG proposals, none relating to civil rights or racial equity, 30% related to the environment, and 27% related to other social issues.

The large passive index investors have subsequently scaled back their support for environmental and social shareholder proposals, but shifts in public sentiment and political control could certainly prompt a reversion to form.

The SEC has overseen and to a significant extent encouraged the aforementioned trends through its oversight of shareholder proposals included on the proxy statements of U.S.-listed companies, overseen by the Securities and Exchange Commission through Rule 14a-8.¹² The conclusion I reached in testifying before this Committee two years ago still holds: “the SEC’s shareholder-proposal rule exceeds Congress’s statutory mandate to the agency, tramples on state corporate law without Congressional authorization, and impedes the efficiency and capital formation that Congress has insisted the agency prioritize.”¹³ Ideally, Congress should act to clarify that shareholder-board interactions remain an issue of state law—and remind the SEC that its purview lies in facilitating disclosure, not the substance of corporate governance.

Even were the shareholder-proposal process properly returned to the states, however, the concentration of shareholder voting power in a small number of intermediaries who have agency costs that dwarf those of public companies themselves remains a major issue for the

¹² See 17 C.F.R. § 240.14a-8.

¹³ Beyond these statutory, federalist, and efficiency concerns, the shareholder proposal rule, at least in its current form, also likely violates the First Amendment. The First Amendment’s protections clearly apply to corporate speech. *Cf. Citizens United v. FEC*, 558 U.S. 310 (2010). That said, the First Amendment’s reach with regard to commercial speech is more “limited” than in other contexts. See *Virginia State Bd. of Pharmacy v. Virginia Citizens Consumer Council*, 425 U.S. 748, 771–72 (1976). A form of “intermediate scrutiny” applies to restraints on commercial speech. See *Central Hudson Gas & Elec. Corp. v. Pub. Serv. Comm’n of NY*, 447 U.S. 557 (1980). A lesser standard yet applies to compelled government speech in the professional or corporate context. See *Zauderer v. Office of Disciplinary Counsel of Supreme Court of Ohio*, 471 U.S. 626, 652–53 (1985); *Nat’l Inst. of Family & Life Advocates v. Becerra*, 138 S. Ct. 2361 (2018).

Critically, however, the Supreme Court’s precedents limiting the First Amendment’s reach in the context of government-compelled commercial and professional disclosures hinge on the government disclosure rules involving “purely factual and uncontroversial information.” *Zauderer*, 471 U.S. at 642 (permitting regulation of commercial advertising requiring disclosure of “purely factual and uncontroversial information”); *Becerra*, 138 S. Ct. at 2372 (finding Free Speech violation when regulation required disclosure of “information about state-sponsored services—including abortion, anything but an ‘uncontroversial’ topic”).

Applying this principle to securities regulation, the D.C. Circuit struck down as unconstitutional the SEC’s “conflict minerals” rule, *Nat’l Ass’n of Mfrs. v. SEC*, 800 F.3d 518 (D.C. Cir. 2015); see *Conflict Minerals*, 77 Fed. Reg. 56,274 (Sept. 12, 2012) (codified at 17 C.F.R. §§ 240, 249b)—notwithstanding Congress’s express authorization to craft one, see 15 U.S.C. § 78(m).

committee to consider.¹⁴ In a 2024 Manhattan Institute paper, I discussed how the rising concentration of investment in passive-investing vehicles—and those fund families' growing ownership share and continuing focus on shareholder engagement—looms large over the equities markets.¹⁵ I have also written extensively on possible reform of the proxy advisory industry in a 2018 paper co-authored with Stanford researchers.¹⁶ Any battery of legislative reform needs to tackle these twin issues, in tandem.

Finally, I would like to emphasize to the committee that the SEC in recent years has badly twisted its disclosure mandate and acted as if it is not constrained by traditional notions of materiality. Indeed, in May 2021, then-Commissioner Allison Lee argued that the SEC has broad authority to require any disclosures “in the public interest,” whether or not material. As Bernard Sharfman and I discussed in our comment letter on the SEC’s subsequently proposed climate-disclosure rule,¹⁷ Commissioner Lee used an “overly cramped” reading; she purported to infer a lack of required materiality in the statute, despite consistent and longstanding usage, from the fact that Congress did not append the word “material” to various prefatory grants of rulemaking authority in the enacted statute. As we explained:

Congress’s delineation of the information required in annual and quarterly reports in 15 U.S.C. § 78m(b)(1) clearly lists items required for a reasonable investor to make financial decisions regarding an investment in an issuer’s securities—precisely the sort of disclosures the Supreme Court has pointed to repeatedly in defining materiality under the securities laws. Similar abutting textual constraints exist in the other chapters, once a reader gets beyond the prefatory language. Moreover, Commissioner Lee’s speech fails to grapple with the express, clarifying definitional command Congress added to the securities laws in 1996, which universally requires the Commission to consider in its rulemaking, “in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation.” This Congressional addition of a prophylactic definition limiting SEC rulemaking was notably after—and implicitly incorporates—the Supreme Court’s 1977 and 1988 decisions in *TSC Industries* and *Basic*, which articulated a materiality constraint in the federal securities laws.¹⁸

¹⁴ For a fuller discussion of the agency costs inherent in both the proxy advisory and passive investing industries, see Statement of James R. Copland, “Who’s Monitoring the Monitors? The Rise of Intermediaries and the Threat to Capital Markets,” Hearing before the Senate Committee on Banking, Housing, and Urban Affairs: The Application of Environmental, Social, and Governance Principles in Investing and the Role of Asset Managers, Proxy Advisors, and Other Intermediaries, Apr. 2, 2019, available at <https://www.banking.senate.gov/imo/media/doc/Copland%20Testimony%204-2-191.pdf>; Copland, *Index Funds Have Too Much Voting Power*, *supra* note 9.

¹⁵ See *id.*

¹⁶ See James R. Copland, David F. Larcker & Brian Tayan, *Proxy Advisory Firms: Empirical Evidence and the Case for Reform* (Manhattan Institute 2018), available at <https://manhattan.institute/article/proxy-advisory-firms-empirical-evidence-and-the-case-for-reform>.

¹⁷ See Bernard S. Sharfman & James R. Copland, Comment, File No. S7-10-22, Release Nos. 33-11042; 34-94478, “The Enhancement and Standardization of Climate-Related Disclosures for Investors,” June 16, 2022, available at <https://www.sec.gov/comments/s7-10-22/s71022-20131661-302049.pdf>.

¹⁸ See *id.* at 3–4 (citations omitted). See also *NAACP v. FPC*, 425 U.S. 662, 669 (1976) (noting that the Supreme Court’s “cases have consistently held that the use of the words ‘public interest’ in a regulatory statute is not a broad

As with passive index voting and proxy advisory firms, some of the legislation noticed before the committee helpfully touches on the materiality issue as well.

In Section II of this written statement, I will give a broader overview of the shareholder proposal process. In Section III, I will discuss proxy advisory firms. In Section IV, I will discuss the rise of passive index investing and ESG investing. In Section V, I will briefly discuss the noticed legislation.

II. The Shareholder Proposal Process: An Overview¹⁹

The Dubious Legality of the SEC's Shareholder Proposal Regime

American capital markets lead the world in no small part due to what my Yale Law professor Roberta Romano characterized as the “genius of American corporate law,”²⁰ which distributes authority between federal and state regimes.²¹ Under its statutory mandate, the SEC is empowered to promulgate rules and regulations to dictate *disclosure* rules, while *substantive* matters related to the distribution of authority between shareholders and corporate boards are left to state law.²² As the Supreme Court has long observed, “Corporations are creatures of state law, and investors commit their funds to corporate directors on the understanding that, except

license to promote the general public welfare. Rather, the words take meaning from the purposes of the regulatory legislation.”).

¹⁹ This analysis is largely derivative of testimony I previously submitted to this Committee in 2023. See Statement of James R. Copland, “The Rise of ESG Investing and the Appropriate Regulatory Responses,” Hearing before the House Committee on Financial Services: Protecting Investor Interests: Examining Environmental and Social Policy in Financial Regulation, July 12, 2023, available at <https://media4.manhattan-institute.org/wp-content/uploads/Copland-Testimony-House-Financial-Services-7-12-2023-fin-rev.pdf>.

²⁰ See generally Roberta Romano, *THE GENIUS OF AMERICAN CORPORATE LAW* (1993).

²¹ The American system arose in no small part by accident. As I observed in my 2020 book *The Unelected*:

Before the Revolutionary War, only a handful of corporate charters had been granted by colonial governments. But the issuing of such charters exploded after the war, with hundreds granted by state governments in the first decade under the U.S. Constitution.

As industrialization took off in the new nation, states began relaxing corporate charter requirements. Most enacted statutes allowing incorporation without special legislation. In 1869, the U.S. Supreme Court ruled that a state could not prevent companies chartered by other states from doing business there—essentially destroying the old royal and colonial powers to limit the corporate form. . . .

Shortly after his inauguration as president in 1933, Franklin Roosevelt signed into law the Securities Act, as part of his “new deal for the American people.” This law regulated the offering or sale of securities using the “means and instrumentalities of interstate commerce.” One year later, Congress enacted the Securities Exchange Act, which extended the scope of regulation to trades of securities in secondary markets, rather than merely when initially issued. To enforce the new regulations, the 1934 act established the Securities and Exchange Commission.

Notwithstanding the populism of Roosevelt’s New Deal, the new securities laws were broadly market-friendly. They did not displace the corporate laws of Delaware and other states, which allocated the rights of shareholders and directors. Nor did they displace the state blue-sky laws.

See *id.* at 194–96.

²² See, e.g., *CTS Corp. v. Dynamics Corp.*, 481 U.S. 69, 89 (1987) (“No principle of corporation law and practice is more firmly established than a State’s authority to regulate domestic corporations, including the authority to define the voting rights of shareholders.”); *Santa Fe Industries, Inc. v. Green*, 430 U.S. 462, 479 (1977).

where federal law expressly requires certain responsibilities of directors with respect to stockholders, state law will govern the internal affairs of the corporation.”²³

Recent statutory changes have somewhat interfered with the distribution of authority between federal and state securities and corporation law—particularly the Sarbanes-Oxley Public Company Accounting Reform and Investor Protection Act of 2002²⁴ and the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010.²⁵ But in general, that states rather than the federal government have the “authority to regulate domestic corporations, including the authority to define the voting rights of shareholders,” remains what the Supreme Court has called the most “firmly established” principle of American corporation law.²⁶

To be clear, under modern conceptions of the Commerce Clause power,²⁷ Congress almost certainly has the authority to preempt significantly, if not wholly,²⁸ state corporate law. *But Congress has not done so.* And that is for the best. Federal primacy in the disclosure regime enables investors to price securities efficiently on an apples-to-apples basis with adequate, accurate information. State primacy in allocating the substantive rights of shareholders vis-à-vis boards prevents a one-size-fits-all lock-in of inefficient rules—and facilitates a “race to the top,” given shareholders’ ability to incorporate variations in state legal regimes into securities pricing.²⁹

Under the substantive state corporate law governing most large publicly traded corporations in America, no shareholder has a right, even as a default rule, to speak in a corporate annual meeting or to introduce a proposal for vote at the meeting. Most large publicly traded American companies are incorporated in Delaware,³⁰ and Delaware’s General

²³ *Santa Fe v. Green*, 430 U.S. at 479.

²⁴ Pub. L. No. 107-204, 116 Stat. 745 (2002). For a substantive critique of the Sarbanes-Oxley law, in the context of traditional American securities and corporate law, see generally Roberta Romano, *The Sarbanes-Oxley Act and the Making of Quack Corporate Governance*, 114 YALE L.J. 1521 (2005).

²⁵ Pub. L. No. 111-203, 124 Stat. 1376 (2010). The Dodd-Frank law interjects a federal role into the allocation of shareholder-board authority through, *inter alia*, requiring publicly traded companies to hold shareholder “advisory votes” on executive compensation annually, biennially, or triennially. *See id.* at § 951.

²⁶ *CTS Corp. v. Dynamics Corp.*, 481 U.S. at 89.

²⁷ *Cf. Gonzales v. Raich*, 545 U.S. 1 (2005); *Wickard v. Filburn*, 317 U.S. 111 (1942).

²⁸ *Cf. Rice v. Santa Fe Elevator Corporation*, 331 U.S. 218, 221-22 (1947) (finding Congress had preempted the field related to grain warehousing, precluding even complementary state regulations of those fields, by vesting with the Secretary of Agriculture “exclusive” authority over federally licensed warehouses).

²⁹ *See generally* Ralph K. Winter, *State Law, Shareholder Protection, and the Theory of the Corporation*, 6 J. LEGAL STUD. 251 (1977); Winter, *The “Race for the Top” Revisited: A Comment on Eisenberg*, 89 COLUM. L. REV. 1526 (1989). *See also* Roberta Romano, *Law as a Product: Some Pieces of the Incorporation Puzzle*, 1 J.L. ECON. & ORG. 225 (1985) (finding the “race to the top” hypothesis more supported than the “race to the bottom” hypothesis in empirical testing).

³⁰ *See* 8 Del. C. § 101 *et seq.* For a variety of reasons, most large publicly traded companies in the United States are incorporated in Delaware. This phenomenon has long been the subject of academic debate. *Compare* William L. Cary, *Federalism and Corporate Law: Reflections upon Delaware*, 83 YALE L.J. 663, 663, 705 (1974) (lamenting a “race to the bottom” in U.S. corporate law) with Ralph K. Winter, *State Law, Shareholder Protection, and the Theory of the Corporation*, 6 J. LEGAL STUD. 251 (1977) (arguing that, *contra* Cary, the federal structure of corporate law creates a “race to the top”); Winter, *The “Race for the Top” Revisited: A Comment on Eisenberg*, 89 COLUM. L. REV. 1526 (1989). *See also* Roberta Romano, *Law as a Product: Some Pieces of the Incorporation Puzzle*, 1 J.L. ECON. & ORG. 225 (1985) (finding the “race to the top” hypothesis more supported than the “race to the bottom” hypothesis in empirical testing).

Corporation Law details rules governing annual meetings,³¹ shareholder voting rights,³² and shareholder rights to inspect shareholder lists and corporate books and records.³³ But apart from certain matters requiring a shareholder vote by law, or as otherwise specified in corporate bylaws or articles of incorporation, Delaware law—the governing law for most large publicly traded companies—makes whether to take a shareholder vote on a matter wholly an issue of board discretion.³⁴

Contrary to this state law, and without foundation in the laws actually enacted by Congress, the SEC through its proxy process rules essentially compels publicly traded companies to hold votes on various subjects demanded by certain shareholders. And the SEC also compels companies to publish those shareholders' statements in support of their ideas, even if controversial and opposed by the company's fiduciary board, and without regard to such statements' accuracy.

To be sure, the SEC's adoption of a "shareholder proposal rule" is longstanding.³⁵ But at its outset, it was predicated upon a misunderstanding of state corporate law and the Securities Acts enacted by Congress.³⁶ The section of the Securities Exchange Act upon which Rule 14a-8 is promulgated, § 14(a), is principally designed to ensure corporate disclosures to shareholders to afford investment information and prevent deception. The Supreme Court noted as much in its *Borak* decision in 1964: "The purpose of § 14(a) is to prevent management or others from obtaining authorization for corporate action by means of deceptive or inadequate disclosure in proxy solicitation."³⁷ It is most certainly not to govern the substantive issues about which shareholders can vote—a creature of state law. The SEC's contrary insistence is an implicit preemption of state law—notwithstanding the Supreme Court's general pronouncement that such would require "a clear indication of congressional intent."³⁸

Simply put: there is no statutory justification for the SEC to require any corporation, by virtue of trading securities on a national exchange, to submit various shareholder issues to a vote of all shareholders, absent the consent of the corporate board of directors or a contrary directive under state law. Yet that is precisely what the SEC has long done.

The SEC's Vacillating Oversight of "Social Cause" Shareholder Proposals

³¹ See *id.* at §§ 211, 222, 228.

³² See *id.* at §§ 212, 213, 216, 217, 218, 225, 231.

³³ See *id.* at §§ 219, 220.

³⁴ See *id.* at § 146. See also Kyle Pinder, *The Non-Binding Bind: Reframing Precatory Stockholder Proposals under Delaware Law*, 15 MICH. BUS. & ENTREPRENEURIAL L. REV. __ (forthcoming), available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5418534.

³⁵ See Securities Exchange Act of 1934 Release No. 3347 (Dec. 18, 1942), 7 Fed. Reg. 10,653 (1942).

³⁶ The original release promulgating the SEC's shareholder proposal rule, *id.*, relies upon an allusion to "fair corporate suffrage" in the House Report for the Securities Exchange Act of 1934, H.R. Rep. No. 1383, 73d Cong., 2d Sess. 14 (1934); the phrase appears nowhere in the actual legislative text. See Pub. L. No. 73-291, Ch. 404, 48 Stat. 881 (1934) (codified at 15 U.S.C. §§ 78a–78oo (2006 & Supp. II 2009)), at §§ 78m, 78n & 78u.

³⁷ *J.I. Case Co. v. Borak*, 377 U.S. 426, 431 (1964).

³⁸ *Santa Fe Industries, Inc. v. Green*, 430 U.S. 462, 479 (1977) ("Absent a clear indication of congressional intent, we are reluctant to federalize the substantial portion of the law of corporations . . . particularly where established state policies of corporate regulation would be overridden.").

In its role as “shareholder-proposal gatekeeper,” the SEC has often modified its substantive approach in diametrically varying ways. Consider the SEC’s handling of shareholder proposals that it described in 1952 as “primarily for the purpose of promoting general economic, political, racial, religious, social, or similar causes.”³⁹ The SEC’s longtime position was that it “was not the intent of [the shareholder-proposal rule] to permit stockholders to obtain the consensus of other stockholders with respect to matters which are of a general political, social or economic nature.”⁴⁰ Thus, the SEC permitted companies to exclude shareholder proposals of such a nature from their proxy ballots.⁴¹

In 1972, however, the SEC modified its substantive screen; its new rule merely permitted companies to exclude shareholder proposals “not significantly related to the business of the issuer or not within its control.”⁴² And in 1976, the SEC issued an interpretive release recalibrating the new standard in a way that essentially *inverted* the pre-1972 rule: a company could exclude a shareholder proposal related to the “ordinary business” of the corporation only if the proposal “involve[d] business matters that are mundane in nature and do not involve any substantial policy or other considerations.”⁴³

In November 2021, in Legal Bulletin No. 14L,⁴⁴ the SEC staff jettisoned longstanding guidance that socially oriented shareholder proposals had to be material to a company’s business to be placed on proxy ballots. Under this new guidance, the staff backed away from the Commission’s longstanding insistence that shareholder proposals related to social or policy issues evidence a “nexus between a policy issue and the company”; the agency staff’s new approach focuses instead “on the social policy significance of the issue that is the subject of the shareholder proposal.” In essence, the SEC staff’s 2021 guidance turned the original rules on their head. Now, the SEC purports to force publicly traded corporate issuers to include on their proxy ballots *any* shareholder proposal related to issues of “social policy significance,” even if immaterial to the corporation’s economic interests.

³⁹ Exchange Act Release No. 4775, 17 Fed. Reg. 11,431, 11,433 (1952).

⁴⁰ Securities Exchange Act Release No. 3638 (Jan. 3, 1945), 11 Fed. Reg. 10,995 (1946).

⁴¹ See Exchange Act Release No. 4775, 17 Fed. Reg. 11,431, 11,433 (1952).

⁴² See Exchange Act Release No. 9784, 37 Fed. Reg. 23,178, 23,180 (1972).

⁴³ See Adoption of Amendments Relating to Proposals by Security Holders, Exchange Act Release No. 12,999, 41 Fed. Reg. 52,994, 52,997–98 (1976). To be sure, the SEC’s reversal of position on shareholder proposals “of a general political, social or economic nature” did not occur in a vacuum. In 1970, a panel decision of the D.C. Circuit Court of Appeals had challenged the SEC staff’s application of the rule in issuing a no-action letter to Dow Chemical; the staff’s position was that the company could exclude a shareholder proposal from the Medical Committee on Human Rights asking that the company cease manufacturing napalm—as a matter of general political or social concern. See *Med. Comm. for Human Rights v. Sec. & Exch. Comm’n*, 432 F.2d 659, 663 (D.C. Cir. 1970), *vacated as moot*, 404 U.S. 403 (1972); see also 17 C.F.R. § 240.14a-8(c) (1970). The circuit court did not overturn the SEC’s rule; rather, it remanded the case to the agency for reconsideration so that “the basis for (its) decision (may) appear clearly on the record, not in conclusory terms but in sufficient detail to permit prompt and effective review.” *Med. Comm. for Human Rights*, 432 F.2d at 682. And the decision has no precedential value, having been subsequently vacated as moot by the Supreme Court. 404 U.S. 403 (1972). But the D.C. Circuit’s opinion—with its lofty invocation of the “philosophy of corporate democracy,” 432 F.2d at 681—very likely influenced the SEC’s retreat and indeed U-turn from its prior position.

⁴⁴ See Staff Legal Bulletin No. 14L (Nov. 3, 2021).

This winter, after a change in executive branch leadership, the SEC again reversed course, issuing a new staff guidance document, Legal Bulletin No. 14M,⁴⁵ that went back substantially in the other direction. Perhaps unsurprisingly, “[c]ompanies filed a record 325 no-action requests after [the] new SEC guidance in February,” and the number of overall shareholder proposals listed on proxy ballots fell 16%.⁴⁶

Aside from this agency back-and-forth regarding what sorts of “social cause” shareholder proposals companies are required to include on their proxy ballots, the SEC staff has clearly engaged in viewpoint discrimination in assessing how it handles corporate requests for “no action” letters permitting proposal exclusions. In 2022, the SEC staff granted a no-action letter to Kroger permitting the company to exclude from its proxy ballot a shareholder proposal submitted by the National Center for Public Policy Research seeking to add “viewpoint” and “ideology” to the company’s Equal Employment Opportunity policy— notwithstanding that it had refused to grant no-action letters to companies facing otherwise identical proposals seeking to add “sexual orientation” and “gender identity” to EEO statements.⁴⁷ (The Fifth Circuit refused to review the SEC staff decision, as moot, after Kroger acquiesced to including the proposal.⁴⁸ Such viewpoint discrimination clearly implicates the First Amendment.⁴⁹

Who Files Shareholder Proposals?

Large shareholders—including both ordinary institutional investors managing passive stock portfolios and actively managed hedge funds seeking to modify corporate behavior to drive returns—make almost no direct use of the Rule 14a-8 shareholder-proposal process. Rather, the SEC’s shareholder-proposal rule in its current form typically enables shareholders with a limited investment interest in the corporation⁵⁰—and/or an investment interest oriented around principles other than share value—to co-opt the corporate agenda for their own purposes.

A small group of repeat filers has accounted for a large share of shareholder proposals over the last twenty years. To date in 2025, a single shareholder—small “corporate gadfly” investor John Chevedden—has filed *one-third* of all shareholder proposals filed at the S&P

⁴⁵ See Staff Legal Bulletin No. 14M (Feb. 12, 2025).

⁴⁶ The Conference Board, Report: Amid Federal Scrutiny and Investor Fatigue, Shareholder Proposals Take a Tumble in the 2025 Proxy Season, Sept. 3, 2025, available at <https://www.conference-board.org/press/Shareholder-Proposals-Take-a-Tumble-in-the-2025>

⁴⁷ See Petition for Rehearing En Banc, Nat’t Ctr. for Publ. Pol’y Res. v. SEC, Case No. 23-60230 (Jan. 29, 2025).

⁴⁸ See Nat’t Ctr. for Publ. Pol’y Res. v. SEC, Case No. 23-60230 (May 14, 2025).

⁴⁹ See Mark R. Kubisch, *Constitutionally Suspect Interventions In the Shareholder Proposal Forum*, 59 WAKE FOREST L. REV. 1155 (2024).

⁵⁰ A company like Apple, with a market capitalization of more than \$3 trillion, can be forced to hold annual meeting votes if demanded by owners of a mere \$2,000 in stock. Even if that threshold were increased more than fourfold, it would be the functional equivalent of allowing a single U.S. citizen, on demand, to place an item up for consideration as a referendum in a national election.

1500.⁵¹ The next-most-common sponsors of shareholder proposals were investors with a socio-political orientation that is expressly left-wing (As You Sow, Green Century Capital Management) or right-wing (National Center for Public Policy Research, National Legal and Policy Center).⁵² Beyond corporate gadflies and social investors, the other common class of shareholder proponent includes those with explicit ties to organized labor, either private (the Carpenters' Pensions) or public (the New York State and City public pension funds).⁵³

Other Recent Trends

In 2025, 276 S&P 500 companies received 595 known shareholder proposals (as of mid-June), equal to 72% of all known submissions across the S&P 1500. The average targeted S&P 500 company received 2.2 proposals (down from 2.5 in 2024 and 2.8 in 2023).

In addition to seeing a decline in the number of shareholder proposals filed, the mix of proposals has shifted back toward core governance concerns, such as special-meeting rights, simple-majority voting for directors, and de-staggering board elections. Environmental and social (E&S) proposals declined in both number and support. In this year's corporate voting season, only four such proposals received majority shareholder support, compared with 82 between 2020 and 2022. And each of these involved the disclosure of corporate political spending. For the first time since 2019, not a single environment-related shareholder proposal received a majority shareholder vote. On average, left-leaning environmental and social proposals won support from just 16% of shareholders this proxy season, down from 33% in 2021.

Further Analysis

This drop in support for environmental and social shareholder proposals is a good thing. As I have argued previously, allowing shareholders to exploit the shareholder-proposal process on behalf of far-flung social and environmental causes can be expected to hurt shareholder value.⁵⁴ As a general matter, equity ownership through outside common shareholders has substantially *higher* agency costs than alternative forms of ownership, such as employee ownership, customer ownership, or supplier ownership.⁵⁵ Yet ordinary common-

⁵¹ See Sullivan & Cromwell, 2025 Proxy Season Review: Part 1 Rule 14a-8 Shareholder Proposals, Aug. 11, 2025, available at https://www.sullcrom.com/SullivanCromwell/_Assets/PDFs/Memos/2025-Proxy-Season-Review-Part-1.pdf.

⁵² See *id.*

⁵³ See *id.*

⁵⁴ See, e.g., Statement of James R. Copland, "Who's Monitoring the Monitors? The Rise of Intermediaries and the Threat to Capital Markets," Hearing before the Senate Committee on Banking, Housing, and Urban Affairs: The Application of Environmental, Social, and Governance Principles in Investing and the Role of Asset Managers, Proxy Advisors, and Other Intermediaries, Apr. 2, 2019, available at <https://www.banking.senate.gov/imo/media/doc/Copland%20Testimony%204-2-191.pdf>; James R. Copland, *Getting the Politics out of Proxy Season*, WALL ST. J., Apr. 23, 2015, available at <https://www.manhattan-institute.org/html/getting-politics-out-proxy-season-5461.html>.

⁵⁵ See generally HENRY HANSMANN, *THE OWNERSHIP OF ENTERPRISE* 35–49 (1996).

stock ownership remains the *dominant* form of organization for large, profit-seeking enterprises in the United States. One reason why is that common-stock ownership minimizes collective decision-making costs.⁵⁶ Thus, shareholder voting rights, like state common-law fiduciary duties, exist for the limited purpose of mitigating agency costs—not to facilitate miniature “corporate democracies.”⁵⁷

One need not be an expert in public-choice theory to comprehend that aggregating disparate voting interests along multiple factors can make collective action difficult.⁵⁸ Democratic and republican institutions have many virtues, but “efficiency” is not among them. Corporations are something else entirely. And for publicly traded companies, the ability to share one’s shares is by far the greatest form of “investor protection”—provided investors receive adequate, truthful information upon which to act, which is precisely why the SEC’s traditional focus on disclosure has been generally so successful.⁵⁹

In sum, in its current guise, the SEC’s shareholder-proposal rule exceeds Congress’s statutory mandate to the agency, tramples on state corporate law without Congressional authorization, and impedes the efficiency and capital formation that Congress has insisted the agency prioritize.⁶⁰

⁵⁶ See *id.*

⁵⁷ See Stephen M. Bainbridge, *The Case for Limited Shareholder Voting Rights*, 53 UCLA L. REV. 601 (2006) (arguing that increasing the power of shareholders to hold managers accountable, including through increased disclosure, imposes significant costs in reduced managerial authority).

⁵⁸ Cf. KENNETH J. ARROW, *SOCIAL CHOICE AND INDIVIDUAL VALUES* (1963) (articulating Arrow’s Impossibility Theorem, which holds that, given certain fairness criteria, voters facing three or more ranked alternatives cannot convert their preferences into a consistent, community-wide ranked order of preferences).

⁵⁹ These concerns are theoretical, but the comport with at least some empirical evidence as well. As the SEC staff rightly notes in its analysis, it can be difficult to parse out long-term stock effects of shareholder proposals due to the host of confounding factors. See Rel. No. 34-87458 at 113 & n.214. In an effort to assess this relationship, however, the Manhattan Institute commissioned an econometric study of shareholder activism and firm value by Tracie Woidtke, an economics professor at the University of Tennessee. See The University of Tennessee Knoxville: Tracie Woidtke, <http://finance.bus.utk.edu/Faculty/TWoidtke.asp>. In her study, published in 2015, Professor Woidtke examined the valuation effects associated with public pension fund influence, measured through ownership, on Fortune 250 companies. Woidtke found that “public pension funds’ ownership is associated with lower firm value” and, more particularly, that “social-issue shareholder-proposal activism appears to be negatively related to firm value.” See Tracie Woidtke, *Public Pension Fund Activism and Firm Value*, at 16 (Manhattan Institute 2015), available at <https://www.manhattan-institute.org/html/public-pension-fund-activism-and-firm-value-7871.html>.

⁶⁰ Beyond these statutory, federalist, and efficiency concerns, the shareholder proposal rule, at least in its current form, also likely violates the First Amendment. The First Amendment’s protections clearly apply to corporate speech. Cf. *Citizens United v. FEC*, 558 U.S. 310 (2010). That said, the First Amendment’s reach with regard to commercial speech is more “limited” than in other contexts. See *Virginia State Bd. of Pharmacy v. Virginia Citizens Consumer Council*, 425 U.S. 748, 771–72 (1976). A form of “intermediate scrutiny” applies to restraints on commercial speech. See *Central Hudson Gas & Elec. Corp. v. Pub. Serv. Comm’n of NY*, 447 U.S. 557 (1980). A lesser standard yet applies to compelled government speech in the professional or corporate context. See *Zauderer v. Office of Disciplinary Counsel of Supreme Court of Ohio*, 471 U.S. 626, 652–53 (1985); *Nat’l Inst. of Family & Life Advocates v. Becerra*, 138 S. Ct. 2361 (2018).

Critically, however, the Supreme Court’s precedents limiting the First Amendment’s reach in the context of government-compelled commercial and professional disclosures hinge on the government disclosure rules involving “purely factual and uncontroversial information.” *Zauderer*, 471 U.S. at 642 (permitting regulation of commercial advertising requiring disclosure of “purely factual and uncontroversial information”); *Becerra*, 138 S. Ct. at 2372.

III. The Role of Proxy Advisory Firms⁶¹

To manage their proxy voting, institutional investors rely heavily on a pair of proxy advisory firms, Institutional Shareholder Services, or ISS, which today is majority-owned by the German stock market, Deutsche Börse AG;⁶² and Glass, Lewis & Co., which is today owned by Peloton Capital Management, a Canadian private equity firm, and its chairman Stephen Smith.⁶³ Together, these two proxy advisors control more than 90% of the market for proxy advisory services.⁶⁴

As summarized in a 2018 report I co-authored with Stanford's David Larcker and Brian Tayan, a substantial body of empirical evidence shows that proxy advisory firms' recommendations influence institutional investor voting and that publicly traded companies are influenced by proxy advisor guidelines.⁶⁵ A 2012 analysis I co-authored showed that an ISS recommendation "for" a given shareholder proposal, controlling for other factors, was associated with a 15-percentage-point increase in the shareholder vote for any given proposal.⁶⁶ This observation is consistent with a more recent Manhattan Institute study, authored by Professor Paul Rose, which found significant "robo-voting" of shares consistent with proxy advisor guidelines among many smaller institutional investors.⁶⁷ Little wonder that Leo Strine, a former chancellor on the Delaware Court of Chancery, observed: "Powerful CEOs come on

(finding Free Speech violation when regulation required disclosure of "information about state-sponsored services—including abortion, anything but an 'uncontroversial' topic").

Applying this principle to securities regulation, the D.C. Circuit struck down as unconstitutional the SEC's "conflict minerals" rule, *Nat'l Ass'n of Mfrs. v. SEC*, 800 F.3d 518 (D.C. Cir. 2015); see *Conflict Minerals*, 77 Fed. Reg. 56,274 (Sept. 12, 2012) (codified at 17 C.F.R. §§ 240, 249b)—notwithstanding Congress's express authorization to craft one, see 15 U.S.C. § 78(m).

⁶¹ This analysis is largely derivative of testimony I previously submitted to the Senate Banking Committee. See Statement of James R. Copland, "Who's Monitoring the Monitors? The Rise of Intermediaries and the Threat to Capital Markets," Hearing before the Senate Committee on Banking, Housing, and Urban Affairs: The Application of Environmental, Social, and Governance Principles in Investing and the Role of Asset Managers, Proxy Advisors, and Other Intermediaries, Apr. 2, 2019, available at <https://www.banking.senate.gov/imo/media/doc/Copland%20Testimony%204-2-19.pdf>.

⁶² See ISS STOXX presentation, Mar. 2025, <https://www.deutsche-boerse.com/resource/blob/4346668/0bd1d782062ab9c0a836886f79b1bcfd/data/iss-stoxx-presentation-2025-en.pdf>.

⁶³ See Press Release, Peloton Capital Management and Stephen Smith Acquire Glass Lewis, Mar. 16, 2021, available at <https://www.pelotoncapitalmanagement.com/news/2021/3/16/peloton-capital-management-and-stephen-smith-acquire-glass-lewis>.

⁶⁴ See Congressional Research Service, Proxy Advisor Regulation: Recent Litigation, State Law Developments, and Federal Legislation, Sept. 4, 2025, available at https://www.congress.gov/crs_external_products/R/PDF/R48691/R48691.1.pdf.

⁶⁵ See James R. Copland et al., *Proxy Advisory Firms: Empirical Evidence and the Case for Reform* (Manhattan Institute 2018), available at <https://media4.manhattan-institute.org/sites/default/files/R-JC-0518-v2.pdf>.

⁶⁶ See James R. Copland et al., *Proxy Monitor 2012: A Report on Corporate Governance and Shareholder Activism* 22–23 (Manhattan Inst. for Pol'y Res., Fall 2012), available at http://www.proxymonitor.org/Forms/pmr_04.aspx.

⁶⁷ See Paul Rose, *Proxy Advisors and Market Power: A Review of Institutional Investor Robovoting* (Manhattan Institute 2021), available at <https://manhattan.institute/article/proxy-advisors-and-market-power-a-review-of-institutional-investor-robovoting>.

bended knee to Rockville, Maryland, where ISS resides, to persuade the managers of ISS of the merits of their views about issues.”⁶⁸

My report with professors Larcker and Tayan also cites a substantial body of empirical evidence demonstrating that at least some proxy-advisor advice may not be in the average shareholder’s interest. The proxy advisory services do not have any “skin in the game” like ordinary investors and are quite small relative to their voting influence—making them susceptible to capture. Their business models contain overt conflicts of interest, as they consult with and work on behalf of both institutional investors and corporate issuers. And of course each of the dominant proxy advisors is foreign-owned.

Little wonder that ISS’s voting guidelines have generally shown a propensity to support various social and environmental proposals, much more so than the median shareholder. Historically, ISS has backed some 70% of shareholder proposals related to political spending, 45% of those related to employment rights, and 35% of those related to human rights or the environment⁶⁹—a sharp contrast to the dearth of average shareholder support for these proposal classes. Although some of these trends have sharply reversed in the 2025 proxy season with the change of administration in Washington, the fundamental issues with the proxy advisory duopoly remain.

⁶⁸ Leo E. Strine, Jr., *The Delaware Way: How We Do Corporate Law and Some of the New Challenges We (and Europe) Face*, 30 DEL. J. CORP. L. 688 (2005).

⁶⁹ See Copland et al., *supra* note 66, at 22–23.

IV. The Rise of Passive Index and ESG Investing⁷⁰

Two other recent trends are increasingly reshaping American investing: the rise in passive index investing by institutional asset managers; and the rise in environmental, social, and governance (“ESG”) investing led by those same institutional asset managers.

In passive index investing, a mutual fund, exchange-traded fund (ETF), or other institutional investing vehicle buys and sells corporate securities to replicate the holdings of an investing “index” determined by a third party to represent some significant swath of the stock market. For example, the investing vehicle might be attempting to replicate the Standard & Poor’s (S&P) 500 Index, which tracks 500 large corporate stocks that together constitute some 85% of the total U.S. equities market. Because passive investing strategies can offer a broadly diversified “stock market” return at a low investing cost, they have become favored vehicles for long-term buy-and-hold investors, including individuals, pension plans, insurance companies, and endowments.

Index investing is exceptionally valuable for ordinary investors, who generally lack the resources and sophistication to buy and sell stocks to build their own diversified portfolios of securities, or to assess active investment advisors’ stock-market strategies. And because they operate at such a low cost—merely replicating, not analyzing—they pass through the savings to their investors. A wealth of research suggests that it is hard for ordinary stock pickers to best passive investing in the market basket, after expenses, and that an unsophisticated investor choosing among funds is better served by a passive, rather than by an active, portfolio investing strategy.

But precisely because passive index investors do *not* act upon information to buy or sell securities with a view toward any mismatch between current market pricing and underlying value, it is peculiar that the now-large share of investing capital held through passive index investing funds has increasingly been flexing its voting muscle over all of corporate America.

And that voting power is growing. The share of U.S. equities held in passive index funds, whether mutual funds or ETFs, has more than doubled in the past decade. Over that period, these passively managed funds have received more than \$2.5 trillion in new cash inflows, while actively managed funds have lost more than \$2.3 trillion in cash outflows. By the end of 2021, for the first time, assets in passive investment vehicles exceeded those in actively managed funds among U.S. equities held in mutual funds and ETFs.

But because index-investing funds share the same market-following strategy, no real differentiation marks their offerings. Predictably, the market has consolidated, even as index investing has risen in popularity. Vanguard, BlackRock, and State Street control 51% of U.S. fund assets under management and more than 20% of total U.S. stock market capitalization. One of the Big Three is the largest shareholder in 88% of S&P 500 companies. If these ownership stakes continue to increase—and I expect they will—we will see even greater ownership concentration among these few investment fund families. And it generally strains

⁷⁰ This analysis is largely derivative of my 2024 Manhattan Institute report, *Index Funds Have Too Much Voting Power: A Proposal for Reform* (Manhattan Institute 2024), available at <https://manhattan.institute/article/index-funds-have-too-much-voting-power-a-proposal-for-reform>. When uncited, please see the fuller report for attribution.

credulity to believe that investment vehicles that by definition eschew *any* discernment in a company's valuation should nevertheless be playing a major role in telling that same company how to reorganize its affairs.

The rise in passive index investing is complicated by the parallel rise in ESG ("environmental, social, and governance") investing. ESG investing is of relatively recent provenance: it traces to a December 2004 report commissioned by the United Nations. Big banks quickly bought in, and by 2006, the New York Stock Exchange and others around the world were adopting ESG principles following the UN protocol.

ESG investing is an offshoot of long-standing "socially responsible investing" that traditionally avoided certain "sin" stocks (e.g., those involving gambling, alcohol, tobacco, or munitions) and/or allocated monies toward industries aligned with investors' idea of the public good. But modern ESG-oriented investment vehicles have embraced something distinct: "impact" investing, in which funds holding diversified portfolios seek to change corporate behavior to match investors' preferred environmental, social, or governance strategies. Obviously, those objectives have been aided and abetted by the SEC's Rule 14a-8 shareholder-proposal regime—and the capture of proxy advisory firms and passive index investors.

ESG funds are a profit center for asset managers, especially those focusing on low-cost passive indexing. At the end of 2020, ESG funds had average fees of 0.2%, while standard ETFs that invest in U.S. large-cap stocks had a 0.14% fee on average—a relative 43% difference. Even such a seemingly small increase in fees can have a big impact when scaled. BlackRock has \$10 trillion in assets under management, so the potential for profits is staggering.

Although ESG funds constitute a relatively small minority of shares held in U.S. equities, the relative share of ESG-invested funds, until recently, had been rising rapidly. In 2020, ESG-related investment funds constituted nearly 25% of new U.S. mutual dollar inflows—double the level in 2019 and up from just 1% in 2014. The value of assets held in ESG funds invested in U.S. equities nearly doubled from year-end 2019 through year-end 2021, increasing from \$276 billion to \$550 billion in two years' time.

Since then, however, we have seen some retrenchment, at least in the United States, as ESG portfolios took a bath. Through the second quarter of 2025, U.S. ESG funds have seen eleven consecutive quarters of net capital outflows. Still, the conflict of interest between ESG investing and both proxy advisors and passive indexers remains. These trends could easily shift back again in the future. The Biden administration changed policy to prod investors toward ESG, and there's every reason to believe a future Democratic administration could do the same.

V. Analysis of Noticed Legislation

The Committee staff has noticed for consideration fifteen pieces of legislation, some of which have already been introduced and some of which are in “discussion draft” format. Each of these legislative concepts bears upon the broader topic of the hearing, proxy power and proposal abuse. But the concepts differ in their reform approach. Essentially, there are five reform approaches contemplated in the noticed legislation:

Reforms targeting principal market actors—proxy advisors and institutional managers

1. *Reforms regulating proxy advisors* (#s 1, 3, 4, 15).
2. *Reforms regulating institutional managers* (#s 2, 6, 10).

Reforms targeting the SEC

3. *Reforms of the SEC’s shareholder proposal process* (#s 8, 9, 11, 12).
4. *Reforms limiting the SEC from requiring non-material disclosures* (#s 5, 14).
5. *Other SEC reforms* (#s 7, 13).

While the specifics matter, I think each of these general approaches have merit.

As previously discussed, the **proxy advisory** firm duopoly acts *de facto* as the largest single shareholders in the publicly traded stock markets, notwithstanding thin capitalization, foreign ownership, and a general lack of transparency. There is little reason why these firms should not be registered and subject to SEC oversight.

Passive index investing fund families control a large and growing share of the publicly traded stock markets and exert substantial control over corporate boards, notwithstanding the tension between their investing model (*mirroring* the stock market) and their engagement practices (*directing* changes to corporate behavior). As these investing vehicles continue to grow in market share, Congress should carefully consider the implications of such a large voting bloc of shares, divorced from actual company research, exercising control over corporate decision making.

The **SEC’s shareholder proposal process** is legally suspect as a usurpation of substantive state corporate law without Congressional mandate. Despite recent salutary pullbacks in SEC staff guidance in this space, the SEC’s approach to overseeing this process is susceptible to viewpoint discrimination and risks placing an unelected federal agency in direct oversight of broad swathes of the economy, far outside its institutional expertise.

Materiality is a bedrock principle of the SEC’s disclosure regime, but it has been publicly questioned by some commissioners, and recent SEC rulemakings and guidance have thrown the concept into doubt. Congress could helpfully add clarity here.

To the extent that such approaches do not unduly tax agency resources and commissioner time, facilitating **better input** to the Commission from publicly traded companies and requiring **greater analysis** and reexamination of regulatory processes would be salutary.

Below, I will explore the proposed approaches in greater detail.

1. Reforms Regulating Proxy Advisors

Context. The two dominant proxy advisory firms, ISS and Glass Lewis, continue to hold outsized market power, a point long recognized by GAO,⁷¹ academic work,⁷² and my own research.⁷³ As discussed above, the sizable role of proxy advisors over equity markets should compel Congressional attention.

The noticed legislation includes the following:

(a) H.R. 4098, the *Stopping Proxy Advisor Racketeering Act* (Fitzgerald) (#1):

Bars proxy advisers from issuing voting recommendations where specified conflicts exist (consulting relationships with the issuer, recommendation changes tied to issuer subscriptions, simultaneous “stewardship” for a proponent, or membership in groups backing proposals on which they advise).

(b) H.R. _____, a bill to amend the *Securities Exchange Act of 1934 to provide for the registration of proxy advisory firms, and for other purposes* (Steil) (#3):

Requires SEC registration for proxy advisors; disclosures about procedures, methodologies, conflicts, and staff qualifications; policies for accuracy/reliability; bans “unfair, coercive, or abusive” practices; annual reporting; and SEC censure/suspension authority.

(c) H.R. _____, a bill to amend the *Securities Exchange Act of 1934 to provide for liability for certain failures to disclose material information in connection with proxy voting advice* (Steil) (#4):

Treats failures to disclose (or misstatements of) material information by proxy-advice businesses as false or misleading under Exchange Act §18.

⁷¹ GAO, Proxy Advisory Firms’ Role in Voting and Corporate Governance Practices, Nov. 2016, available at <https://www.gao.gov/assets/690/682816.pdf>.

⁷² See, e.g., Aiysha Dey et al., “Proxy Advisory Firms and Corporate Shareholder Engagement,” 37 REV. FIN. STUD. 3877 (Sept. 2024).

⁷³ See, e.g., James R. Copland et al., “Proxy Advisory Firms: Empirical Evidence and the Case for Reform” (Manhattan Institute 2018), available at <https://manhattan.institute/article/proxy-advisory-firms-empirical-evidence-and-the-case-for-reform>.

(d) H.R. _____, a bill to amend the Securities Exchange Act of 1934 with respect to prohibitions relating to the solicitation and influence of proxies (#15):

Prohibits proxy advisors from furnishing to security holders any recommendation, advice, analysis, or rating about voting.

Discussion

Bill #3, calling for SEC registration for all proxy advisors, seems like the sort of modest approach that should command broad support. (A similar bill, H.R. 4015, passed through the House in 2017.) Registration can supply durable, neutral-process oversight and accountability to a highly concentrated market.

Bill #1's effort to remedy significant conflicts of interest infecting the proxy advisory market is salutary, and there can be merit in bright-line conflict prohibitions. Still, the Committee may wish to focus carefully on definitions to avoid overbreadth that might sweep in benign affiliations, such as trade association membership. *De minimis* and safe-harbor provisions should be considered. The committee could also consider more limited approaches, such as the SEC's 2019 guidance treating proxy voting advice subject to antifraud rules.

Bill #4 is similarly pointed in the right direction but could possibly be constructively amended. Given that the Commission has already clarified that proxy voting advice is a "solicitation" subject to Rule 14a-9's antifraud standard, material misstatements or omissions are already actionable. It may make more sense for Congress to reinforce 14a-9-based duties (with examples) rather than reframing adviser communications as §18 filings. The legislation should also probably include safe harbors for good-faith, documented methodologies.

Bill #15 strikes me as overbroad and possibly unconstitutional under modern commercial speech doctrine, although it would depend on the ultimate details. The SEC's traditional treatment of proxy advice as a "solicitation" subject to antifraud, not as unlawful speech to be banned. Although it may be possible to narrow this concept to pass constitutional muster, bills 3, 1, and 4 strike me as more fruitful avenues to pursue.

2. Reforms Regulating Institutional Managers

Context. A number of institutional investors effectively outsource their proxy voting to one of the big proxy advisory firms.⁷⁴ In addition, large passive index fund families have a large and increasing share of the market—and influence voting outcomes despite not engaging in any specific *investment*-side company research.

The noticed legislation includes the following:

(a) H.R. 3402, a bill to amend the Securities Exchange Act of 1934 to require certain disclosures by institutional investment managers in connection with proxy advisory firms, and for other purposes (Loudermilk) (#2):

Requires managers to file an annual report showing how they voted, the percentage alignment with proxy-adviser recommendations, and their consideration of such advice; adds requirements for managers with >\$100B AUM (including clarifying that shareholders are not obligated to vote every item and conducting an economic analysis that a vote is in investors' "best economic interest").

(b) H.R. _____, the Empowering Shareholders Act of 2025 (Huizenga) (#6):

Requires passive fund managers to (1) implement owner-directed voting, (2) vote in line with board recommendations, or (3) abstain.

(c) H.R. _____, Protecting American's Savings Act (Nunn) (#10):

Prohibits institutional investors from outsourcing proxy-voting decisions; clarifies no person can be required to cast votes.

Discussion

Bill #2 makes sense, at least for larger institutional investors. The Committee should explore the *cost* this proposal might impose on smaller institutional investors; we should not want to create barriers to entry in the institutional-investing market. But the principle that sunshine is the best disinfectant should work well here. Disclosure can illuminate "robovoting" and herd effects without dictating outcomes. The "best economic interest" analysis should be calibrated to a reasonableness standard to avoid turning each ballot item into a mini-cost-benefit proceeding—and should probably be permitted at the policy level, not per-item. It would also be salutary for Congress to affirm SEC guidance clarifying that advisers need not vote every proxy and may structure client arrangements accordingly.

⁷⁴ See, e.g., Paul Rose, Proxy Advisors and Market Power: A Review of Institutional Investor Robovoting (Manhattan Institute 2021), available at <https://manhattan.institute/article/proxy-advisors-and-market-power-a-review-of-institutional-investor-robovoting>.

Bill #6 builds on existing market experimentation among large passive index families and is parallel to Senator Sullivan's INDEX Act. I worry, however, that as structured here the legislation might create unanticipated problems by pushing most passive shares toward abstention or management support—thus undercutting constructive shareholder activism from true activist investors that add value for average shareholders. As I explained in my 2024 report:

Retail investors (nonprofessional investors) who invest in corporate securities through mutual funds, ETFs, and comparable investment vehicles—particularly if investing in passive index funds—are implicitly deciding to delegate their analysis of corporate valuations, governance, and performance. At least some retail investors in actively managed funds may retain a belief—misguided or not—that they can outperform market indexes, or at least structure investment strategies more tailored to their idiosyncratic financial needs, through fund selection. But an investor in a passively managed fund is implicitly delegating his investing choices to the broader buy-and-sell decisions of the stock market itself, at least as defined in a market basket selected by S&P or the like.

It is theoretically strange to devolve shareholder voting rights to such retail investors in these cases. Investors who are affirmatively opting not to make their buy-and-sell decisions on securities hardly seem well equipped to evaluate the host of potential governance decisions presented on modern proxy ballots for publicly traded companies. Devolving shareholder voting to individual shareholders owning passive index funds seems as logically incoherent as allowing the managers of such funds to weigh in on such ballot items—even if it would have the salutary effect of breaking up the voting clout of the small number of asset managers with large passive fund holdings. . . .

[If the end result of “pass through” voting were to prompt most passive index shares to abstain or reflexively vote with management, it] could serve, in at least some cases, to entrench existing boards and managers—insulating status quo management from shareholder influence that would enhance share value. While socially oriented shareholder activism tends to be associated with lower share value, hedge-fund investors who deeply research companies and engage in activist investment strategies designed to enhance share value—investing a lot of their own skin in the game—tend, on average, to enhance share value and improve efficient market pricing. [R]equiring passive index fund managers to abstain from voting, absent affirmative voting recommendations from beneficial investors, which could very well wind up being the case for a large percentage of all fund assets. In so doing, the act could work to block shareholder majorities opposing management in all but the “routine” cases exempted by the act's provisions.⁷⁵

⁷⁵ James R. Copland, *Index Funds Have Too Much Voting Power: A Proposal for Reform* (Manhattan Institute 2024), available at <https://manhattan.institute/article/index-funds-have-too-much-voting-power-a-proposal-for-reform>.

Rather than defaulting to simple abstention *or* management support in the absence of a pass-through voting signal, this legislation should either work through how default abstention rules might need to be adjusted to really have passive indexers “sit on the sidelines” or adopt a “mirror voting” mechanism as the default, such that asset managers of passive-investing vehicles cast their votes in the same proportion as other nonpassive shareholders. Essentially, the large passive funds would be voting the same way they invest: passively, mirroring the votes of those investors actively engaged in price discovery. (I work through these particulars in more detail in my 2024 paper.⁷⁶)

In part, Bill #10, like Bill #2, would helpfully codify SEC guidance clarifying that advisors need not vote on every item—and may retain proxy advisers to assist with research and execution (subject to diligence and oversight). Banning outsourcing outright would force thousands of advisers and funds to replicate research and operations at high cost; “robovoting” concerns would probably be best addressed without a prohibition through a disclosure regime as postulated in Bill #2.

3. Reforms of the SEC’s Shareholder Proposal Process

Context: The SEC’s shareholder proposal process is legally dubious and platforms tiny minority shareholders and shareholders with an interest in things other than share value, to the average investor’s detriment.

The noticed legislation includes the following:

(a) H.R. _____, the *Performance over Politics Act* (Fitzgerald) (#8):

Allows exclusion of proposals that substantially implement, duplicate, or are substantially similar to previously included proposals.

(b) H.R. _____, the *Businesses Over Activists Act* (Norman) (#9):

Prohibits the SEC from compelling inclusion or discussion of shareholder proposals and removes SEC preemption over state regulation of proposals and proxy materials.

(c) H.R. _____, a bill to clarify that an issuer may exclude a shareholder proposal pursuant to section 240.14a-8(i) of title 17, Code of Federal Regulations, without regard to whether such proposal relates to a significant social policy issue (Rose) (#11):

Allows exclusion under Rule 14a-8(i) without regard to whether the proposal implicates a “significant social policy.”

⁷⁶ See *id.*

- (d) H.R. _____, a bill to authorize the exclusion of shareholder proposals from proxy or consent solicitation material if the subject matter of the shareholder proposal is environmental, social, or political (Donalds) (#12):

Permits companies to exclude shareholder proposals with an environmental, social, or political subject matter.

Discussion

Bill #9 is consistent with my viewpoint that the SEC's entire shareholder proposal apparatus is an illegitimate usurpation of authority beyond that explicitly legislated by Congress. That corporate law is state law is a bedrock principle of federalism that has undergirded American capital markets advantage. The Supreme Court has been clear: "No principle of corporation law and practice is more firmly established than a State's authority to regulate domestic corporations, including the authority to define the voting rights of shareholders."⁷⁷

To be sure, varying legal regimes governing shareholder proposals based on state of incorporation would complicate matters for publicly traded companies, relative to a one-size-fits-all federal solution. But a one-size-fits-all solution is also fraught with error. Rather than serving as a "shareholder proposal reviewer," the SEC staff should be focused on fighting securities fraud. And the SEC's oversight of the proxy statement should be limited to policing fraud—and any specific Congressional mandates—not to weighing the substantive merits and demerits of shareholder ideas, a task fraught with viewpoint-discriminatory concerns that implicate the First Amendment.

While each of the other three bills tackling the shareholder proposal process itself would be a step in the right direction, I do wish to caution that Congress should expressly state in any such bill that it is *not* endorsing the legality of the SEC's current regime. Inasmuch as I think the substantive review of shareholder proposals should be a question of state law not federal regulation, Congress should not implicitly sign off on the process.

That said, Bill #12's express call to permit exclusion of social, political, and environmental questions from publicly traded companies' proxy ballots would be a welcome return to the pre-1970s standard. I have publicly supported such a standard in principle, for years.⁷⁸ To be sure, there could be gray areas in which lines may be difficult to draw. But by expressly permitting the exclusion of any policy questions, a bill to this effect would at least get the SEC staff out of the business of picking preferred policy viewpoints.

Bill #11 would not go as far and would still leave open the question of viewpoint discrimination, but it would effectively codify the thrust of the SEC's current guidance

⁷⁷ CTS Corp. v. Dynamics Corp., 481 U.S. 69, 89 (1987).

⁷⁸ See James R. Copland, "Getting the Politics out of Proxy Season," Wall Street Journal, Apr. 23, 2015, available at <https://www.manhattan-institute.org/html/getting-politics-out-proxy-season-5461.html>.

under Legal Bulletin 14M and prevent the absurd result under the prior rule that shareholders are not permitted to interfere with corporations' ordinary business *except when* the subject is political—effectively turning corporate annual meetings into mini-policy-plebiscites.

4. Reforms Limiting the SEC from Requiring Non-Material Disclosures

Context: Materiality anchors the federal securities regime. In the Supreme Court's view, information is "material" if there's a "substantial likelihood" a reasonable investor would view it as important in the total mix. As discussed above, the SEC has increasingly stretch its mandate to require non-material disclosures, with some SEC Commissioners expressly repudiating the materiality standard in the disclosure context. Recent climate-rule litigation and the SEC's voluntary stay underscore tension over prescriptive, non-financial metrics versus materiality.

The noticed legislation includes the following:

(a) H.R. _____, the *Mandatory Materiality Requirement Act of 2025* (Huizenga) (#5):

Requires that SEC-mandated issuer disclosures be "material," with a limited exception where eliminating non-material items would not lessen the burden overall.

(b) H.R. _____, a bill to amend the *Securities Exchange Act of 1934* to require the *Securities and Exchange Commission to disclose and report on non-material disclosure mandates, and for other purposes* (#14):

Requires the SEC to list each non-material disclosure requirement and justify it on the website and to report to Congress every five years; provides that failure to disclose such non-material information is not privately actionable.

Discussion

It would be salutary to codify a materiality cornerstone into the securities laws, as called for in Bill #5. Bernard Sharfman and I discussed this issue in more detail in our comment letter to the SEC discussing its proposed climate disclosure rule.⁷⁹

Bill #14 offers a more modest yet still salutary alternative, requiring an express justification for a non-material disclosure requirement and a safe harbor protecting issuers against private rights of action for non-material disclosure—effectively blocking litigation warfare over non-material disclosure requirements. In this “lighter touch” approach, the Committee might also consider a periodic sunset of non-material disclosure rules absent a demonstrated investor utility.

5. Other SEC Reforms

Context. The SEC already has the Dodd–Frank Investor Advisory Committee and a Small Business Capital Formation Advisory Committee; neither systematically reflects the perspective of large public company issuers. In addition, the Commission has rarely studied its processes governing proxy statements and shareholder proposals.

The noticed legislation includes the following:

(a) H.R. _____, the Public Company Advisory Committee Act of 2025 (Lucas) (#7):

Creates a Public Company Advisory Committee at the SEC to advise on investor protection, market efficiency, and capital formation.

(b) H.R. _____, the Corporate Governance Examination Act (Wagner) (#13):

Directs the SEC to conduct recurring five-year studies on proposals, proxy advisers, and the proxy process (including incentives, issuer costs, and politicization).

Discussion

The principal cost burden of these bills would fall on the SEC staff. There is obviously an opportunity cost to any such requirements, but beyond such costs, these ideas would strike me as salutary. I would solicit input from the Commissioners, however, before enacting such legislation. Again, it would be desirable to make sure that in enacting any study of Rule 14a-8, the Congress explicitly states that it is not endorsing the SEC’s process. Substantive shareholder rights in this area should be a creature of state law.

⁷⁹ See Bernard S. Sharfman & James R. Copland, Comment to the Securities and Exchange Commission, File No. S7-10-22, Release Nos. 33-11042; 34-94478, “The Enhancement and Standardization of Climate-Related Disclosures for Investors,” June 16, 2022, available at <https://www.sec.gov/comments/s7-10-22/s71022-20131661-302049.pdf>.

James R. Copland

September 10, 2025

Conclusion

I commend the Committee for thinking so carefully about an issue I have long studied, the SEC's shareholder proposal process, governed through its oversight of the proxy statement; and the broader issues concerning shareholder voting, passive index investor voting, and proxy advisory firms.

I continue to believe that overreaching SEC rulemaking, in this and other areas, has strained the "genius" of American corporate law and, if not remedied, could threaten to imperil our strategic capital markets advantage.

The selected list of writings I have authored or published which follows should be incorporated by reference and can add further details to this statement. I encourage Members of the Committee to ask questions, which I will endeavor to answer to the best of my ability. I am also more than willing to follow up later with Members and staff.

Selected Writings*Congressional Testimony*

Statement of James R. Copland, “The Rise of ESG Investing and the Appropriate Regulatory Responses,” Hearing before the House Committee on Financial Services: Protecting Investor Interests: Examining Environmental and Social Policy in Financial Regulation, July 12, 2023, *available at* <https://media4.manhattan-institute.org/wp-content/uploads/Copland-Testimony-House-Financial-Services-7-12-2023-fin-rev.pdf>.

Statement of James R. Copland, “Economic Growth and Efficient Capital Markets: An Agenda at Odds with Subcommittee’s Bills Under Consideration,” Hearing before the House Committee on Financial Services Subcommittee on Investor Protection, Entrepreneurship, and Capital Markets: Promoting Economic Growth: A Review of Proposals to Strengthen the Rights and Protections for Workers, May 15, 2019, *available at* https://media4.manhattan-institute.org/sites/default/files/Testimony_JCopland_051519.pdf.

Statement of James R. Copland, “Who’s Monitoring the Monitors? The Rise of Intermediaries and the Threat to Capital Markets,” Hearing before the Senate Committee on Banking, Housing, and Urban Affairs: The Application of Environmental, Social, and Governance Principles in Investing and the Role of Asset Managers, Proxy Advisors, and Other Intermediaries, Apr. 2, 2019, *available at* <https://www.banking.senate.gov/imo/media/doc/Copland%20Testimony%204-2-191.pdf>.

Statement of James R. Copland, “SEC Rule 14a-8: Ripe for Reform,” Hearing before the House Committee on Financial Services Subcommittee on Capital Markets and Government Sponsored Enterprises: Hearing on Corporate Governance: Fostering a System that Promotes Capital Formation and Maximizes Shareholder Value, Sept. 21, 2016, *available at* <https://media4.manhattan-institute.org/sites/default/files/T-JC-0916.pdf>.

Statement of James R. Copland, Testimony before the House Financial Services Committee, Apr. 26, 2006, *available at* <https://manhattan.institute/article/testimony-of-james-r-copland-before-the-united-states-house-of-representatives-committee-on-financial-services>.

Federal Regulatory Comment Letters

James R. Copland, Comment to the Department of the Treasury, REG-118269-23, Section 30C Alternative Fuel Vehicle Refueling Property Credit of the Internal Revenue Code, Nov. 18, 2024, *available at* <https://www.regulations.gov/comment/IRS-2024-0049-0037>.

James R. Copland, Comment to the Department of the Treasury, Section 45Y Clean Electricity Production Credit and Section 48E Clean Electricity Investment Credit, Aug. 2, 2024, *available at* <https://www.regulations.gov/comment/IRS-2024-0026-1797>.

James R. Copland, Comment to the Commodities Futures Trading Commission, RIN 3038-AF40, “Commission Guidance Regarding the Listing of Voluntary Carbon Credit Derivative Contracts,” Feb. 16, 2024, *available at* <https://media4.manhattan-institute.org/wp-content/uploads/To-File-Copland-Comment-on-CFTC-Voluntary-Carbon-Market.pdf>.

C. Boyden Gray, Comment, Comment, File No. S7-10-22, Release Nos. 33-11042; 34-94478, “The Enhancement and Standardization of Climate-Related Disclosures for Investors,” June 17, 2022, *available at* <https://www.sec.gov/comments/s7-10-22/s71022-20132160-302652.pdf> (Attachment 3: Affidavit of James R. Copland).

Bernard S. Sharfman & James R. Copland, Comment to the Securities and Exchange Commission, File No. S7-10-22, Release Nos. 33-11042; 34-94478, “The Enhancement and Standardization of Climate-Related Disclosures for Investors,” June 16, 2022, *available at* <https://www.sec.gov/comments/s7-10-22/s71022-20131661-302049.pdf>.

James R. Copland, Comment to the Department of Labor, RIN 1210-AC03, “Prudence and Loyalty in Selecting Plan Investments and Exercising Shareholder Rights,” Dec. 13, 2021, *available at* <https://www.dol.gov/sites/dolgov/files/EBSA/laws-and-regulations/rules-and-regulations/public-comments/1210-AC03/00793.pdf>.

Bernard S. Sharfman & James R. Copland, Comment to the Department of Labor, RIN 1210-AC03, “Prudence and Loyalty in Selecting Plan Investments and Exercising Shareholder Rights,” Dec. 13, 2021, *available at* https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3984463.

James R. Copland, Comment to the Securities and Exchange Commission, File No. S7-23-19, Release No. 34-87458, “Procedural Requirements and Resubmission Thresholds under Exchange Act Rule 14a-8,” Feb. 3, 2020, *available at* <https://www.sec.gov/comments/s7-23-19/s72319-6741164-207698.pdf>.

James R. Copland, Comment to the Securities and Exchange Commission, File No. S7-22-19, Release No. 34-87457, “Amendments to Exemptions from the Proxy Rules for Proxy Voting Advice,” Feb. 3, 2020, *available at* <https://www.sec.gov/comments/s7-22-19/s72219-6742842-207818.pdf>.

Manhattan Institute Reports

James R. Copland, *Index Funds Have Too Much Voting Power: A Proposal for Reform* (Manhattan Institute 2024), available at <https://manhattan.institute/article/index-funds-have-too-much-voting-power-a-proposal-for-reform>.

Paul Rose, *Proxy Advisors and Market Power: A Review of Institutional Investor Robovoting* (Manhattan Institute 2021), available at <https://manhattan.institute/article/proxy-advisors-and-market-power-a-review-of-institutional-investor-robovoting>.

James R. Copland, David F. Larcker & Brian Tayan, *Proxy Advisory Firms: Empirical Evidence and the Case for Reform* (Manhattan Institute 2018), available at <https://manhattan.institute/article/proxy-advisory-firms-empirical-evidence-and-the-case-for-reform>.

James R. Copland & Margaret M. O’Keefe, *Proxy Monitor 2017: Season Review* (Manhattan Institute 2017), https://www.proxymonitor.org/Forms/pmr_15.aspx.

James R. Copland & Margaret M. O’Keefe, *Proxy Monitor 2016: A Report on Corporate Governance and Shareholder Activism* (Manhattan Institute 2016), available at http://www.proxymonitor.org/pdf/pmr_13.pdf.

Tracie Woidtke, *Public Pension Fund Activism and Firm Value* (Manhattan Institute 2015), available at https://media4.manhattan-institute.org/sites/default/files/lpr_20.pdf.

James R. Copland & Margaret M. O’Keefe, *Proxy Monitor 2015: A Report on Corporate Governance and Shareholder Activism* (Manhattan Institute 2015), available at https://www.proxymonitor.org/Forms/pmr_11.aspx.

James R. Copland & Margaret M. O’Keefe, *Proxy Monitor 2014: A Report on Corporate Governance and Shareholder Activism* (Manhattan Institute 2014), available at https://www.proxymonitor.org/Forms/pmr_09.aspx.

James R. Copland & Margaret M. O’Keefe, *Proxy Monitor 2013: A Report on Corporate Governance and Shareholder Activism* (Manhattan Institute 2013), available at https://www.proxymonitor.org/Forms/pmr_06.aspx.

James R. Copland with Yevgeniy Feyman & Margaret O’Keefe, *Proxy Monitor 2012: A Report on Corporate Governance and Shareholder Activism* (Manhattan Institute 2012), available at https://www.proxymonitor.org/Forms/pmr_04.aspx.

James R. Copland, *Proxy Monitor 2011: A Report on Corporate Governance and Shareholder Activism* (Manhattan Institute 2011), available at https://www.proxymonitor.org/Forms/pmr_02.aspx.

Book

James R. Copland, *The Unelected: How an Unaccountable Elite Is Governing America* (Encounter Books 2020) (see especially chapter 13, “Stock Market Politics,” at pp. 191–202).

Article

James R. Copland, “Against an SEC-Mandated Rule on Political Spending Disclosure: A Reply to Bebchuk and Jackson,” 3 *Harvard Business Law Review* 381 (2013), available at http://www.hblr.org/wp-content/uploads/2013/10/HLB209_crop.pdf.

Columns

James R. Copland, “It’s Time to Rein in Index Funds’ Shareholder Activism,” *City Journal*, Sept. 5, 2025, available at <https://www.city-journal.org/article/esg-shareholder-activism-blackrock-state-street-vanguard>.

James R. Copland, “The ESG Bubble Is Bursting,” *City Journal*, Aug. 19, 2025, available at <https://www.city-journal.org/article/esg-investing-funds-energy-economy>.

James R. Copland & Charles Yockey, “EU Regulatory Overreach Threatens American Sovereignty,” *City Journal*, Apr. 30, 2025, available at <https://www.city-journal.org/article/eu-green-deal-parliament-environmental-labor-mandates>.

James R. Copland & Charles Yockey, “EU Pauses Corporate Reporting, Worldwide Companies Not Yet Under Brussels’ Thumb,” *Brussels Signal*, Apr. 4, 2025, available at <https://manhattan.institute/article/eu-pauses-corporate-reporting-worldwide-companies-not-yet-under-brussels-thumb>.

James R. Copland & Bernard S. Sharfman, “How to Reestablish the Authority of Corporate Law in the Shareholder Proposal Process,” *CLS Blue Sky Blog*, Mar. 12, 2024, available at <https://manhattan.institute/article/how-to-reestablish-the-authority-of-corporate-law-in-the-shareholder-proposal-process>.

James R. Copland, “How Everyday Investors May Soon Vote Away ESG,” *N.Y. Post*, Sept. 16, 2023, available at <https://manhattan.institute/article/how-everyday-investors-may-soon-vote-away-esg>.

James R. Copland & Bernard S. Sharfman, "The SEC Can't Transform Itself into a Climate-Change Enforcer," *Wall Street Journal*, Sept. 14, 2022, available at <https://manhattan.institute/article/the-sec-cant-transform-itself-into-a-climate-change-enforcer>.

James R. Copland, "The Business Roundtable's Statement Isn't Revolutionary. It's a Truism," *Washington Post*, Aug. 22, 2019, available at <https://www.washingtonpost.com/opinions/2019/08/22/business-roundtables-statement-isnt-revolutionary-its-truism/>.

James R. Copland, "Senator Warren's Bizarro Corporate Governance," *economics21.org*, Aug. 16, 2018, available at <https://economics21.org/warren-backwards-corporate-governance>.

James R. Copland, "Another Shareholder Proposal? McDonald's Deserves a Break Today," *Wall Street Journal*, Jul. 7, 2017, available at <https://www.wsj.com/articles/another-shareholder-proposal-mcdonalds-deserves-a-break-today-1499381801>.

Howard Husock & James R. Copland, "'Sustainability Standards' Open a Pandora's Box of Politically Correct Accounting," *Investor's Business Daily*, Mar. 24, 2017, available at <https://www.investors.com/politics/commentary/sustainability-standards-open-a-pandoras-box-of-politically-correct-accounting/>.

James R. Copland, "Getting the Politics out of Proxy Season," *Wall Street Journal*, Apr. 23, 2015, available at <https://www.manhattan-institute.org/html/getting-politics-out-proxy-season-5461.html>.

James R. Copland, "SEC Needs to Rethink Its Rules on Proxy Advisory Firms," *Washington Examiner*, July 25, 2014, available at <https://manhattan.institute/article/sec-needs-to-rethink-its-rules-on-proxy-advisory-firms>.

James R. Copland, "Politicized Proxy Advisers vs. Individual Investors," *Wall Street Journal*, Oct. 7, 2012, available at <https://www.manhattan-institute.org/html/politicized-proxy-advisers-vs-individual-investors-3863.html>.

James R. Copland, "The Strange New World of Corporate Governance," *Investors Business Daily*, Oct. 7, 2011, available at <https://manhattan.institute/article/the-strange-new-world-of-corporate-governance>.

James R. Copland, "Are U.S. IPOs DOA?," *WashingtonPost.com*, Apr. 12, 2007.

James R. Copland, "The Capital Market Crackup," *Chief Executive*, Dec. 1, 2006, available at <https://manhattan.institute/article/the-capital-market-crackup>.

Chairman HILL. Thank you, sir. Mrs. Keel, you are recognized for 5 minutes. If we need to, let Mr. Mueller share his mic, if your mic is not working. You guys get cozy there. The box will move, Mr. Mueller. It is not glued to the desk, or you can move it a little back. There you go.

Mrs. KEEL. Great. Thank you.

Chairman HILL. Thank you, ma'am. You are recognized for 5 minutes.

STATEMENT OF FERRELL KEEL, PARTNER, JONES DAY

Mrs. KEEL. Chairman Hill, Ranking Member Waters, and members of the committee, thank you for the invitation to testify today. My hope is to shed light on why Rule 14a-8 no longer effectively serves the interests of shareholders at large. My observations draw upon my experience counseling public companies, big and small, on securities, corporate governance, and environmental, social, and governance (ESG) activism, but I am here today in my individual capacity and not on behalf of any client. I will start by outlining a few of the challenges with Rule 14a-8 and then humbly offer a few ideas as to alternatives.

Challenge number one, shareholder democracy needs rational bounds. No right is limitless. For example, if I buy a seat on an airplane, do I have the right to use it as a soapbox and hold my fellow passengers captive for the duration of the flight? In the shareholder proposal world, any individual can buy a megaphone and a billboard on a company's proxy statement for \$2,000. To put it in context, that represents .000002 percent of the market cap of the average S&P 500 company. Proponents are getting prime proxy real estate at bargain basement prices. It does not have to be this way. We see healthy shareholder engagement around the world despite much higher participation thresholds.

Challenge number two, Rule 14a-8 is too complex, making it subjective, inefficient, and easy to manipulate. The SEC has issued interpretive guidance on Rule 14a-8 through 18 staff legal bulletins over the last 2 decades. These bulletins change the goal posts with each new administration, and the guidance contains exceptions to exclusions and highly subjective frameworks that force companies and proponents alike to apply fuzzy standards, like does a proposal transcend ordinary business, or does it fall short? Is it significant or insignificant to social policy? Will it have a broad societal impact or just a limited one? Does it probe too deeply or just the right amount? The answers can only be known to the eye of the beholder.

Complexity has a cost, and that cost is that Rule 14a-8 is unusable to the ordinary shareholder. How valuable is a right to speak if the average shareholder cannot even figure out how to submit a proposal? The only people who have a shot are professional activists, individuals and organizations who are oftentimes not even shareholders. These professionals effectively borrow a shareholder stake to get their foot in the door and then control the process from start to finish. It is not uncommon for the named shareholder to not engage with a company a single time. This means that the term, "shareholder proposal," is a misnomer. In reality, most proposals are activist proposals.

Challenge number three, a proxy ballot is not an efficient place to hold a political referendum. Rule 14a-8 has turned companies' annual meetings into political hotbeds. For example, this proxy season, multiple companies had one shareholder ask them to promote Diversity, Equity, and Inclusion (DEI) while another shareholder asked them to abolish it. More generally, proposals increasingly ask companies to opine on polarizing issues as if companies can solve the toughest legislative and regulatory questions of our day. For example, proposals have asked a store that sells hammers and nails to make a statement on reproductive rights, a theme park to state its position on geopolitical issues in China, a credit card company to unilaterally formulate and execute gun sale regulation. I want to be clear, these are critically important issues, but what we are really talking about can be summarized in three questions. Is the company's annual meeting the right forum to address these issues? Are companies best situated to serve as de facto regulators, or are you? Do shareholders at large garner from the political proposals that have a tenuous connection to a company?

Issue number four, shareholder proposals are not costless. Companies pour an immense amount of energy into addressing proposals, and it can take a company hundreds of employee hours to coordinate engagement, strategy, and response. A company must consider whether it would cause them to jeopardize legal privilege, breach nondisclosure provisions, disclose proprietary or sensitive employee information, or reveal competitive strategies. Reducing the expense of a proposal to dollars and cents simply does not capture the intangible costs. What is the alternative? So with a system that is three quarters of a century old, it is time to rethink the process.

I think there are three essential options. Option one, keep Rule 14a-8, but significantly revamp it. At a minimum, the ownership requirement would need to be raised, but it could also include other modifications, like the SEC getting out of the business of adjudicating no action letters. The SEC and shareholders could rely on the independent boards to exercise their fiduciary duties and apply Rule 14a-8 in good faith. Truthfully, companies would struggle with this version of the shareholder process, given it is much easier to blame an umpire, here, the SEC. Option number two, eliminate 14a-8 and let States decide what is a proper subject matter, which is actually how 14a-8 was originally intended to operate and then option three would be something more akin to what we would describe as private ordering. So, you would keep 14a-8 but let companies and their shareholders decide how 14a-8 should be applied. I am not sure I know which answer is best, but I do believe that living with the current system does not serve the interests of investors in the long run, and it will ultimately hurt both companies and shareholders.

Thank you again for the opportunity.

[The prepared statement of Mrs. Keel follows:]

**Testimony of
Ferrell M. Keel, Partner at Jones Day
Before the U.S. House Committee on Financial Services**

**Hearing on “Proxy Power and Proposal Abuse: Reforming Rule 14a-8 to Protect
Shareholder Value”**

September 10, 2025
10:00 a.m.
Rayburn House Office Building, Room 2128

Biography of Ferrell M. Keel

Ferrell Keel is a partner in the Financial Markets practice at Jones Day. She has significant experience representing clients in a broad range of complex capital markets transactions, as well as high-stakes corporate governance matters relating to Securities and Exchange Commission (SEC) and stock exchange rules and regulations. Ferrell also regularly advises boards on corporate governance matters and facilitates annual board evaluations.

Ferrell's corporate governance practice has recently focused on shareholder activism, particularly as it relates to environmental, social & governance (ESG) issues. She regularly counsels clients on risks stemming from ESG disclosures and shareholder proposals and was a leading member of the Jones Day team that represented ExxonMobil in its Rule 14a-8 shareholder proposal lawsuit against shareholder activists in 2024.

Ferrell is also an expert on proxy advisor matters, having testified to the Texas State Senate Committee on State Affairs on S.B. 2337, a first-of-its kind statute that seeks to regulate proxy advisors. In July 2025, ISS and Glass Lewis sued Texas Attorney General Ken Paxton to allege that S.B. 2337 is unconstitutional. In August 2025, the Texas Stock Exchange (TXSE) and Texas Association of Business intervened as defendants to defend S.B. 2337. Ferrell is a leading member of the Jones Day team representing TXSE and the Texas Association of Business in the suit, which is ongoing.

Ferrell has led the full range of capital markets transactions, including initial public offerings (IPOs) and follow-on equity offerings; spin-offs; high yield, investment-grade, and convertible debt offerings; commercial paper programs; rights offerings; private placements of equity and convertible securities; and tender and exchange offers. Ferrell works regularly with clients that span a wide range of industries including energy, technology, financial services, consumer, retail, industrials and health care.

Prior to joining Jones Day in 2019, Ferrell was an associate in the capital markets practice at Davis Polk & Wardwell LLP. She holds a J.D. from New York University and a B.S. in Economics and History from Vanderbilt University where she was a Walter C. Wattles Fellow.

Testimony of Ferrell M. Keel
September 10, 2025

Written Statement

Chairman Hill, Ranking Member Waters and members of the Committee, thank you for the invitation to testify today. My hope is to shed light on why Rule 14a-8 no longer effectively serves the interests of shareholders at large. My observations draw upon my experience counseling public companies—big and small—on securities, corporate governance and ESG activism, but I am here today in my individual capacity and not on behalf of any client. The views I express are my own, and not necessarily those of Jones Day or any client.

I will start by outlining a few of the challenges with Rule 14a-8 and then humbly offer a few ideas as to alternatives.

The Challenges

1. Shareholder democracy needs rationale bounds.

No right should be limitless—for example, if I buy a seat on an airplane, do I have the right to use it as a soap box and hold fellow passengers captive for the duration of the flight?

In the shareholder proposal world, any individual can buy a megaphone and a billboard on a company's proxy statement for \$2,000. To put it in context, that represents 0.000002% of the market cap of the average S&P 500 company.¹ It would be like buying a Super Bowl ad for 14 cents. Proponents are getting prime proxy real estate at bargain basement prices.

It doesn't have to be this way. We see healthy shareholder engagement around the world despite much higher participation thresholds. Take Germany who has a €500,000 ownership requirement. Or the United Kingdom who requires 100 individuals to jointly own £10,000 in shares.

It is not a new idea to require individuals with influence to have meaningful ownership in a company. For example, companies require directors to own minimum amounts of a company's stock, and executive compensation is largely based on equity ownership to ensure alignment with shareholder interests. Similarly here, we need to think about how requiring a shareholder to have a bigger economic stake would safeguard against individuals acting in their own interest and therefore limiting proposals that do not further the broader shareholder interests.

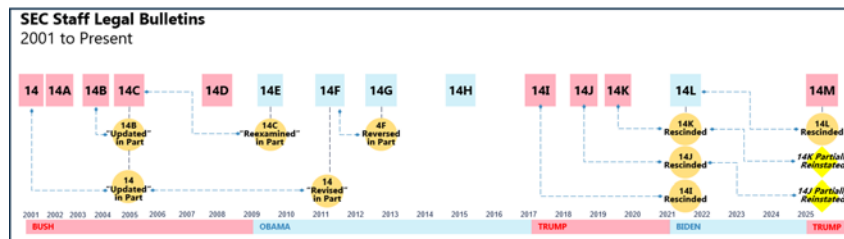
¹ Per Morningstar.com, *S&P 500 PR*, *MORNINGSTAR*, <https://www.morningstar.com/indexes/spi/spx/quote> (last visited Sept. 8, 2025), the S&P 500 total market cap was \$54.8 trillion, resulting in an average market cap of \$109.6 billion per company in the S&P 500.

Testimony of Ferrell M. Keel
September 10, 2025

2. Rule 14a-8 is too complex, making it subjective, inefficient and easy to manipulate.

The SEC has issued interpretive guidance on Rule 14a-8 through 18 Staff Legal Bulletins over the last two decades.² This guidance informs companies and shareholders alike as to whether a company is justified in excluding a proposal from a shareholder vote based on various procedural and substantive bases. These Staff Legal Bulletins change the goalposts with each new administration, and result in an iterative, complex and confusing web of standards that is difficult to apply with efficiency or consistency. The guidance contains exceptions to exclusions and highly subjective analytical frameworks that force companies and proponents alike to apply fuzzy standards like, does a proposal “transcend ordinary business,” or does it fall short? Is it “significant” (or insignificant) to social policy? Will it have a “broad societal impact,” or just a limited one? Does it “probe too deeply,” or just the right amount? The answers can only be known to the eye of the beholder.

The image below shows each of the SEC’s Staff Legal Bulletins (“SLBs”) relating to Rule 14a-8. The red and blue SLBs represent guidance issued under Republican and Democratic presidential administrations, respectively. As a reminder, guidance is not law. As the SEC says itself, it has “no legal force or effect” and it “does not alter or amend applicable law.”³ Yet guidance changes with the political winds, resulting in inconsistent application. That is not an effective tool for investors or an efficient use of resources for companies.



Complexity has a cost, and that cost is that Rule 14a-8 is unusable to the ordinary shareholder. How valuable is a right to speak if the average shareholder can’t even figure out how to submit a proposal?

The only people who have a shot at successfully submitting a proposal are professional activists—individuals and organizations who are oftentimes not even shareholders. These professionals do not merely help a shareholder navigate Rule 14a-8. Rather, they effectively

² *Staff Legal Bulletins*, SEC, <https://www.sec.gov/rules-regulations/staff-guidance/staff-legal-bulletins> (last updated Feb. 12, 2025).

³ *Shareholder Proposals: Staff Legal Bulletin No. 14M (CF)*, SEC (Feb. 12, 2025), <https://www.sec.gov/about/shareholder-proposals-staff-legal-bulletin-no-14m-cf>.

Testimony of Ferrell M. Keel
September 10, 2025

borrow a shareholder's stake to get their foot in the door, and then control the process from start to finish. It's not uncommon for the named shareholder to not engage with a company a single time. This means that the term "shareholder" proposal is a misnomer. In reality, most proposals are "activist" proposals that are orchestrated by individuals who primarily care about the issue at hand—regardless of the cost and ultimate impact that a proposal will have on the value of a company, its shareholders and its stakeholders.

3. A proxy ballot is not an efficient place to hold a political referendum.

Rule 14a-8 has turned companies' annual meetings into political hot beds, putting companies in the middle of the crossfire. For example, this proxy season multiple companies had one shareholder ask them to promote DEI while another shareholder asked them to abolish it.⁴

More generally, proposals increasingly ask companies to opine on sensitive and polarizing issues, as if companies can solve the toughest legislative and regulatory questions of our day. For example, proposals have asked:

- A store that sells hammers and nails to make a public statement on reproductive rights⁵
- A theme park to state its position on geopolitical issues in China⁶
- A credit card company to unilaterally formulate and execute gun sale regulation⁷
- An e-commerce store to consider investing in Bitcoin⁸

I want to be clear: these are all critically important, or at least interesting, issues. But what we are really talking about can be summarized in three questions:

- Is a company's annual meeting the right forum to vote on public policies?
- Are companies best situated to serve as de facto regulators, or are you?
- Do shareholders at large garner value from political proposals that have a tenuous connection to a company?

⁴ Shirley Westcott, *2025 U.S. Proxy Season Review*, ALLIANCE ADVISORS, <https://allianceadvisors.com/2025-u-s-proxy-season-review/> (last visited Sept. 8, 2025).

⁵ Michelle Nicole Diamond et al, *Shareholder Focus on Reproductive Rights Post-Dobbs*, WILMERHALE (Oct. 4, 2022), <https://www.wilmerhale.com/en/insights/blogs/esg-epicenter/20221003-shareholder-focus-on-reproductive-rights-post-dobbs#:~:text=1,and%20political%20and%20electioneering%20expenditures>.

⁶ *2022 Notice of Annual Meeting of Shareholders and Proxy Statement*, THE WALT DISNEY COMPANY (Jan. 19, 2022), <https://thewaltdisneycompany.com/app/uploads/2022/01/2022-Proxy-Statement.pdf>; *2023 Notice of Annual Meeting of Shareholders and Proxy Statement*, THE WALT DISNEY COMPANY (Feb. 10, 2023), <https://thewaltdisneycompany.com/app/uploads/2023/02/2023-Proxy-Statement.pdf>.

⁷ Visa Inc., SEC Staff No-Action Letter (Oct. 30, 2019), <https://www.sec.gov/divisions/corpfin/cf-noaction/14a-8/2019/sumofusvisa103019-14a8.pdf>.

⁸ Amazon.com, Inc., No-Action Request Letter (Jan. 20, 2025), <https://www.sec.gov/files/corpfin/no-action/14a-8/rominencppramazon12025-14a8inc.pdf>.

Testimony of Ferrell M. Keel
September 10, 2025

4. Shareholder proposals are not costless: a company's energy is expensive.

Companies pour an immense amount of energy into addressing proposals. Depending on the nature and number of proposals, it can take a company hundreds of employee hours to coordinate its engagement, strategy and response to a shareholder proposal. A company must consider whether a proposal would cause it to jeopardize legal privilege, breach non-disclosure provisions, disclose propriety or sensitive employee information or reveal competitive strategies. Employees from legal, investor relations, human resources and the business functions may be involved, depending on the topic. And of course, executive officers and the board are also consulted and involved in formulating a response. For proposals relating to polarizing matters, a company also has to carefully consider how its response will impact employees, customers and suppliers. Reducing the expense of a proposal to dollars and cents simply does not capture the intangible costs.

For a more detailed explanation of the steps a company may take upon receiving a proposal, see Annex A.

What is the alternative?

With a system that is three quarters of a century old, it is time to rethink the process if we want a system that allows for shareholder engagement and still serves the broader shareholder interests. I believe there are essentially three options.

Option 1: Keep Rule 14a-8 but significantly revamp it. At a minimum, the ownership requirement would need to be raised. But it could also include other modifications like:

- The SEC could get out of the business of adjudicating no-action letters. The SEC and shareholders could instead rely on independent boards to exercise their fiduciary duties and apply Rule 14a-8 in good faith.
- Companies could still be required to submit no-action letters to articulate their reasoning for the exclusion—but the SEC would not be expected to issue a no-action letter. There would be a presumption the SEC would not object to the exclusion if the company did not hear back from the SEC within a specified period of time. This is not a novel idea: it is similar to the SEC's review process for preliminary proxy statements.

Truthfully, companies may very well struggle with this version of the shareholder process given it is much easier to blame an umpire (here, the SEC) for a bad call. If companies made these decisions themselves, they would fear retaliation from shareholders who might, for example, try to enjoin their annual meeting and create chaos.

Testimony of Ferrell M. Keel
September 10, 2025

This version of the shareholder proposal process would only work if both companies and shareholders were held accountable to act in good faith. Companies would be held in check via the threat of SEC objection or enforcement and the board's fiduciary duties. For shareholders, there would have to be a mechanism to ensure that they could not enjoin the annual meeting—perhaps as a condition to using Rule 14a-8.

Option 2: Eliminate Rule 14a-8 and let states decide what is a “proper subject” matter for proposals—which is actually how Rule 14a-8 was originally intended to operate.⁹

Option 3: This option is something in between, and would best be described as “private ordering.” This would involve keeping Rule 14a-8, but letting companies and their shareholders decide how Rule 14a-8 should be applied. For example, a company could articulate what “ordinary business” means in its bylaws. After all, the SEC's guidance is merely guidance, and a company's bylaws define its contractual rights with shareholders. And while figuring out the market standard would take some time, I believe companies and shareholders would get to a place that appropriately balances both shareholder rights and a workable system. We saw private ordering work with proxy access, which is a corporate governance mechanism that allows shareholders to nominate directors.

In this world, companies could still be required to notify the SEC if it intended to exclude a proposal, and companies could be required to publicly disclose what proposals they excluded so shareholders stayed fully informed.

I do not purport to know which answer is the best. But I do believe living with the current system does not serve the interests of investors in the long run, and it will ultimately hurt both companies and shareholders—the very thing that the rules were intended to protect.

Thank you again for the opportunity to speak to you today.

⁹ SEC Division of Corporate Finance Letter Relating to Section 20 and to Rule X-14A07, Exchange Act Release No. 3638 (Jan. 3, 1945), 11 Fed. Reg. 10,995 (1946) (stating that the purpose of Rule 14a-8 (originally Rule X-14A-7) was to “place stockholders in the position to bring before their fellow stockholders matters of concern to them as stockholders in such corporation; that is, such matters relating to the affairs of the company concerned as are proper subjects of stockholders’ action under the laws of the state under which it was organized.”).

Annex A

Company Intake and Response Process

A proposal is typically received four months prior to when the company files its proxy statement in advance of the annual meeting.

Upon receipt, a company's legal team will inform the board. It will also analyze whether the proposal complies with Rule 14a-8, as it has 40 days to file a no-action request with the SEC if it believes it can and should be excluded.

The legal team will work closely with the company's various constituents to understand:

- Whether shareholders have historically raised the topic or expressed views on it;
- How the proposal's topic is currently been addressed by the company;
- The feasibility and legality of implementing the proposal, and whether it would jeopardize legal privilege, breach non-disclosure provisions, disclose propriety or sensitive employee information or reveal competitive strategies; and
- The expense of implementing the proposal.

Depending on the topic of the proposal, this analysis can take multiple months and typically involves coordinating with various business functions that may span multiple geographies, product lines or segments.

The company will typically engage with the proponent to understand the proponent's motivation. It is not uncommon for a proponent to submit a proposal on one topic but engage on something entirely different. Once the company understands the proponent's motives, the company may try to convince the proponent to withdraw if the company has already addressed the proposal. The company may also be willing to negotiate a withdrawal by agreeing to take certain actions that are responsive to the proponent's request.

When a company believes it can exclude a proposal under one of the exclusionary bases in Rule 14a-8, it will ask the SEC to grant it "no action relief." This involves writing a letter to the SEC that typically ranges between 7 and 15 pages of dense legal analysis and factual support for the company's position. Outside counsel is typically engaged in this process given the complexity of Rule 14a-8. A no-action letter will typically go through multiple rounds of review internally and also be reviewed by the board.

Companies will go through the "no-action" process even on clear-cut applications of Rule 14a-8—e.g., if a proposal missed the deadline or a proponent just did not provide proof of the requisite share ownership. This is for a couple of reasons. First, the proxy advisors will vote against one or more directors if a company excludes a proposal without explicit SEC no-action relief.¹⁰ Given the proxy advisors' significant influence, companies are unwilling to risk not

¹⁰ ISS United States Procedures & Policies (Non-Compensation), Frequently Asked Questions, <https://www.issgovernance.com/file/policy/active/americas/US-Procedures-and-Policies-FAQ.pdf>; Glass Lewis

getting their support. Second, if a shareholder disagrees with a company's decision, a proponent could sue to enjoin the annual meeting. It is difficult to understate the disruption and chaos that would ensue.

Because it is not predictable as to whether a company will receive no-action relief, the board will formulate a statement for the proxy statement to recommend to shareholders how they should vote on the proposal. This statement reflects an immense amount of diligence and strategic thought from both management and the board.

Days before the proxy statement is sent to shareholders, the company will receive a response from the SEC on the no-action request and finalize its proxy statement for distribution to shareholders.

If the proposal is included in the proxy statement, shareholders may want to discuss the company's proposal in the weeks leading up to the annual meeting. Once the proxy advisors' recommendations are issued—typically a few weeks before the annual meeting—the company will have insight as to the level of support the proposal is expected to receive. The company will also monitor for “exempt solicitation” filings with the SEC. These are filings where individuals (who may or may not be the proponent) can publicly offer their views to the company's shareholders and the public at large. These may prompt the company to issue additional clarifying communications.

After the annual meeting results are tallied, the company will report the results to its shareholders. If the proposal gets majority support, the company will oftentimes implement the proposal, even though it is non-binding. The proxy advisors also require that the company implement the proposal if a majority of the votes cast support the proposal, and Glass Lewis even requires companies to publicly address the proposal if the proposal gets just 30% support.

2025 Benchmark Policy Guidelines.
<https://resources.glasslewis.com/hubfs/2025%20Guidelines/2025%20US%20Benchmark%20Policy%20Guidelines.pdf>.

Chairman HILL. The gentlewoman yields back. Mr. Mueller, you are recognized for 5 minutes.

STATEMENT OF RON MUELLER, PARTNER, GIBSON DUNN & CRUTCHER LLP

Mr. MUELLER. Chairman Hill, Ranking Member Waters, and members of the committee, thank you for the opportunity to share my observations on why Exchange Act Rule 14a-8, the SEC's shareholder proposal rule, should be revised and to address proxy advisory firms. My observations, which are my own and not on behalf of anyone else, are based on over 35 years as a securities and corporate governance lawyer, working with a wide range of U.S. public companies and addressing literally thousands of shareholder proposals.

Rule 14a-8 is highly consequential, impacting many U.S. companies and all of those companies' shareholders, as well as the U.S. economy. Under the rule, a shareholder can require a company to include the shareholder's proposal and supporting statement in the company's proxy statement, thereby allowing all shareholders to vote for or against the proposal. As Chairman Hill acknowledged, when this rule was first adopted, the rule was designed to provide access to a company's proxy for a proposal that is otherwise proper under State law. However, the rule has taken on a life of its own, with detailed eligibility and procedural provisions and 13 substantive bases for excluding a proposal from the company's proxy statement. If a company believes that a shareholder proposal does not satisfy the rule and wishes to exclude the proposal from the proxy statement, the burden is on the company to submit a no action request to the SEC or to handle the matter in court.

While I believe that shareholder proposals have and can be useful, the shareholder proposal landscape has changed dramatically over the past 10 or 15 years. First, the volume and the subject matter of shareholder proposals have changed significantly. During the 2017 proxy season, the number of social policy and environmental shareholder proposals exceeded the number of corporate governance proposals for the first time, and by the 2022 proxy season, the number of social policy proposals alone exceeded the number of corporate governance proposals.

Second, the shareholder proposal process has changed. Rule 14a-8 has become subject to dramatic swings in how the rule is interpreted, resulting in uncertainty and increased costs to both companies and to shareholder proponents. In addition, proposals increasingly are crafted by special interest groups focused on narrow policy issues or specific outcomes. For example, a group that calls itself The Shareholder Rights Group includes some actual shareholders but also includes investment advisors and consultants who handle most or all of the shareholder proposal process for their clients. They are, in essence, ESG guns for hire. The 16 members of this group account for more than 40 percent of all shareholder proposals.

The role of the proxy advisory firms in these developments cannot be overstated. Shareholder proponents typically cater and structure their proposals to comply with proxy advisory firms' voting policies, meaning that the proposal is often a facade for the

true objective of the proponent. As discussed in hearings before the Subcommittee on Capital Markets, the proxy advisory firm's objectivity is easily questioned. More proposals mean more work for them and of course, the proxy advisory firms have no economic stake, and the consequences of their voting decisions are not subject to any regulatory oversight and do not have fiduciary duties to a company's shareholders.

The shareholder proposal process imposes significant costs on companies, as Mrs. Keel said, particularly diverting key employees, executives, and directors from their normal work. As discussed in my written testimony, receipt of a shareholder proposal triggers numerous concurrent workstreams that occur during an already busy time of the corporate year. Given all of these consequences and costs, one has to question why a single shareholder owning shares with a value of \$2,000 can initiate a process and pose significant costs that are borne by all of the company's shareholders. In light of these dynamics, the case for reform of Rule 14a-8 and for regulatory oversight of the proxy advisory firms is compelling. Legislation limiting the abuse of 14a-8 can serve the interest of all shareholders and will help to maintain the business and focus and promote the continued success of U.S. companies.

Thank you very much, and I look forward to your questions.

[The prepared statement of Mr. Meuller follows:]

Testimony of Ronald Mueller

**Partner and Founding Member, Securities Regulation and
Corporate Governance Practice Group
Gibson, Dunn & Crutcher LLP**

Before the U.S. House Committee on Financial Services

**Hearing on “Proxy Power and Proposal Abuse: Reforming Rule 14a-8 to Protect
Shareholder Value”**

September 10, 2025

Chairman Hill, Ranking Member Waters and members of the Committee, thank you for the invitation to testify today. I appreciate the opportunity to share with you my observations on why Exchange Act Rule 14a-8 (“Rule 14a-8” or the “Rule”), the SEC’s shareholder proposal rule, needs to be revised and to address regulation of proxy advisory firms, all of which is necessary in order to protect shareholder value and maintain the strength and leadership of the U.S. economy. My observations are based on over 35 years as a securities and corporate governance lawyer, including as a partner at Gibson, Dunn & Crutcher, as a founding member of the firm’s Securities Regulation and Corporate Governance practice group, and as a former counsel to SEC Commissioner Edward Fleischman.¹ During that time, I have worked with a wide range of publicly traded companies in connection with their shareholder engagement activities and their responses to literally thousands of shareholder proposals that were submitted under Rule 14a-8.

There are two aspects of the SEC’s shareholder proposal rule on which most U.S. public companies, shareholders, and proxy process participants would agree. First, Rule 14a-8 is highly consequential, impacting many U.S. public companies with significant and long-term effects. Second, the Rule 14a-8 and shareholder engagement landscapes have changed dramatically over the past decade, and the Rule is in need of reform. Beyond those two statements, you will find widely varying views on whether the past and potential future consequences of Rule 14a-8 are beneficial or harmful to companies, their shareholders, and our economy, and widely varying views on what reforms are needed. In my view, those debates demonstrate why it is appropriate and necessary for this Committee to hold this hearing and to act on legislation to rein in the abuses of the Rule and to minimize some of the adverse consequences we have seen.

U.S. public companies of all sizes take shareholder relations seriously and welcome the opportunity to engage productively with their investors. But public companies also recognize that not all shareholders have the same priorities, and board of directors and company management have fiduciary responsibilities to act in the best interests of shareholders at large. Thus, one has to question why a single shareholder owning shares with a value of just \$2,000 can initiate a process that imposes significant costs and, more importantly, diverts key company

¹ My comments and the views that I express are my own and not those of Gibson, Dunn & Crutcher LLP or attributable to any client or any association of which I am a member.

personnel, executives, and directors from other business activities, which costs and consequences are borne by all of the company's shareholders.

Moreover, the nature of shareholder proposals being submitted to companies in recent years have changed significantly from the proposals submitted in prior decades. Shareholder proposals no longer are primarily focused on corporate governance issues or on providing information or input on important business activities, but instead increasingly are crafted by special interest groups focused on narrow policy issues or specific outcomes, without regard to whether or how companies may already be addressing the issue, or to other considerations that may be more significant and consequential.

As well, the shareholder proposal process itself has changed over the past decade. Rule 14a-8 has become subject to dramatic swings in how the rule is interpreted, resulting in uncertainty over how Rule 14a-8 will be applied and increasing the cost and burdens of the shareholder proposal process for companies as well as for shareholder proponents.

In light of these changes, the case for reform of Rule 14a-8 and for regulatory oversight of proxy advisory firms is compelling.

History of Rule 14a-8

In order to understand the need for reform, it is important to understand what Rule 14a-8 is and where the controversies exist around its operation, the impact the Rule has on U.S. public companies, and the abuses and changes that have developed in recent years.

The predecessor to what is now Rule 14a-8 was adopted by the SEC in 1942, as Rule X-14A-7 under Section 14(a) of the Securities Exchange Act of 1934 ("Exchange Act").² Section 14(a) of the Exchange Act provides the SEC broad authority to regulate any company or other person who solicits proxies or consents³ in respect of any registered security, including to adopt "such rules and regulations as the SEC may prescribe as necessary or appropriate in the public interest or for the protection of investors."

The Rule was entitled "Duty of Management to Set Forth Stockholders' Proposals" and applied only to proposals that were a proper subject for action by the security holders.⁴ The Chairman of

² Securities Exchange Act of 1934 Release No. 3347 (Dec. 18, 1942), 7 Fed. Reg. 10,653 (1942).

³ Proxies and the proxy process are essential to allowing companies and shareholders to take important actions, including the election of directors and approval of certain transactions, due to the widely distributed holdings of public companies' voting securities, and the separation that exists between the beneficial owners who are the ultimate owners of voting stocks and the depositories, banks, brokers, and others who actually hold shares and thus are entitled to vote under state corporate law.

⁴ The text of the rule read as follows:

Rule X-14A-7. Duty of Management to Set Forth Stockholders' Proposals.

In the event that a qualified security holder of the issuer has given the management reasonable notice that such security holder intends to present for action at a meeting of security holders of the issuer a proposal which is a proper subject for action by the security holders, the management shall set forth the proposal and provide means

the SEC at the time explained that the provision reflected the fact that, for publicly traded companies, voting decisions are made not at the annual meeting, but at the time that shareholders grant voting authority by executing their proxy cards, and that to make informed voting decisions, shareholders should receive information about every proposal being voted on at the annual meeting.⁵

Interpretive and administrative issues quickly arose under the Rule, and it began to take on a life of its own. In 1945, the SEC issued an opinion of its Director of the Division of Corporation Finance interpreting the Rule's phrase "proper subject for action" to mean proposals which relate directly to the affairs of the particular corporation and concluding that proposals which deal with general political, social, or economic matters are not "proper subjects for action by security holders."⁶ In 1947, the SEC amended the Rule to provide that if a company received a shareholder proposal but intended to exclude the proposal from its proxy materials, either because it claimed that the proposal was not a proper subject for action or was not timely received, the company had to file a copy of the proposal with the SEC together with a statement of the reasons the company was excluding the proposal from its proxy materials.⁷ In 1948, the SEC adopted the first substantive bases for excluding shareholder proposals from company proxy statements.⁸ In 1953, the Rule was amended to add an exclusion if a proposal "consists of a recommendation or request that the management take action with respect to a matter relating to the conduct of the ordinary business operations of the issuer."⁹ Over time, additional procedural and eligibility provisions were added to the Rule, and the substantive bases for exclusion of proposals were expanded and revised.

by which security holders can make a specification as provided in Rule X-14A-2. Further, if the management opposes such proposal, it shall, upon the request of such security holder, include in its soliciting material the name and address of such security holder and a statement of such security holder setting forth the reasons advanced by him in support of such proposal; Provided however, that a statement of reasons in support of a proposal shall not be longer than 100 words and provided further that such security holder and not the management shall be responsible for such statement. For the purposes of this rule notice given more than thirty days in advance of a day corresponding to the date on which proxy soliciting material was released to security holders in connection with the last annual meeting of security holders shall, prima facie, be deemed to be reasonable notice.

⁵ *Hearings on H.R. 1498, H.R. 1821, and H.R. 2019, Before the House Committee on Interstate and Foreign Commerce, 78th Cong., 1st Sess., pt. 2, at 174-75 (1943)* (Statement of Chairman Purcell) ("Once a shareholder could address a meeting[;] today he can only address the assembled proxies which are lying at the head of the table. The only opportunity that the stockholder has of expressing his judgment comes at the time when he considers the execution of the proxy form, and we believe, whether we are right and whether we are wrong—and I think we are right—that that is the time he should have the full information before him and the ability to take action as he sees fit.")

⁶ Securities Exchange Act Release No. 3638 (Jan. 3, 1945).

⁷ Securities Exchange Act Release No. 3998 (Oct. 10, 1947).

⁸ Securities Exchange Act Release No. 4185 (Nov. 5, 1948). Specifically, proposals could be excluded if submitted primarily for the purpose of enforcing a personal claim or of redressing a personal grievance, if the shareholder proponent had proposed but failed to present the proposal at the prior year's annual meeting, or if substantially the same proposal was presented at the prior year's annual meeting and received less than 3% support.

⁹ Securities Exchange Act Release No. 4950 (Oct. 9, 1953)

How Rule 14a-8 Operates Today

Today, Rule 14a-8 has the same basic outcome as the 1942 version of the Rule. Under today's rule, if a qualified shareholder has given a company timely notice that it intends to present a proposal that is a proper subject for shareholder action at the company's annual meeting, the company is required to include the proposal and the shareholder's supporting statement in the company's proxy statement and to include the proposal on the company's proxy card, thereby providing a means for all shareholders to vote for or against or to abstain from voting on the proposal. However, today's rule has detailed eligibility and procedural provisions defining how much stock one must have owned and for how long in order to be a "qualified shareholder," as well as addressing how a shareholder demonstrates that it has satisfied those ownership requirements.¹⁰ Today's rule continues to specify when notice of a proposal is deemed timely, but also limits each person to submitting no more than one proposal to a company for a particular shareholders' meeting, and requires certain undertakings.¹¹ Today's rule requires a company to notify the shareholder within a specific timeframe if the shareholder has failed to satisfy any of these procedural requirements and provides the shareholder an opportunity to correct those deficiencies.¹² And today's rule includes 13 substantive bases for excluding a proposal from the company's proxy materials even when it was timely and properly submitted in accordance with the Rule. Those substantive bases continue to allow exclusion if the proposal is not a proper subject for action by shareholders under the laws of the state in which a company is incorporated or organized.¹³ Rule 14a-8's significant substantive bases for exclusion of proposals include:

- Rule 14a-8(i)(7), the **ordinary business** exclusion, which allows a company to exclude a proposal that deals with a matter relating to the company's ordinary business operations, including if it seeks to "micromanage" the company, such as where the proposal involves intricate detail, or seeks to impose specific timeframes or methods for implementing complex policies;
- Rule 14a-8(i)(5), the **economic relevance** exclusion, which allows exclusion if the proposal relates to operations which account for less than 5% of the company's total assets, net earnings, and gross sales for its most recent fiscal year, and is not otherwise significantly related to the company's business;
- Rule 14a-8(i)(10), the **substantial implementation** exclusion, which allows exclusion if the company has already substantially implemented the proposal;
- Rule 14a-8(i)(11), the **duplicative proposal** exclusion, which allows exclusion if the proposal substantially duplicates another proposal previously submitted to the company by another shareholder for the same meeting; and
- Rule 14a-8(i)(12), the **resubmission** exclusion, which allows exclusion if the proposal addresses substantially the same subject matter as a proposal included in the company's

¹⁰ 17 C.F.R. § 240.14a-8(b)(1)(i), 17 C.F.R. § 240.14a-8(b)(2).

¹¹ 17 C.F.R. § 240.14a-8(b)(1)(ii)-(iii), 17 C.F.R. § 240.14a-8(c).

¹² 17 C.F.R. § 240.14a-8(f)(1).

¹³ 17 C.F.R. § 14a-8(i)(1).

proxy materials either one, two, or three or more times in the past five years, and the most recent vote failed to achieve support of at least 5%, 15%, or 25% of shareholders, respectively.¹⁴

Rule 14a-8 continues to require a company to notify the SEC whenever it receives a shareholder proposal that it intends to exclude from the company's proxy materials. These notices must include a statement of the company's reasons for excluding the proposal. In practice, these notices have evolved to consist of "no-action requests," in which the company explains the facts and one or more bases under Rule 14a-8 supporting the company's view that the shareholder proposal may properly be excluded from the company's proxy materials. The no-action requests typically require extensive legal work to research relevant interpretive statements by the SEC and the SEC Staff, to identify and analyze prior no-action requests that are relevant to the current proposal, and to draft the legal analysis that supports exclusion of the proposal based on the prior interpretations and precedents. Once a company has filed a no-action request with the SEC, the shareholder proponent or the proponent's representative is permitted, but not required, to submit its arguments as to why the proposal should not be viewed as excludable under Rule 14a-8.

Although not required under Rule 14a-8, as a matter of policy the SEC Staff in the SEC's Division of Corporation Finance generally will issue a response to each no-action request, in which the SEC Staff states whether or not it concurs with the company's analysis that a proposal may properly be excluded from the company's proxy materials under either the eligibility and procedural requirements or under one or more of the substantive bases of Rule 14a-8.¹⁵ While the SEC Staff's work in reviewing and responding to no-action requests is similar to the SEC Staff's other actions to monitor and comment on public companies' compliance with SEC rules, in the shareholder proposal context their work requires an immense effort as a small "task force" works during the year-end holidays and through the early months of proxy season to review and

¹⁴ The other substantive grounds for exclusion are:

- Rule 14a-8(i)(2), the **violation of law** exclusion (available if implementation of the proposal would cause the company to violate any state, federal, or foreign law to which it is subject);
- Rule 14a-8(i)(3), the **violation of proxy rules** exclusion (available if the proposal or supporting statement is contrary to any of the SEC's proxy rules, including Rule 14a-9, which prohibits materially false or misleading statements in proxy materials);
- Rule 14a-8(i)(4), the **personal grievance/special interest** exclusion (available if the proposal relates to a personal claim or grievance against the company or any other person, or if it is designed to result in a benefit to the proponent or to further a personal interest which is not shared by the other shareholders at large);
- Rule 14a-8(i)(6), the **absence of power/authority** exclusion (available if the company would lack the power or authority to implement the proposal);
- Rule 14a-8(i)(8), the **director elections** exclusion (available if the proposal relates to the election of specific nominees for directors or otherwise could affect the outcome of the upcoming election of directors);
- Rule 14a-8(i)(9), the **conflicting proposal** exclusion (available if the proposal conflicts with one of the company's own proposals to be submitted to shareholders at the same meeting); and
- Rule 14a-8(i)(13), the **amount of dividends** exclusion (available if the proposal relates to specific amounts of cash or stock dividends).

¹⁵ 17 C.F.R. §§ 202.1(d), 202.2.

respond to hundreds of fact-intensive no-action requests. The determinations reached by the SEC Staff in response to no-action requests reflect only the SEC Staff's informal views,¹⁶ and "do not constitute an official expression of the Commission's views."¹⁷ As such, only a court can authoritatively determine whether a Rule 14a-8 shareholder proposal can be excluded from a company's proxy materials.¹⁸ In practice, however, most companies and shareholder proponents defer to the SEC Staff's no-action determinations and accept those determinations as the final arbiter of whether a proposal can be excluded from a company's proxy statement.

Rule 14a-8 Imposes Significant Costs and Burdens on Public Companies

The Rule 14a-8 shareholder proposal process imposes significant costs on companies, not just in terms of out-of-pocket expenses but more significantly in terms of the time and attention of key personnel who are diverted from their regular job functions in order to respond to the issues raised by a shareholder proposal. Notably, these costs and consequences are borne by all of a company's shareholders, and can be initiated by the action of a single shareholder owning as little as \$2,000 worth of company stock.

Even though most Rule 14a-8 shareholder proposals are phrased as non-binding requests that companies take a particular action (commonly referred to as "precatory" proposals), companies take shareholder proposals seriously. The effort and expense that a company devotes to work on a shareholder proposal matter may commence long before a proposal is actually submitted to the company. Shareholders and environmental, social, or political advocacy groups, which themselves may not be shareholders but which work with shareholders and serve as "representatives," sometimes contact a company well in advance of submitting a shareholder proposal, and the context for this contact is either explicitly or implicitly threatening to submit a shareholder proposal. They will request a meeting so that they may present their views, understand the company's position on an issue, and perhaps reach a resolution that may involve the company agreeing to take some action or provide some additional disclosures. In cooperating in this manner, the company's goal is to avoid a proposal actually being submitted by the shareholder or group. Whether a company is dealing with this situation, or the far more common situation of receiving a shareholder proposal without any advance discussion, this engagement process can involve countless hours of work by: the company's legal department; personnel within the company's operations who are subject matter experts on the often obscure topics targeted by a shareholder or group; the company's investor relations, public relations, and public policy group; and senior management and members of the board of directors.

More commonly, companies receive shareholder proposals without advance engagement by the shareholder proponent, which puts pressure on the company to devote all of the foregoing

¹⁶ See Division of Corporation Finance: Informal Procedures Regarding Shareholder Proposals, <https://www.sec.gov/rules-regulations/shareholder-proposals/division-corporation-finance-informal-procedures-regarding-shareholder-proposals>.

¹⁷ 17 C.F.R. §§ 202.1(d).

¹⁸ Nat'l. Ctr. for Pub. Policy Research v. SEC, No. 23-60230 (5th Cir. 2024).

resources and actions to the proposal during the relatively short time between its receipt of the proposal and the date when it is scheduled to print its proxy materials.

Regardless of whether a company received advance notice of a shareholder proposal, its actual receipt of a proposal triggers additional workstreams. Due to the technical and prescriptive nature of the shareholder proposal process, companies typically work with outside law firms to assist in responding to shareholder proposals. Our work with clients that have received a shareholder proposal typically includes the following steps:

- reviewing the submission to determine whether the shareholder has satisfied the procedural and eligibility requirements under Rule 14a-8;
- drafting and sending to the shareholder a letter notifying the shareholder of any procedural or eligibility deficiencies in their submission, and explaining what the shareholder needs to do to correct those deficiencies;
- determining whether any response to the deficiency letter cures the deficiencies;
- researching the past shareholder proposal activities of the shareholder, and of any advocacy group serving as the shareholder's representative, to assess their policy position on the topics addressed in the proposal and to assess how often they reach an agreement with companies resulting in their withdrawal of their shareholder proposals;
- researching whether the same or similar proposals have been submitted to and voted on at other companies, and analyzing any prior voting results;
- researching whether the company's significant shareholders have voting policy statements on the topic covered by the proposal and otherwise assessing whether and how they have previously voted on similar proposals; and
- researching whether proxy advisory firms have voting policies on the topic covered by the proposal or otherwise assessing whether they have previously issued voting recommendations on similar proposals, and if so, analyzing the factors that influenced their votes.

Informed with the results of the foregoing research and analysis, a company can pursue several courses of action:

- the company can seek to engage with the shareholder and negotiate a withdrawal of the proposal, which may involve the company agreeing to take some action or provide some additional disclosures;
- the company can unilaterally implement some or all of the actions requested by the proposal;
- the company can seek to exclude the proposal as improper under Rule 14a-8, typically through the SEC's no-action request process; and
- the company can include the proposal in its proxy statement, typically (but not always) together with the company's arguments as to why it recommends that shareholders vote against the proposal.

Companies often pursue more than one of these courses of action concurrently, further increasing the costs and burdens of the process on the company, given the compressed timeframes and the uncertainty as to which outcome will be successful. Each course of action involves differing considerations.

Companies may for a variety of reasons determine to implement a shareholder proposal by taking some or all of the actions that the proposal requests. This decision may be based on the determination that the proposal, if presented at the annual meeting, will likely garner support from at least a majority of shares voting at the meeting, as is often the case with proposals seeking popular corporate governance changes, such as elimination of a staggered board, elimination of a poison pill rights plan, or adoption of proxy access. A company may also implement the actions requested in a shareholder proposal because it determines that the proposal is consistent with management's view on the topic, otherwise can be implemented without controversy or disruption, or – as addressed below – simply because the proposal is a good idea. In the foregoing scenarios, if the company is not implementing the proposal exactly as requested, the company typically will engage with the shareholder proponent and request that the shareholder withdraw the proposal in light of the actions the company has or will take to implement it. If the shareholder refuses to withdraw the proposal, the company may seek to exclude the proposal from its proxy materials under Rule 14a-8(i)(10), arguing that the company has already substantially implemented the proposal. If the company is unsuccessful in excluding the proposal under Rule 14a-8(i)(10), or if the company decides to allow the proposal to appear in its proxy statement, the company will seek to convince holders of at least a majority of the shares voting at its annual meeting that the company's actions to implement the proposal are sufficient and that they should therefore vote against the shareholder proposal.

A company may seek exclusion of a shareholder proposal, either through the SEC's no-action process discussed above or alternatively (but much less commonly and with far greater costs) by filing a lawsuit. I know from thirty years' experience that drafting a winning no-action request to exclude a shareholder proposal is not an easy task, and the costs, considerations, and uncertainty involved are some of the most vexing aspects of the shareholder proposal process. Extensive research is often required to identify relevant no-action precedents, and extensive coordination with the company's subject matter experts can be required to fully and accurately include relevant facts regarding the company's operations. Because companies' no-action requests under Rule 14a-8 are publicly available, the requests also raise concerns about proprietary or strategic information,¹⁹ as well as investor relations, customer relations, and public policy concerns. Moreover, despite the thousands of no-action requests issued under Rule 14a-8, the SEC Staff's rationale for concurring or not concurring with exclusion of a shareholder proposal is often opaque. This is because the SEC Staff typically provides little or no explanation as to why it did or did not concur with a company's analysis of the bases for excluding a proposal under Rule

¹⁹ For example, a company might be unwilling to assert Rule 14a-8(i)(5)'s economic relevance exclusion due to competitive concerns around disclosing the extent to which particular operations account for a percentage of its net earnings or gross sales.

14a-8, and as discussed below, the SEC Staff's interpretations have frequently shifted under different administrations.

An entirely additional set of dynamics, costs, and company efforts come into play when a shareholder proposal is included in a company's proxy statement. Typically, companies recommend that their shareholders vote against a shareholder proposal, either because they have determined that the subject of the proposal is not in the best interests of shareholders or they have determined that the actions requested in the proposal are not an appropriate way to address a particular topic. These determinations reflect the work and input from internal personnel and external advisors as discussed above, including briefings to and input from senior management and the board of directors, or a committee of the board. The company and its advisors then must draft disclosure that will respond to the proposal and the company's voting recommendation in the company's proxy statement. This disclosure sets forth the company's perspective on the shareholder's proposal, typically explaining any nuance or context that is relevant for a company-specific consideration of the proposal, and often addressing how the company's management and board of directors have already considered or acted upon the topic addressed by the proposal. The company's disclosures also often must correct inaccurate, misleading, mischaracterized, or outdated assertions made in the shareholder proponent's supporting statement that accompanies its proposal.

A company's shareholders at large are directly pulled into the shareholder proposal process once the company's proxy statement is filed and disseminated to its shareholders, as they then are put in the position of evaluating and determining how to vote on the proposal. But it is important to bear in mind that by this time the company's shareholders have already borne costs, both in terms of expenses and diversion of many company personnel, management, and the board of directors, resulting from a single shareholder's submission of a proposal. Institutional shareholders devote significant time and expense to analyzing proposals and companies' responses, at times meeting with companies and with shareholder proponents, to try to assess the significance of the issues raised in proposals and other factors relevant to their voting decisions.

Rule 14a-8 Empowers Proxy Advisory Firms

When a shareholder proposal is included in a company's proxy statement, the role and influence of the proxy advisory firms cannot be overstated. Due to "robo-voting" and other default voting policies that rely on proxy advisory firm recommendations, as well as the need for diversified institutional investors to be able to assess and vote on the hundreds of shareholder proposals that are presented during peak proxy and annual meeting season, both companies and shareholder proponents typically cater to the proxy advisory firms' voting policies. Companies will often take actions designed to align with the advisory firms' voting policies, even when those actions do not fully implement the shareholder proposal, and shareholder proponents seek to position their proposals in terms that they hope the advisory firms will support. For example, shareholder proposals often ask for a company to evaluate and issue a report on a particular topic, instead of asking that the company actually take an action to address the topic, since proxy advisory firms are generally viewed as more likely to support a proposal requesting a report (which is less

disruptive to company operations) than a proposal requesting specific action to address an issue.²⁰ As another example, shareholder proponents often describe proposals addressing labor and employment issues or environmental issues as raising human rights concerns, which may be designed to increase the likelihood of garnering support under various proxy advisory firm voting policies.²¹

The proxy advisory firms' objectivity in this process is easily and reasonably questioned. As others have noted,²² widespread support by Institutional Shareholder Services ("ISS") and Glass Lewis for shareholder proposals contributes to more shareholder proposals for the proxy advisory firms to assess. Proxy advisory firm recommendations "for" shareholder proposals enable proponents to achieve sufficient votes for their proposals that, even though representing only minority support, allow resubmitted proposals to avoid future exclusion under the SEC's shareholder proposal rule²³ and, in some instances, trigger a proxy advisory firm's "board accountability" voting policies. Under these "board accountability" policies, the proxy advisory firms expect boards of directors to take action in response to a shareholder proposal that receives a specified level of voting support, and the firms may recommend votes against some or all of a company's directors at the next annual meeting if the proxy advisory firm views the board's response as insufficient. The "board accountability" policies apply regardless of whether a shareholder proposal was phrased as a non-binding precatory request and, in Glass Lewis's case,

²⁰ For example, ISS's proxy voting policies on a number of topics indicate a preference for reports on an issue over proposals requesting specific action on the same topic. For instance, ISS states that it will "[g]enerally vote for requests for reports on the feasibility of developing renewable energy resources," but "against proposals requesting that the company invest in renewable energy." Likewise, ISS will "[g]enerally vote for proposals seeking a report on the company's animal welfare standards," but "against proposals to phase out the use of animals in product testing" (except in certain circumstances). See Institutional Shareholder Services, Inc., *United States Proxy Voting Guidelines Benchmark Policy Recommendations* at pages 71 and 67, <https://www.issgovernance.com/file/policy/active/americas/US-Voting-Guidelines.pdf?v=2025.2>.

In contrast, the SEC Staff does not draw a distinction on whether a proposal requests a specific action or only a report when evaluating whether the proposal is excludable as implicating a company's ordinary business operations under Rule 14a-8(i)(7). Staff Legal Bulletin No. 14E (Oct. 27, 2009) ("[S]imilar to the way in which we analyze proposals asking for the preparation of a report, the formation of a committee or the inclusion of disclosure in a Commission-prescribed document — where we look to the underlying subject matter of the report, committee or disclosure to determine whether the proposal relates to ordinary business — we will consider whether the underlying subject matter of [a proposal requesting a] risk evaluation involves a matter of ordinary business to the company."), <https://www.sec.gov/rules-regulations/staff-guidance/staff-legal-bulletins/shareholder-proposals-staff-legal-bulletin-no-14e-cf>.

²¹ For example, ISS's "Socially Responsible Investor" voting policy takes into account "not only ... sustainable economic returns to shareholders and good corporate governance but also ... the ethical behavior of corporations and the social and environmental impact of their actions."

²² *Exposing the Proxy Advisory Cartel: How ISS & Glass Lewis Influence Markets Before the Subcomm. on Capital Markets of the H. Comm. on Financial Services*, 117th Cong. 4 (2025) (statement of Elizabeth Ising).

²³ See 17 C.F.R. § 14a-8(i)(12) (permitting the exclusion of a shareholder proposal if it "addresses substantially the same subject matter as a proposal, or proposals, previously included in the company's proxy materials within the preceding five calendar years if the most recent vote occurred within the preceding three calendar years and the most recent vote was: (i) Less than 5 percent of the votes cast if previously voted on once; (ii) Less than 15 percent of the votes cast if previously voted on twice; or (iii) Less than 25 percent of the votes cast if previously voted on three or more times").

the policy may apply even if a majority of the shares present at a company's annual meeting voted against the shareholder proposal.²⁴

At the same time, it is unclear whether the proxy advisory firms are in a position, resource-wise and economically, to evaluate the specifics of each proposal at each company. For example, I have occasionally seen the advisory firms' reports merely repeat competing claims made by a shareholder proponent and a company, without seeking to determine which claim is accurate. And, of course, to state the obvious, the proxy advisory firms have no economic stake or interest in any shareholder proposal and do not have fiduciary duties to a company's shareholders.

The Volume and Evolution of Rule 14a-8 Proposals

In recent years, the number of shareholder proposals submitted to public companies have increased significantly. The 2024 proxy season was a high-water mark, with at least 976 shareholder proposals submitted to companies.²⁵ During the 2025 proxy season, at least 805 proposals were submitted, compared to 502 proposals during the 2011 proxy season, representing a 60% increase over 15 proxy seasons. Despite this significant increase, the number of governance- and executive compensation-related proposals submitted has declined slightly over the years. For example, an average of 267 governance proposals were submitted annually over the last 15 proxy seasons, while 233 governance proposals were submitted during the 2025 season. Likewise, an average of 67 executive compensation-related proposals were submitted over the past 15 proxy seasons, while only 56 were submitted during the 2025 season.

In contrast, the number of proposals addressing social and environmental topics has skyrocketed, with 324 social-oriented proposals and 194 environmental proposals submitted during the 2024 proxy season, respectively, representing increases of approximately 200% and 150% compared to the 2011 season.²⁶ Further, whereas governance-related proposals historically have represented the largest category of proposals, in the 2022 proxy season the number of social-oriented proposals submitted (286) for the first time surpassed the number of governance-related proposals (246). The number of social-oriented proposals has exceeded the number of governance-related proposals for each proxy season since 2022.

²⁴ ISS's policy is triggered only if a shareholder proposal receives a majority vote, while Glass Lewis expects to see board "responsiveness" to a shareholder proposal before the next annual meeting if at least 30% of the shares voted supported the shareholder proposal.

²⁵ Statistics on the number of proposals submitted each year invariably undercount the actual amounts, since some proponents do not publicize proposals that are submitted and then withdrawn as a result of engagement with a company. Unless otherwise noted, the statistical data on shareholder proposals (including proponent data) presented here generally is derived from Institutional Shareholder Services ("ISS") publications and the ISS shareholder proposals and voting analytics databases. Statistics for the 2025 proxy season include proposals for 2025 annual meetings of shareholders at Russell 3000 companies submitted on or before August 27, 2025.

²⁶ The total number of proposals submitted, as well as proposals related to social and environmental topics, decreased slightly in 2025, but still remain at historically high levels.

The volume of no-action requests made to the SEC has also risen—378 no-action requests were submitted in the 2025 proxy season, up 41% from 269 during the 2024 season and more than doubling the 176 no-action requests submitted during the 2023 season.²⁷

For over a decade, shareholder proposal submissions have been dominated by a single individual named John Chevedden, together with a few other individuals with whom he coordinates. For example, during the 2025 proxy season, Mr. Chevedden submitted over 250 shareholder proposals, representing almost one-third of all of this season’s shareholder proposals. Most of Mr. Chevedden’s proposals relate to corporate governance or executive compensation matters, although he was also a leading submitter of proposals requesting enhanced disclosure of companies’ lobbying activities, and he occasionally coordinates with social and environmental advocacy groups to submit shareholder proposals.

Shareholder proposals have also become a niche market for special interest groups and organizations. Many of these organizations are not actually shareholders but instead serve as “representatives” of shareholders, and in that role, take on all or most of the tasks of drafting shareholder proposals: submitting them to companies, defending the proposals from no-action exclusion requests, and advocating for the proposals once they appear in companies’ proxy statements. When shareholder representatives are involved in the process, companies often have little or no contact with the actual beneficial owner whose shares serve as the basis for a proposal’s submission, with the shareholder serving as no more than the nominal “ticket” to provide the representative access to companies’ proxy statements.

As You Sow, a foundation focused on sustainability and environmental-related shareholder activism,²⁸ is one of the most active shareholder representatives. Its website states that it “represents investors across a broad range of ESG issue areas, empowering shareholders through the use of shareholder resolutions to drive companies toward a sustainable future.”²⁹ As You Sow either submitted or served as the representative for shareholders that submitted 57 proposals so far in the 2025 proxy season and has served in that role for at least 738 shareholder proposals over the past 15 proxy seasons. Trillium Asset Management³⁰ and Green Century Capital Management,³¹ other environmental-focused shareholder advocacy groups, have submitted or served as representatives for at least 353 and 215 proposals over the past 15 proxy seasons, respectively. Mercy Investment Services, a faith-based asset management program focused on social and civic engagement issues such as human rights and lobbying in addition to

²⁷ See Gibson Dunn Client Alert, *Shareholder Proposal Developments During the 2025 Proxy Season* (August 8, 2025), <https://www.gibsondunn.com/wp-content/uploads/2025/08/DC-Shareholder-Proposal-Developments-Proxy-Season-080625.pdf>.

²⁸ See *About Us*, As You Sow, <https://www.asyousow.org/about-us>.

²⁹ See *Resolutions*, As You Sow, <https://www.asyousow.org/resolutions-tracker>.

³⁰ See *Our Investment Approach*, Trillium Asset Management, <https://www.trilliuminvest.com/investment-approach/overview>.

³¹ See *About Green Century*, Green Century, <https://www.greencentury.com/about-us/>.

environmental causes,³² has submitted or served as representative for at least 365 proposals over the past 15 proxy seasons. The National Center for Public Policy Research (“NCPPR”), a “non-partisan, free-market, independent conservative think tank,” has submitted at least 284 proposals over the past 15 proxy seasons.

At the same time that the volume of proposals has increased, proposals have increasingly focused on narrow topics, have become increasingly prescriptive, and frequently appear designed to second-guess management decisions. As an example, in the 2006 proxy season, Wendy’s received a proposal requesting that the board of directors “issue a sustainability report to shareholders.”³³ During the same proxy season, Smithfield Foods received a slightly more company-specific, but still very broad informational request for a “sustainability report...examining the impacts of both company-owned and contract farms,”³⁴ and Intel likewise received a proposal in the 2009 proxy season requesting the board of directors create a “comprehensive policy articulating [the] [c]ompany’s respect for and commitment to the Human Right to Water.”³⁵

In contrast, recent environmental-related proposals have been more prescriptive and focused on specific approaches to addressing an issue. In my view, all of these types of proposals go beyond seeking information on whether and how companies are addressing a particular issue – which information shareholders, in turn, could consider as part of their investment decisions – and instead seek to interfere with management’s decisions on how best to run the business, and therefore should be excludable under the ordinary business prong of Rule 14a-8(i)(7). For instance, Caterpillar received a proposal for its 2023 annual meeting requesting that the company issue a report “describing if, and how, [the company’s] lobbying and policy influence activities (both direct and indirect through trade associations, coalitions, alliances, and other organizations) align with the goal of the Paris Agreement to limit average global warming to well below 2°C above pre-industrial levels, and to pursue efforts to limit temperature increase to 1.5°C, and how [the company] plans to mitigate the risks presented by any misalignment.”³⁶ During the most recent proxy season, Duke Energy (and other companies) received a request for the company’s “net zero-related activities and progress, including: (1) memberships in organizations advocating net zero goals and policies; (2) activities and transactions involving net zero goals and policies; and/or (3) corporate commitments or agreements involving net zero goals and policies.”³⁷

³² See Mercy Investment Services, Inc., <https://mercyinvestmentservices.org/>.

³³ See Wendy’s Int. Inc., Proxy Statement (Schedule 14A) (Mar. 13, 2006), <https://www.sec.gov/Archives/edgar/data/105668/000119312506052305/ddef14a.htm>.

³⁴ See Smithfield Foods, Inc., Proxy Statement (Schedule 14A) (July 31, 2006), <https://www.sec.gov/Archives/edgar/data/91388/000119312506156775/ddef14a.htm>.

³⁵ See Intel Corp., SEC No-Action Request (Mar. 13, 2009), <https://www.sec.gov/divisions/corpfin/cf-noaction/14a-8/2009/northstarasset031309-14a8.pdf>.

³⁶ See Caterpillar Inc., Proxy Statement (Schedule 14A) (May 1, 2023), https://www.sec.gov/ix?doc=/Archives/edgar/data/18230/000130817923000830/lcat2023_def14a.htm.

³⁷ See Duke Energy Corp., Proxy Statement (Schedule 14A) (Mar. 14, 2025), https://www.sec.gov/ix?doc=/Archives/edgar/data/1326160/000110465925023754/tm2430172-3_def14a.htm.

Similarly, whereas financial institutions in the past received proposals requesting assessments of the greenhouse gas emissions resulting from their lending portfolios,³⁸ they more recently have received requests for “a policy for a time-bound phase-out of [] lending and underwriting to projects and companies engaging in new fossil fuel exploration and development,”³⁹ and requests for annual disclosure of “the proportion of sector emissions attributable to clients that are not aligned with a credible Net Zero pathway.”⁴⁰

Other examples of recent, prescriptive proposals abound, including proposals submitted over the past three proxy seasons to credit card companies requesting reports disclosing “management’s decision-making regarding the potential use of a merchant category code (‘MCC’) for standalone gun and ammunition stores,”⁴¹ and a proposal at Delta during the most recent proxy season requesting a report on the company’s “efforts to address heat-related dangers to workers throughout its operations.”⁴²

While shareholder proposals have long been viewed as a bastion of liberal ideas, it was perhaps inevitable that shareholder proposals would come to represent the full spectrum of political ideas. As noted above, NCPPR was early to the game and has submitted numerous shareholder proposals advocating that companies pursue conservative policies, but the overall increase in such proposals, sometimes referred to as “anti-ESG” proposals, has been notable. For example, in each of the 2024 and 2025 proxy seasons, more than 102 anti-ESG proposals were submitted, representing approximately one out of every eight shareholder proposals. These proposals cover a full range of social and environmental topics, generally questioning or opposing companies’ diversity, equity, and inclusion programs or greenhouse gas reduction efforts, or raising concerns over actions or operations that are perceived to be biased against conservative values.

As proposals have become more prescriptive, companies also increasingly receive proposals with competing requests. During the 2024 proxy season, JPMorgan Chase & Co. received a proposal requesting that the company annually disclose its “Clean Energy Supply Financing Ratio [], defined as its total financing through equity and debt underwriting, and project finance in low-carbon energy supply relative to that in fossil-fuel energy supply”⁴³ as well as a competing proposal advocating against the company’s “climate transition policies” and for greater

³⁸ See, e.g., The PNC Financial Services Grp., Inc., Proxy Statement (Schedule 14A) (Mar. 14, 2013), https://www.sec.gov/Archives/edgar/data/713676/000130817913000071/lpnc_def14a.htm.

³⁹ See, e.g., JPMorgan Chase & Co., Proxy Statement (Schedule 14A) (Apr. 4, 2023), <https://www.sec.gov/ix?doc=/Archives/edgar/data/0000019617/000001961723000281/jpm-20230403.htm>.

⁴⁰ See, e.g., JPMorgan Chase & Co., SEC No-Action Request (Mar. 29, 2024), <https://www.sec.gov/files/corpfin/no-action/14a-8/karigerjpmorgan032924-14a8.pdf>.

⁴¹ See, e.g., American Express Co., Proxy Statement (Schedule 14A) (Mar. 15, 2024), <https://www.sec.gov/ix?doc=/Archives/edgar/data/0000004962/000119312524068837/d558747ddef14a.htm>.

⁴² See Delta Air Lines Inc., SEC No-Action Request (Mar. 3, 2025), <https://www.sec.gov/files/corpfin/no-action/14a-8/nyrsdelta3325-14a8.pdf>.

⁴³ See JPMorgan Chase & Co., SEC No-Action Request (Mar. 4, 2024), <https://www.sec.gov/files/corpfin/no-action/14a-8/nyjpmorgan030424-14a8.pdf>.

investment in non-renewable sources of power, such as fossil fuels and nuclear energy.⁴⁴ Likewise, in the 2023 proxy season, the Coca-Cola Company received a proposal requesting that the company conduct and publish a third party racial equity audit “to review its corporate policies, practices, products, and services, above and beyond legal and regulatory matters, and assess their impact on nonwhite stakeholders,”⁴⁵ and then in its 2024 proxy season received a proposal requesting the company publish a report regarding the risks associated with its “diversity, equity and inclusion (DEI) initiatives.”⁴⁶ Notably, the 2024 proposal’s supporting statement referenced that the requested assessment would “cost much less” than “racial equity audits.”⁴⁷

Tactics of Shareholder Proponents and Shareholder Representatives

Shareholder proponents and their representatives engage in a number of tactics that increase the burden and angst associated with the shareholder proposal process. One of the more common complaints is that shareholders and their representatives use the shareholder proposal process to pursue objectives that are different from the proposals they submit. For example, energy companies frequently receive shareholder proposals asking for reports about various climate change initiatives, but when the companies meet with the proponents’ representatives, it becomes clear that the proponents’ real goal is for the companies to exit fossil fuels. Companies that receive proposals asking for a report on their respect for freedom of association and collective bargaining have reported that the shareholder proponents’ actual intention is for the companies to remain neutral in labor organizing campaigns. As noted above, these tactics may reflect the perception that proxy advisory firms are more likely to support proposals requesting a report than proposals requesting specific changes in a company’s operations. However, sometimes it becomes clear that a proposal is simply being used to press entirely unrelated issues, or to provide the shareholder or its representative with an opportunity to speak at a company’s annual meeting. For example, one organization has submitted numerous proposals asking companies to maintain an independent director as chair of the board, but that organization has instead focused on animal rights concerns when meeting with companies to which it has submitted its proposal. Other shareholder proponents and representatives have submitted independent chair proposals only to use time allotted for presenting their proposals at a company’s annual meeting to complain about the company’s involvement in a lawsuit or complain about perceived anti-conservative bias by company management. At one prominent company, a disgruntled former employee has submitted a proposal to his former employer every year since his employment

⁴⁴ See JPMorgan Chase & Co., Proxy Statement (Schedule 14A) (Apr. 8, 2024), <https://www.sec.gov/ix?doc=/Archives/edgar/data/0000019617/000001961724000273/jpm-20240406.htm>.

⁴⁵ See The Coca-Cola Co., Proxy Statement (Schedule 14A) (Mar. 10, 2023), <https://www.sec.gov/ix?doc=/Archives/edgar/data/21344/000130817923000117/ko4104401-def14a.htm>.

⁴⁶ See The Coca-Cola Co., Proxy Statement (Schedule 14A) (Mar. 18, 2024), <https://www.sec.gov/ix?doc=/Archives/edgar/data/21344/000155837024003468/ko-20240501xdef14a.htm>.

⁴⁷ Id.

terminated, using the annual meeting as a platform to air his personal grievance with the company.

Another tactic of shareholder proponents and representatives that raises questions as to their true intentions is the practice of submitting proposals to a company every year even after the company has taken action to implement the prior year's proposal. For example, a number of companies have issued reports on various topics as requested in shareholder proposals, only to receive another proposal from the same proponent or representative the following year requesting slightly different information on the same topic. Companies that receive a proposal from John Chevedden can be all but certain that, even if they implement that proposal as requested, they will receive another proposal from him raising a different issue the following year.

The Impact of Rule 14a-8

Rule 14a-8 is highly consequential, impacting many U.S. public companies with significant and long-term effects. In particular, some widely adopted corporate governance practices have come about as a result of Rule 14a-8 shareholder proposals. Among the most successful shareholder proposal campaigns over the past several decades were proposals asking companies to adopt a majority vote standard applicable to the election of directors when there is not a proxy contest (whereas previously a plurality vote standard applied assuring re-election in uncontested meetings), proposals requesting the elimination of outside director retirement plans (which were viewed as entrenching directors and undermining board succession and refreshment planning), and proposals requesting an advisory vote on executive compensation (which was thereafter mandated by Congress under the Dodd-Frank Wall Street Reform and Consumer Protection Act). In addition, while one can debate whether this is a favorable or adverse impact, hedge fund activism as it exists in our markets today has been greatly facilitated by Rule 14a-8. The elimination of staggered boards of directors, the elimination of poison pill rights plans, the adoption of proxy access bylaws, and the ability of shareholders to call special meetings of shareholders have come about largely through Rule 14a-8 shareholder proposals requesting that boards eliminate constructs viewed as entrenching and insulating board of directors from being accountable to shareholders.

It is difficult to identify positive impacts to companies and their shareholders, if any, from environmental and social shareholder proposals. In my experience, to the extent that these topics are relevant to a particular company, the company is already addressing the issue customer relations, employee recruitment and retention, regulatory, or other similar considerations. Public companies are very aware of the political, economic, social, and regulatory environments in which they operate, and they have many resources for assessing what is relevant to those audiences when determining how best to protect and enhance shareholder value.

Rule 14a-8 Should Be Revised to Minimize Vague and Shifting Interpretations That Arise under the Current Rule

In the absence of a clear Congressional mandate on Rule 14a-8, the Rule is subject to vague and shifting interpretations, making it difficult to rely on even well-established precedents. The often unpredictable outcome of the Rule 14a-8 no-action request process increases the cost and burden of the Rule 14a-8 process to both companies and shareholder proponents, and is one of the reasons that the Rule needs to be reformed.

The ordinary business exclusion under Rule 14a-8(i)(7) has been in flux for decades. In 1976, the SEC considered revisions to the “ordinary business” exclusion, hoping to fashion more workable language distinguishing between “mundane” business matters and “important” ones.⁴⁸ In lieu of amending the text of Rule 14a-8(i)(7)’s ordinary business exclusion, the SEC stated that going forward it would interpret the provision so as not to allow exclusion of proposals “which have significant policy, economic or other implications inherent in them.”⁴⁹ In 1997, the SEC referred to this interpretation as precluding exclusion of proposals addressing “significant social policy” issues.⁵⁰ Over the years, the SEC and the SEC Staff would classify various topics as potentially implicating significant policy issues, such as issues arising from manufacturing tobacco related products,⁵¹ plant closings,⁵² transitioning to renewable energy,⁵³ operations involving manufacture of guns,⁵⁴ animal cruelty or testing,⁵⁵ net neutrality,⁵⁶ and health care reform.⁵⁷

Over the past ten years, the frequency and degree of the SEC Staff’s interpretive changes under Rule 14a-8 have increased dramatically. In 2015, in response to a letter from the Council of Institutional Investors criticizing the SEC Staff’s concurrence that companies could exclude proxy access shareholder proposals under Rule 14a-8(i)(9) when companies were proposing for shareholder approval alternative terms for proxy access, SEC Chair Mary Jo White instructed the SEC Staff to review its interpretation of the Rule 14a-8(i)(9) “conflicting proposal” standard, and the SEC Staff refused to respond to 47 pending no-action requests on that ground. Then, in late

⁴⁸ Release No. 34-39093 at 7 (Sept. 18, 1997).

⁴⁹ Release No. 34-12999 (Nov. 22, 1976) (stating, in part, “proposals of that nature [relating to the economic and safety considerations of a nuclear power plant], as well as others that have major implications, will in the future be considered beyond the realm of an issuer’s ordinary business operations”).

⁵⁰ Release Nos. 34-39093, at n.72 (Sept. 18, 1997).

⁵¹ See Philip Morris Cos., SEC No-Action Request (2/22/1990).

⁵² See Pacific Telesis Grp., SEC No-Action Request (2/2/1989).

⁵³ See Exxon Mobil Co., SEC No-Action Request (3/23/2000).

⁵⁴ See Sturm, Ruger & Co., Inc., SEC No-Action Request (3/05/2001).

⁵⁵ See DeVry Inc., SEC No-Action Request (9/25/2009), <https://www.sec.gov/divisions/corpfin/cf-noaction/14a-8/2009/peta092509-14a8.pdf>.

⁵⁶ See Sprint Nextel Co., SEC No-Action Request (2/10/2012), <https://www.sec.gov/divisions/corpfin/cf-noaction/14a-8/2012/thenathancummings021012-14a8.pdf>.

⁵⁷ See United Technologies Corp., SEC No-Action Request (1/31/2008), <https://www.sec.gov/divisions/corpfin/cf-noaction/14a-8/2012/thenathancummings021012-14a8.pdf>.

2015, the SEC Staff announced that it was reversing decades of precedents under Rule 14a-8(i)(9),⁵⁸ largely eliminating that provision as a basis for excluding shareholder proposals. Whereas in the 2014 proxy season approximately 11% of all no-action requests in which the SEC Staff concurred with exclusion of a proposal were based on Rule 14a-8(i)(9), in the 2016 proxy season there was only one successful no-action request based on that provision.

During the same period, the SEC Staff also largely abandoned the Rule 14a-8(i)(3) standard for excluding proposals containing materially false and misleading or vague and indefinite statements. In early 2015, the SEC Staff literally reversed course on how it interpreted this ground for exclusion. Specifically, in December 2014 the SEC Staff concurred that language in a proposal that included a proposed standard for qualifying as an independent director was vague and indefinite, and that the proposal therefore could be excluded under Rule 14a-8(i)(3). Nevertheless, approximately two months later, the SEC Staff declined to concur with exclusion of a proposal with identical language, stating, “[a]lthough the staff has previously agreed that there is some basis for your view, upon further reflection, we are unable to conclude that the proposal, taken as a whole, is so vague or indefinite that it is rendered materially misleading.”⁵⁹ As a result, whereas Rule 14a-8(i)(3) arguments served as the basis for 18% of all successful no-action requests in the 2014 proxy season, in 2015 only three proposals were excluded on that ground (representing 2% of all successful no-action requests) and in 2016 only one proposal was excluded as being materially false and misleading or vague and indefinite (representing less than 1% of all successful no-action requests).

In 2017, the SEC Staff indicated that it would rely on a company’s board of directors to determine whether a proposal failed to raise significant policy issues that would preclude exclusion under the relevance standard of Rule 14a-8(i)(5) or the ordinary business standard of Rule 14a-8(i)(7), although in practice few no-action requests satisfied the SEC Staff’s standard for exclusion.⁶⁰

In 2021, Staff Legal Bulletin 14L (“SLB 14L”) rescinded three prior Staff Legal Bulletins and dramatically abandoned the SEC Staff’s traditional approach to assessing significant policy

⁵⁸ The change was announced in Staff Legal Bulletin 14H (Oct. 22, 2015), <https://www.sec.gov/rules-regulations/staff-guidance/staff-legal-bulletins/shareholder-proposals-staff-legal-bulletin-no-14h-cf>.

⁵⁹ See, e.g., Abbott Laboratories, SEC No-Action Request (Feb. 26, 2015), <https://www.sec.gov/divisions/corpfm/cf-noaction/14a-8/2015/kennethsteiner022615-14a8.pdf>; The Boeing Co., SEC No-Action Request (Feb. 26, 2015, recon. denied Mar. 4, 2015), <https://www.sec.gov/divisions/corpfm/cf-noaction/14a-8/2015/johncheveddenboeingrecon030415-14a8.pdf>.

⁶⁰ During the 2018 proxy season, 29 no-action requests included a board analysis, but the SEC Staff only concurred with exclusion and referenced the board’s analysis of the significance of the proposal to the company’s business in one instance. See Gibson Dunn Client Alert, *Shareholder Proposal Developments During the 2018 Proxy Season*, (Jul. 12, 2018), <https://www.gibsondunn.com/wp-content/uploads/2018/07/shareholder-proposal-developments-during-the-2018-proxy-season.pdf>.

issues under Rule 14a-8(i)(7)'s ordinary business standard.⁶¹ We summarized the impact of SLB 14L in our 2022 client alert on shareholder proposal developments, stating:

The change of administration at the SEC and the issuance of SLB 14L appear to have served as an open season call for shareholder proponents: the number of proposals submitted surged, the percentage of proposals that shareholders were willing to withdraw as a result of negotiations dropped, and the number of proposals excluded through the no-action process plummeted. At the same time, recent amendments to Rule 14a-8 had only a very minor impact on shareholder submissions. As a result, shareholders were presented with more proposals on a wider range of topics with which they disagreed, with overall levels of voting support dropping notably.⁶²

Specifically, in 2022 the number of proposals submitted to companies increased by 6% from 2021 to 888 – the highest number of shareholder proposal submissions to date, with the number of environmental proposals up 54% compared to 2021 and the number of proposals addressing social topics up 9%, constituting the largest category of proposals submitted in 2022. Notably, the overall success rate for excluding proposals through no-action requests plummeted to 38%, a drastic decline from success rates of 71% in 2021 and 70% in 2020.⁶³ The 38% success rate was significantly below even the previous lowest exclusion rate in recent times, which occurred in the 2012 proxy season when the success rate dipped to 66%.⁶⁴ Success rates in 2022 declined on every basis for exclusion, with the most drastic decline in success rates for procedural (56% in 2022, down from 84% in 2021), substantial implementation under Rule 14a-8(i)(10) (13% in 2022, compared with 55% in 2021), and ordinary business grounds under Rule 14a-8(i)(7) (24% in 2022, compared with 65% in 2021).⁶⁵

Staff Legal Bulletin 14M, issued in February of this year, in turn rescinded SLB 14L and sought to re-establish the standards long ago announced by the SEC for applying the relevance standard of Rule 14a-8(i)(5) and the ordinary business standard of Rule 14a-8(i)(7). However, even the SEC Staff's interpretive position under those provisions during the 2025 proxy season denied exclusion of proposals that are prescriptive and seek to second-guess or interfere with management of companies' business to a degree that was unheard of one or two decades ago. Moreover, absent reform of Rule 14a-8, the Rule will continue to be subject to shifting interpretations that can negatively impact public companies and shareholder value.

⁶¹ Gibson Dunn Client Alert, *The Pendulum Swings (Far): SEC Staff Issues New Guidance on Shareholder Proposals* (Nov. 5, 2021), <https://www.gibsondunn.com/the-pendulum-swings-far-sec-staff-issues-new-guidance-on-shareholder-proposals/>.

⁶² Gibson Dunn Client Alert, *Shareholder Proposal Developments During The 2022 Proxy Season* (Jul. 11, 2022), <https://www.gibsondunn.com/wp-content/uploads/2022/07/shareholder-proposal-developments-during-the-2022-proxy-season.pdf>.

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ *Id.*

Rule 14a-8 Should Be Revised to Clarify Its Interaction with State Corporate Law

Any reform of Rule 14a-8 should clarify the extent to which the Rule is intended to supplement state corporate law and companies' charter documents, and to what extent (if any) it supplants state corporate law and company charter documents.

When the predecessor to Rule 14a-8 was first adopted, the Rule was designed to supplement shareholders' state corporate law rights by providing access to a company's proxy statement for a proposal that a shareholder otherwise would be entitled to introduce at a company's annual meeting under state law.⁶⁶ However, as noted above, the Rule soon took on a life of its own through the addition of eligibility and procedural requirements and the 13 substantive bases for exclusion of proposals. These provisions emerged in part due to the lack of clarity among states' corporate laws on what types of proposals are proper matters for shareholder action,⁶⁷ as well as to address abuse of the Rule.⁶⁸

Now, it is clear that Rule 14a-8 to some extent supplants state corporate law, but the extent to which it does so is unclear. For example, under most state corporate laws and most companies' charter documents, only shareholders of record (those who appear as the registered owners of securities on the list of shareholders maintained by the company or by its transfer agent) are entitled to submit and present shareholder proposals; the beneficial owners of shares are required to work through the shareholder of record if they want to present a shareholder proposal. Rule 14a-8 varies from that and allows a beneficial owner to submit and present a shareholder proposal subject to substantiating its ownership through the bank, brokerage firm, or other intermediary that holds its shares. Conversely, most state corporate laws and company charter documents do not place ownership thresholds or holding period requirements on shareholders' ability to submit shareholder proposals,⁶⁹ and do not limit the number of proposals that a

⁶⁶ *Hearings Before the Committee on Interstate and Foreign Commerce on H.R. 1493, H.R. 1821 and H.R. 2019*, 78th Cong. 172 (1943) (statement of Ganson Purcell, Chairman, Securities and Exchange Commission); *see also* 87 Fed. Reg. 45052, 45053 (July 27, 2022) ("The rule is intended to facilitate shareholders' right under state law to present their own proposals at a company's meeting of shareholders and the ability of all shareholders to consider and vote on such proposals.").

⁶⁷ As stated by the court in *Medical Committee for Human Rights v. SEC*, "[T]he paucity of applicable state law giving content to the concept of 'proper subject' led the [SEC] to seek guidance from precedent existing in jurisdictions which had a highly developed commercial and corporate law and to develop its own 'common law' relating to proper subjects for shareholder action.", 432 F.2d 659, 677 (D.C. Cir. 1970), *vacated*, 404 U.S. 403 (1972).

⁶⁸ *See, for example*, Exchange Act Rel. No. 4185, 13 FR 6680 (Nov. 5, 1948), adopting a number of procedural requirements and substantive exclusions because "[t]he Commission has found that in a few cases security holders have abused this privilege by using the rule to achieve personal ends which are not necessarily in the common interest of the issuer's security holders generally. In order to prevent such abuse of the rule, but without unduly restricting the privilege which it grants to security holders, the amendment places reasonable limitations upon the submission of such proposals."

⁶⁹ *But see* Section 21.373 of the Texas Business Organizations Code, authorizing Texas corporations to impose ownership and procedural conditions on shareholders' ability to submit shareholder proposals, discussed in Gibson Dunn Client Alert, *The Comprehensive Reference Guide for Directors and Officers: 2025 Amendments to the Texas*

shareholder may present, whereas Rule 14a-8 does. While many well-informed observers strongly believe that Rule 14a-8's ownership and procedural requirements do not pre-empt state law, to my knowledge there is no definitive law on the point. In *SEC v. Transamerica Corp.*, 163 F.2d 511, 518 (3d Cir. 1947), the court suggested otherwise, stating that a bylaw provision could not be used to circumvent the predecessor of Rule 14a-8. As well, the text of Rule 14a-8(i)(1) states only that a shareholder proposal must be "*a proper subject* for action by shareholders under the laws of the jurisdiction of the company's organization" (emphasis supplied), but the Rule does not address one way or the other eligibility and procedural requirements under state corporate law or company charter documents.

In fact, Rule 14a-8 and its predecessors have so dominated the landscape for shareholder proposals for so long, there is uncertainty as to what proposals are "proper" subjects for shareholder action under state corporate law, particularly in the context of non-binding "precatory" shareholder proposals.⁷⁰ Resolving whether Rule 14a-8 creates a federal law standard authorizing precatory proposals,⁷¹ or defers to state corporate law is critical, since most shareholder proposals submitted under Rule 14a-8 are precatory proposals.

Reform, Not Repeal, of Rule 14a-8 May Be Best

Issuance of Staff Legal Bulletin 14M was an important step to rein in some of the shareholder proposals that have been submitted to companies in recent years, but in my opinion, it did not go far enough. In talking with public companies about how the shareholder proposal process could be improved, a surprising number have expressed a preference for reform, but not repeal, of Rule 14a-8. The concerns with repeal of Rule 14a-8 arise both from the possibility that it will not eliminate the uncertainty, complications, and variability of the shareholder proposal process and from acknowledgement that, when properly constrained, Rule 14a-8 can operate in the interests of investors by serving as an efficient means for raising significant corporate governance and corporate policy questions.

First, as discussed above, state corporate law on shareholder proposals is not well developed. Companies would be dependent on local courts exploring unfamiliar issues or on state legislation for guidance on whether particular shareholder proposals are "proper" under state law. As well, it is uncertain whether companies that wish to allow for some shareholder proposals through provisions in their charters and bylaws (commonly referred to as "private ordering") could replicate standards such as those that exist under Rule 14a-8. In particular, while it might generally be accepted that companies could adopt eligibility and procedural conditions on shareholders' ability to submit state law shareholder proposals, it is uncertain whether companies

Corporate Statute (Jul. 7, 2025), <https://www.gibsondunn.com/the-comprehensive-reference-guide-for-directors-and-officers-2025-amendments-to-the-texas-corporate-statute/>.

⁷⁰ Kyle A. Pinder, *The Non-Binding Bind: Reframing Precatory Stockholder Proposals under Delaware Law*, forthcoming in 15 Mich. Business & Entrepreneurial L. Rev., available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5418534

⁷¹ For example, Section 951 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, the so-called "Say on Pay" provision, mandates non-binding advisory votes on executive compensation.

could enforce substantive exclusions such as those that exist under the various prongs of Rule 14a-8(i).⁷² Again, the issues would likely rely on courts or state legislation for resolution. Of course, Rule 14a-8 shareholder proposals currently may be addressed through litigation, but most companies and shareholders prefer to rely on no-action requests submitted to the SEC, which are less expensive and typically more quickly resolved than litigation. Also, under a state law- and company-specific shareholder proposal regime, shareholders would be faced with differing standards across companies.

Second, there are also practical concerns on how the proxy solicitation process would operate if a company were to receive non-Rule 14a-8 shareholder proposals from several different proponents. In this regard, it is important to note that an alternative to Rule 14a-8 already exists. Most public companies' bylaws provide a means for shareholders to submit proposals to be voted on at the company's annual meeting, provided that the proposal is a "proper" matter to be transacted at the meeting and the shareholder satisfies "advance notice" requirements set forth in the bylaws.⁷³ These proposals are commonly referred to as "floor proposals," to distinguish them from proposals submitted under Rule 14a-8.

Under current SEC rules, if a shareholder submits a floor proposal to a company and notifies the company that the shareholder intends to solicit proxy voting authority from shareholders owning sufficient shares to approve its proposal (generally, holders of 50% of the company's shares), the company may vote proxies it receives on the floor proposal only if the company includes the proposal as a separate voting item in its proxy statement and on its proxy card. Typically, this floor proposal process is utilized by hedge fund or other activist shareholders who are conducting a traditional proxy contest at a company. However, the floor proposal process was recently used by the AFL-CIO and United Mine Workers of America to present five precatory proposals at a company's annual meeting. Faced with the possibility of numerous floor proposals from a number of shareholder proponents, each filing and distributing their own proxy statements and proxy cards, the Rule 14a-8 shareholder proposal process, properly constrained, does not look so bad.

Observations on Ways to Reform Rule 14a-8 and Enhance Proxy Advisory Firm Transparency

Rule 14a-8 has been a useful means for shareholders to raise and share their views on corporate governance and significant business policy issues, but the Rule as currently administered is problematic in a number of ways: a single shareholder owning a relatively small amount of stock can initiate a costly and disruptive process; shareholders can be presented with proposals covering the same topic over multiple years; a single shareholder proponent can hound a company with a different proposal each year; existing interpretations of the substantive

⁷² See Pinder, *supra* n. 107, at Part IV, discussing drawbacks of bylaw provisions attempting to establish substantive conditions for shareholder proposals.

⁷³ See, e.g., Section 211(b) of the Delaware General Corporation Law ("DGCL"), stating that "[a]ny other proper business may be transacted at the annual meeting."

exclusions under Rule 14a-8 allow for proposals that are overly prescriptive or otherwise designed to second-guess management, instead of informing investors on how management is addressing important business issues; and the existing substantive exclusions use vague terms that are subject to differing interpretations.

To address these concerns, I support reform of Rule 14a-8 to:

- Significantly raise the ownership thresholds;
- Increase the resubmission thresholds for proposals covering similar topics, and consider applying similar thresholds for serial proponents;
- Eliminate the “significant policy” exception under Rule 14a-8(i)(7) and focus on significance to the company’s business;
- Revive the former relevance standard to allow for exclusion of any proposal that primarily advances a general economic, political, environmental, social, or similar interest; and
- Confirm that Rule 14a-8 supplements, but does not supplant, state corporate law.

As well, proxy advisory firms can serve a supportive role in helping investors analyze an overwhelming number of shareholder proposals. But the firms face conflicts of interest since an increase in shareholder proposals means more business for them, and it is not clear that they evaluate the company-specific economic relevance of proposals or evaluate in practical terms the costs and benefits of issuing a report or taking other actions requested in a proposal. Since proxy advisory firms clearly and directly impact investors’ proxy voting decisions and the voting outcomes on shareholder proposals at U.S. public companies, Congress and the SEC should adopt and implement common-sense regulation of proxy advisory firms to protect the integrity of the U.S. proxy system and capital markets.

On a closing note, I’d like to take the opportunity to commend the SEC Staff on its administration of Rule 14a-8. The SEC Staff currently devotes significant resources every year to the Rule 14a-8 shareholder proposal process. In some respects, their task does not differ significantly from other SEC Staff review processes that assess whether companies and market participants are complying with the SEC’s rules. Reform of Rule 14a-8 could significantly lighten the administrative burden of the shareholder proposal process on the SEC Staff, freeing them to pursue equally important regulatory responsibilities.

Although I believe that more proposals should be excludable from companies’ proxy statements than has been the case in recent years, I do not view that as being the fault of the SEC’s Staff, but instead attribute it to the lack of clarity around the policy objectives of Rule 14a-8. That lack of clarity is something that Congress can, and I hope soon does, rectify. Doing so will serve the interests of all shareholders, as opposed to those of special interest groups, and will help to maintain the business focus and promote the success of U.S. public companies.

Thank you again for inviting me to testify, and I look forward to answering your questions.

Chairman HILL. Thank you, sir. Comptroller Lander, you are now recognized for 5 minutes for your oral presentation.

STATEMENT OF BRAD LANDER, COMPTROLLER, CITY OF NEW YORK

Mr. LANDER. Good morning, Chair Hill, Ranking Member Waters, New York members Velásquez, Meeks, and Torres, and other members of the committee. Thank you for the opportunity to testify today on the importance of shareholder proposals and engagement. These tools help protect the retirement security of New York City's teachers, cops, firefighters, and nurses. They are also an important foundation of the freedom to invest that has bolstered U.S. capital markets for decades. Yet, the sponsors of today's proposals are seeking to gut these modest tools for accountability, allowing corporate CEOs to run roughshod over shareholders.

As comptroller of the city of New York, I serve as the investment advisor, custodian, and a trustee of our city's five pension funds, managing \$300 billion on behalf of over 700,000 current and retired civil servants. My fiduciary duty is clear: to safeguard their retirement security for many decades to come. So, we are not day traders. We are long-term stewards, invested broadly across 10,000 public companies and markets worldwide. Strong corporate governance and risk oversight are foundational to healthy companies, healthy pension funds, healthy capital markets. As investors, we know that economic, governance, legal, operational, environmental, workforce, and reputational risks all affect company performance and shareholder value. Of course, they do. It is our duty to weigh those risks. Shareholder proposals and engagement are among our most effective tools to do so.

Over time, shareholder proposals have led to widely accepted practices that define modern corporate governance, strengthening our pension funds and broader capital markets. So, consider executive compensation clawbacks. After the financial crisis, our systems filed shareholder proposals urging stronger policies. At Wells Fargo, our 2013 proposal led to a tougher clawback policy used to take back \$60 million from executives after the fake account scandal or consider insider trading. In 2021, we brought shareholder proposals that highlighted concerns we had about 10b5-1 plans at Abbott Labs and McKesson. Those votes helped inform the SEC's 2022 amendments, protecting all shareholders from insider trading. Other reforms, such as stock option expensing and advisory votes on executive pay, began as shareholder proposals and were later codified.

Another example is shareholder access to nominate independent directors, an effort we led through our Boardroom Accountability Project. Independent research has found that proxy access has led to improved performance at the companies where it was adopted, and now broadly across the market. Most of our proposals, though, are resolved through engagement. In recent years, for example, we brought proposals at several U.S. banks for disclosing the ratio of their fossil fuel financing to clean energy financing, a simple disclosure useful for all investors. JPMorgan Chase agreed and called it "an excellent example of what ongoing engagements and pragmatic and reasonable requests can accomplish." At Starbucks, prompted

by reports of management's interference with employees' rights to organize a union, we filed a shareholder proposal requesting a third-party assessment of Starbucks' adherence to its own commitments to workers' rights. The proposal received 52 percent of the votes of all shareholders, and Starbucks commissioned and disclosed the assessment. Other shareholder proposals have addressed investor risks, including excessive drug pricing and addictive opioids, railroad safety, and online child safety at tech companies.

The proposed legislative changes could block every one of those. They would erode the freedom to invest that has made American capital markets the envy of the world. They would lead to a world with more insider trading, fewer protections for investors, workers, consumers, and the environment, and more relatives of the CEO on corporate boards. Indeed, it is no coincidence these proposals come at the very same time that some corporations are seeking to evade accountability by reincorporating in States that have eroded shareholder rights. Tesla's proposed \$1 trillion CEO pay package, enabled by cronyism on their board, is the most visible example. In other words, these proposals would harm our teachers, our cops, our firefighters, and our nurses on behalf of billionaire corporate CEOs, and, more broadly, they would weaken the United States' economy.

As fiduciaries, our duty is clear: to protect the financial security of our beneficiaries with the health of our markets is essential. Shareholder proposals and engagement strengthen accountability and ensure that U.S. markets remain the most trusted and resilient in the world. Let us not screw that up. Thank you for the opportunity to share my perspective. I look forward to your questions.

[The prepared statement of Mr. Lander follows:]



THE CITY OF NEW YORK
OFFICE OF THE COMPTROLLER
 BRAD LANDER

**Testimony of New York City Comptroller Brad Lander
 Before the U.S. House Committee on Financial Services**

September 10, 2025

Good morning Chairman Hill, Ranking Member Waters, and Members of the Committee. Thank you for the opportunity to testify today on the importance of shareholder proposals and engagement.

These modest tools for accountability of corporations to their shareholders have helped protect the retirement security of New York City's teachers, cops, firefighters, and nurses. They are also an important foundation of the "freedom to invest" that has bolstered the health of U.S. capital markets for decades. Yet Republicans, who used to be advocates of free markets, are seeking to gut Rule 14a-8 in order to allow corporate CEOs to run roughshod over their shareholders.

As Comptroller of the City of New York, I serve as the investment advisor, custodian, and trustee of the City's five pension funds, managing \$300 billion on behalf of over 700,000 current and retired NYC civil servants—the hardworking people who make our city run. My fiduciary duty is clear: to safeguard their retirement security.

We are responsible, long-term investors; a first-year teacher or rookie cop starting this fall will rely on our funds for their retirement many decades from now. We aren't day-traders; we are long-term stewards. We are invested broadly across the market, including in over 10,000 public companies worldwide.

Strong corporate governance and risk oversight are foundational to healthy companies, pension funds, and capital markets. As investors, we know that economic, governance, legal, operational, environmental, workforce, and reputational risks all affect company performance and shareholder value. It is our duty to weigh these risks. Shareholder proposals and engagement are among our most effective tools to do so.

Over time, shareholder proposals have led to widely accepted practices that now define modern corporate governance. These reforms have made our pension funds and our markets stronger. Let me give you just a few examples.

Consider executive compensation clawbacks. After the great financial crisis, when no executives were held accountable, our systems filed shareholder proposals urging stronger policies. At Wells Fargo, our 2013 proposal led to a tougher clawback policy that the board used to take back \$60 million from executives after the fake accounts scandal. The proposed legislation would render that impossible.

Or consider insider trading. In 2021, we brought shareholder proposals that highlighted concerns we had about 10b5-1 plans at Abbott Labs and McKesson; those votes fell just short of a majority—but they helped inform the SEC's 2022 amendments, which protect all shareholders. Other reforms—such as stock option expensing and advisory votes on executive pay—began as shareholder proposals and were later codified in regulation.

Another example is shareholder access to the company proxy to nominate directors. In 2014, just six U.S. companies had proxy access. Today, following our Boardroom Accountability Project, roughly 800 do, including most of the S&P 500. Independent research found that proxy access led to improved performance.

A separate analysis found that 58% of over 1000 studies showed a positive relationship between environmental, social, and governance efforts and corporate financial performance, 13% had neutral outcomes, and only 8% had negative effects.ⁱ

Most of our proposals are resolved through engagement. In recent years, we brought proposals at several U.S. banks for disclosure of the ratio of their fossil fuel financing to their clean energy financing. Simple disclosure, useful for all investors. JPMorgan Chase agreed to do so, and called it "an excellent example of what ongoing engagements and pragmatic and reasonable requests can accomplish."

At Starbucks, prompted by reports of management's interference with employees' rights to organize a union, we filed a shareholder proposal requesting a third-party assessment of Starbucks' adherence to its commitments to workers' rights. The proposal received 52% of the votes of shareholders, and Starbucks commissioned and disclosed the assessment.

Other shareholder proposals have enabled investors to safeguard portfolios from risks and catalyze positive corporate change on excessive drug pricing and oversight of addictive opioids by pharmaceutical companies, railroad safety, and online child safety at tech companies.

Proposed legislative changes would block every one of these. They would disincentivize engagement, reduce transparency, and make it harder for investors to assess risks. They would erode the freedom to invest that has delivered strong shareholder returns for decades and made American capital markets the envy of the world. They would lead to a world with more insider trading, fewer protections for investors, workers, consumers, and the environment, and more relatives of CEOs on corporate boards.

It's no coincidence these proposals come at the very same time that some corporations are seeking to evade accountability by re-incorporating in states that have eroded shareholder rights. Tesla's proposed \$1 trillion CEO pay package, bolstered by cronyism on their board, is the most visible example of what happens when oversight is weakened.

In other words: these proposals would harm our teachers, cops, firefighters, and nurses, on behalf of billionaire corporate CEOs.

As fiduciaries, our duty is clear: protect the financial security of our beneficiaries, for which the health of our markets is absolutely essential. Shareholder proposals and engagement strengthen accountability, empower independent directors, and ensure that U.S. markets remain the most trusted and resilient in the world. Don't screw that up.

Thank you for the opportunity to share this perspective. I look forward to your questions.

ⁱ Gunnar Friede et al, [ESG and Financial Performance: Aggregated Evidence from More than 2000 Empirical Studies](#), 2020.

Chairman HILL. The gentleman yields back. We will now turn to member questions, and I recognize myself for 5 minutes for questioning.

Sarbanes-Oxley and Dodd-Frank have significantly impacted public corporations' annual proxy statements by increasing their regulatory requirements for disclosure, words and a discussion about executive compensation and shareholder access. Together, these two laws have driven up costs, increased the length and complexity of proxy statements, and expanded the disclosure and oversight process, and fundamentally changed much of the shareholder access to the proxy system. Likewise, the now rescinded but 2003 safe harbor for investment managers using a proxy advisor to be off the hook for the responsibility of voting by delegating that authority to an advisor, that has been withdrawn but it on top of these other changes, added to exactly this costly process.

To the comptroller's points, this is not about reining in executive compensation, capital allocation, dividend policy, 10b5, funds. That is all, I think, absolutely in the realm of what should be available for proxy access. It is where it goes beyond that to non-material business operations issues.

[Chart]

Chairman HILL. I put up my static display here in compliance with House rules to just show the change in the proxy process since I have been involved in corporate finance for now 40 years. I picked four public companies that have been consistently part of the S&P 500 since 1980, my first full year in the financial business, IBM, Procter & Gamble, 3M, and Merck and the proxy in 1980 for IBM was 26 pages, Procter & Gamble, 12. In 2020, IBM's proxy was 83 pages, and Procter & Gamble's was 85 pages.

Mr. Mueller, let me start with you. As you see these changes and outlines all the reasons why, both statutory and regulatory, what would you say is the primary driver for that length in the proxy statements over the past 45 years? What is the top contributor you think?

Mr. MUELLER. Sure, Chairman Hill. Certainly, three things. Certainly, the regulations that you mentioned, but I think there are two other factors going on. One is good and one is bad. I mean, the good news here is that companies now treat their proxy statement as a communication document, not just a compliance document. Shareholder democracy is alive and well in America, and the proxy statement helps fulfill that purpose, but the second cause is not so good, and again, it is the subject of this hearing, which are shareholder proposals and proxy advisory firms. Proxy advisory firms have certain criteria as they look for when they are making their voting recommendations, and they will only look at an SEC-filed document and so preparing a proxy has now become an ISS and a Glass Lewis check-the-box compliance process, adding to the length.

There is also the shareholder proposal process itself. Whether or not a company receives a shareholder proposal, companies are acutely aware of what other proposals are being submitted to other companies. So, many companies try to avoid that target by proactively saying look at what we are doing on this issue, look at what we are doing on that issue.

Chairman HILL. Thank you. I have always been concerned that sometimes more information is too much information, and it is confusing. I do not know that it is in plain English. I really admire the issue of trying to expose clarity in management compensation, for example. I think we want comp committees that are, as Warren Buffett says, filled with sabretooth tigers, not pussy cats. On the other hand, I am not sure the average investor could remotely figure out the pages and pages and pages of comp comparisons in a proxy, and my advice to the Commission will be to make that a lot simpler.

Mrs. Keel, thank you for representing Vanderbilt University today ably. Glad your mic is working. Talk to me about the economic relevance issue around Legal Bulletin 14M. Do you think that change will be better to allow companies to exclude proposals that really do not have an economic relevance to the corporation's business operations?

Mrs. KEEL. Sure. Thank you. I think it is definitely a step in the right direction, but I do not think we can kind of overstate that it is going to be the kind of savior to the process. So before 14L, I counted just about 20 examples of when the economic relevance exclusion was actually relied upon, and I think it goes back to my written remarks about the kind of complexity of actually applying these standards. So, if we look at this year's success rate with this economic relevance standard, which, for background, it allows you to exclude a proposal if it relates to 5 percent or less of a company's operations.

Chairman HILL. Thank you, ma'am. I appreciate your testimony. I thought it was quite well done. I yield back, and I recognize the ranking member of the full committee from California, Ms. Waters, for 5 minutes.

Ms. WATERS. Thank you very much, Mr. Chairman. Mr. Lander, you are a fiduciary, which means you legally have to act in the best interests of the city of New York, responsible for the retirement security of over 750,000 public servants who work or have worked for the city. I want to get your take on a developing matter related to shareholder value and shareholder rights.

As you may have read, President Trump has secured an over 10-percent equity stake in Intel, the great American chip maker. As part of this deal, President Trump has promised that the U.S. Government's holdings in Intel will be passive. He has promised that the U.S. Government will vote with Intel's board and according to Intel's management on all matters. As a fiduciary for 750,000 beneficiaries, if you were to own 10 percent of any large company, especially one that apparently has management and governance issues that have caused it to lose out to its competitors, would you forgo your opportunity to exercise voting rights?

Mr. LANDER. Thank you, Ranking Member Waters. Of course, we would not forgo our responsibility, not just our rights, to exercise our voting power if we were 10 percent of shareholders, and I think what you said at the beginning about the hypocrisy being exposed here. I mean, what could be more a form of crony capitalism than the President deciding without any clear rules, without any role for Congress, without any guidelines when the U.S. Government is going to take a position in companies and then say, as you have

just said, that management can do whatever they want? Ninety percent of the other shareholders in Intel are people, like our funds, are small investors, who now have been told the U.S. Government is going to take a very large position and just let the management do whatever they want. It will erode independent shareholder governance and accountability that are foundation of our capital markets, make it hard for funds like ours to invest with trust and competence, and it really risks both the retirement security of small investors and beneficiaries like ours and the broader independence of our capital markets and their accountability to shareholders.

Ms. WATERS. Continuing on, President Trump is supposed to be acting in the best interests of the American people. Is it prudent and financially responsible to blindly go along with Intel's management on, for example, executive compensation or providing corporate perks like apartments, private jets, or year-end bonuses? As you know, these are the kinds of decisions that Intel's board and management are responsible for. What will stop them from rewarding their failures if Intel's largest shareholder is voiceless and voteless?

Mr. LANDER. The whole concept of shareholder governance is that, on the board, there will be some independent members who represent independent shareholders in relationship to management. Some interests, of course, are aligned, but not all interests are aligned, so what is appropriate for CEO compensation, how the board itself should be structured, how compensation will be deferred. There are a whole set of areas where you have got to have independent members of the board exercising that responsibility to provide oversight and if what happens increasingly in American companies, is that the President decides to take a large position and then give carte blanche authority to its managers, again, that is what we mean by crony capitalism. On some of these boards, you have the relatives or buddies or former business partners of the CEOs. What you need is independent members who are looking out for the interests of the much broader or smaller and more diverse set of shareholders, and the steps the President has taken at Intel jeopardize that independence.

Ms. WATERS. Thank you very much. What I do not get is this: why is it management, with a so-called independence board, would think shareholders are not interested in having the best results responsible for the fiduciary concerns of the board? Why do they believe that somehow they are not in the best interest of earning profits for everybody? You get it?

Mr. LANDER. Yes. Look, this is an important debate. There is a room for conversation between management and board members, but shareholders want good returns. At in the companies that we invest in, all the proposals that we bring are designed to achieve that.

Mr. BARR [presiding]. The gentlelady's time has expired.

Ms. WATERS. Thank you very much.

Mr. BARR. The gentleman from Michigan, Mr. Huizenga, who is also the vice chair of the full committee and former chairman of the ESG Task Force, is now recognized.

Mr. HUIZENGA. Hey, thank you, I was going to say Chairman Hill, but Chairman Barr. I know Chairman Hill has got a markup. Mr. Chairman, I do have to at least address one thing. My family business, third generation sand and gravel operation, was brought up. I guess I would just note that I am glad I am not a publicly traded company and not subject to a bunch of ESG woke activists from California coming in and trying to tell me how to dig dirt, but not every company has that same fortunate position.

I do want to thank the committee and Chairman Hill for continuing to highlight the abuses that happened under the leadership of former SEC chair, Gary Gensler, who allowed and, frankly, encouraged activist investors to hijack the shareholder process and push a social agenda that ultimately harmed publicly traded companies and their investors. By some estimates, under the Biden-run SEC, these environmental, social, and political proposals grew by almost 60 percent. I am proud of the work of the ESG Working Group, as you had just noted, and what we did, and many of the exact issues that we have talked about already today were explored by that committee.

Last, I think it is crucial that the committee continue to explore and hold the proxy advisor firms accountable. The outsized influence of Glass Lewis and ISS have harmed the shareholder process. These proxy advisory firms bear none of the consequences their recommendations have and have even fought against exact proposals when it applied to them that they encouraged to be applied to other publicly traded companies. They operate without sufficient transparency and have become the de facto standard settlers for corporate governance policies in the U.S. As chairman, I was happy to see them testify before our Oversight Committee last Congress, and I think we should continue to hold them accountable, encourage them to be more transparent, especially as they navigate conflicts of interest in the firms that they supposedly serve.

Mr. Copland, I want to start with you. A lot has happened since the first time you came in front of our committee in 2016. The issue of proxy voting and shareholder proposals has become somewhat of a political football, to say the least, as shifts in policy have flipped back and forth. How has the volume and nature of the shareholder proposals changed over the past decade, and are you seeing more proposals focused on specific social or political issues and through our work here in Congress, have we been able to maybe curb some of that and influence the impact of those?

Mr. COPLAND. Well, the short answer is the volume has increased significantly up until this year, and we have seen a decrease this year. I do think that the—

Mr. HUIZENGA. Regime change, I think, happened at the SEC.

Mr. COPLAND. I think the regime change and from the SEC going from 14L to 14M has made a difference but in terms of how these have been received, I mean, certainly, as Mr. Mueller sort of talked about in his opening statement, we have seen, up until recently, a substantial uptick in the number of social and environmental proposals. When I started tracking this 15 years ago there were still a fair number of them, but they were a much smaller percentage. The other thing—

Mr. HUIZENGA. It has really exploded.

Mr. COPLAND. Yes, and when I first testified—it was not the first time I testified in front of this committee, but on this subject matter—specifically, in 2016, I could say no shareholder proposal has ever gotten majority shareholder votes over board opposition at the Fortune 250. That switched shortly after that in 2017, and you started seeing more of these, and that reflects the change in voting advice from the proxy advisory firms and voting pattern from the Big Three. So that is—

Mr. HUIZENGA. Well, passive index investors have been brought up or at least alluded to, and they seem to have scaled back some of the support for ESG proposals. However, the proxy advisory firms can swing approximately a third sometimes of those types of votes. As a committee, we have discussed bills such as the Investor Democracy is Expected (INDEX) Act and my Empowering Shareholders Act as a solution, which would, I think, deemphasize their influence. Should large brokerage firms continue to move toward empowering individual investors?

Mr. COPLAND. Yes, I think that is a good idea. I do not think the uptick is going to be huge from it. So, I do like something like the mirror voting that the INDEX Act, that Senator Sullivan originally introduced, does on that. I explain it more in my written testimony and in the paper I wrote last year that I—

Mr. HUIZENGA. We will follow up, and, Mrs. Keel, last moment. I am going to have to follow up in writing. I wanted to know resource-wise the impact that these proxy advisory firms have on the SEC, and we will submit a question. I want to talk about Toyota in particular.

Mr. BARR. The gentleman's time has expired.

Mr. HUIZENGA. With that, I yield back.

Mr. BARR. The gentleman's time has expired. The gentlewoman from New York, Ms. Velázquez, is now recognized.

Ms. VELÁZQUEZ. Thank you, Mr. Chairman, and, Comptroller Lander, it is always great to see you, especially here in Washington.

While the other side continues to rail that corporate disclosures and shareholder input on subjects like corporate diversity, executive pay, climate, and political donations are woke ideas that have no connection to a company's bottom line, they fail to recognize these subjects are about investment and market risks. As head of the New York City pension fund, one of the largest in the country, do you not want all relevant data and information about an investment?

Mr. LANDER. Absolutely. There is simply no simple line for an investor in thinking about what the risks are at a particular company. You worry about reputational issues. You worry about leadership and will it change. You worry about is the broader regulatory structure in the industry going to shift. There is no neat line. That is what it means to be an investor. All investors are trying to get all the information we can, assessing that range of risks. Yes, of course, some of them are shifts in the economy or the economic sector, but they are legal, they are operational, they are environmental, they are workforce. What these proposals do is bring more information and transparency so we can evaluate those risks effectively.

Ms. VELÁZQUEZ. In fact, is it not your duty as a fiduciary to our city's pensioners to consider all material data, risks, and opportunities relevant to a portfolio?

Mr. LANDER. Absolutely, and I am lucky to have a great team of people to help assess those risks, who say here is what we need to know from a company, and sometimes they will tell us directly and we can do it through engagement. Often, we file a proposal, and then the company works with us, as I mentioned, for JPMorgan Chase. Sometimes we bring a resolution, and that helps provide that transparency.

Ms. VELÁZQUEZ. As a fiduciary, is it not true that your main responsibility is to secure the strongest risk-adjusted return for your beneficiaries?

Mr. LANDER. My fiduciary duty is to secure the strongest risk-adjusted returns for my beneficiaries, who, again, are teachers, nurses and school crossing guards. Risk adjusted is what is key there. What an investor is doing all the time is assessing risks. How can you do that without the full panoply of information?

Ms. VELÁZQUEZ. Thank you for that answer. Comptroller Lander, you lead our city's pension fund. The New York City pension fund has filed resolutions for decades on issues associated with climate change, diversity, human rights, and political spending. As head of our city's pension fund, what is your philosophy that leads you and the pension fund to use the resolution approach and do you believe it is consistent with your fiduciary duty as chief financial officer?

Mr. LANDER. So, we always start from fiduciary duty to achieve maximum risk-adjusted returns for our beneficiaries, and again, when you wake up every day responsible for the retirement of the hardworking people who make our city run, it is easy to keep that in mind. I gave some examples in my testimony. If we think a company's got insider trading risks, that is the thing we are going to look at. With corporate board diversity, it has been proven through independent research that Bloomberg and others have done, that having a more diverse board helps you see the broad issues facing your economic sector better and improves financial returns. The same is true for proxy access to nominate directors. That is what we evaluate. All of the efforts to bring shareholder proposals to evaluate risks are made to improve that risk-adjusted return.

Ms. VELÁZQUEZ. Have you found companies to be responsive to these engagements?

Mr. LANDER. Most of our proposals are resolved through engagement. I gave the example of JPMorgan Chase no small company, who last year agreed after we filed a resolution with them asking, seeking disclosure of the ratio of their fossil fuel financing to clean energy financing, they engaged with us and they agreed to start providing that disclosure. We then withdrew the proposal. It did not have to go to the ballot. All investors have that information.

Ms. VELÁZQUEZ. So, based on your experience so far, why do you think my colleagues on the other side of the aisle and their allies in the Make America Great Again (MAGA) movement are focused on limiting shareholder input?

Mr. LANDER. I really do not understand it. Once upon a time, Republicans were defenders of free markets, and this is an effort to

erode them and give more power to corporate CEOs at the cost of small shareholders.

Ms. VELÁZQUEZ. Thank you. I yield back.

Mr. BARR. The gentlewoman's time has expired. The gentleman from Oklahoma, Mr. Lucas, also chair of the Monetary Policy Task Force, is now recognized.

Mr. LUCAS. Thank you, Mr. Chairman. Beginning with you, Mrs. Keel, there is broad consensus here that reforms need to take place in regard to the shareholder proposal process. How can we make the necessary changes while protecting the legitimate rights of shareholders to engage in good governance?

Mrs. KEEL. Sorry. Can you say the last part?

Mr. LUCAS. How can we make the necessary changes while protecting legitimate rights of shareholders to engage in good governance?

Mrs. KEEL. Sure. So, I think what we are really here to talk about is not limiting any sort of shareholder right. We are trying to add boundaries to make it an orderly process, to make it focused on things that are important to companies, not things that are just political referendums to decide whether or not a social policy is good or bad or has merit. What we really need to do is to focus on a proposal that is worthy of the investors' attention and that is something that is going to bring value to the shareholders.

Mr. LUCAS. Let us focus on the relevance exclusion in Rule 14a-8(i)(5). I have heard from industry stakeholders that the rule's broad language has rendered the exclusion almost meaningless. Mr. Copland, would a materiality standard be more workable? Would it be helpful in limiting shareholder proposals to those that are truly relevant to a company's business?

Mr. COPLAND. Yes, and I have argued in my testimony and previously that it would be very helpful to codify materiality as a requirement for the SEC. I think Representative Huizenga has got a bill here on that point. It is very important because we had a SEC commissioner in the last administration, Allison Herren Lee, who was arguing our disclosure rules did not have to be material at all, and that is where we got the climate disclosure rulemaking.

Mr. LUCAS. I have been very focused in my time on this committee on strengthening capital formation through our public markets, and the previous administration's SEC promulgated rules that discourage companies from going and remaining public due to high compliance costs. Mr. Mueller, how can we increase the attractiveness of our public markets through corporate governance regulatory framework?

Mr. MUELLER. Well, thank you. It is important to reexamine the rules and make sure they are still working. The good news here, I think, is that SEC chair, Paul Atkins, is one of the first chairs in a long time that is looking at old rules and saying do they justify the cost and benefits. It would also be incredibly helpful to have a public company advisory committee at the SEC, and there is legislation supporting that.

Mr. LUCAS. Let me simply say in closing, I would note that my bill, the Public Company Advisory Committee Act, would give public companies a formal avenue from which to advise the SEC on the practical effects of their rules, regulations, and policies. This idea

has bipartisan support and would help prevent the regulatory whiplash that we have seen through the SEC between administrations. With that, I yield back, Mr. Chairman.

Mr. BARR. The gentleman yields. The gentleman from California, Mr. Sherman, who is also the ranking member of the Capital Markets Subcommittee, is now recognized.

Mr. SHERMAN. Thank God we have had shareholder proposals. They have helped us create the norm of having independent directors, of having annual elections for directors. The average Russell 3000 company gets a shareholder proposal about once every 8 years, so we are not overwhelmed by all this. Mr. Copland and Ms. Mueller say that we should leave these issues to a matter of State corporate law. What an outrageous attack on shareholder power because you have got 50 States, and so if Delaware says no to a trillion-dollar compensation package, you just go to Texas but wait a minute, Texas might limit you to a trillion. Go to Wyoming, they will do \$2 trillion, and you know where you can go if you need 3 trillion? You just incorporate the Cayman Islands.

Look, Wyoming is desperate for money for their State operations. It is not the job of their legislators to police the national capital markets, and if they see \$10 million or \$20 million or \$30 million of revenue for their State, why should they not accept that in order to make sure that Elon Musk gets \$2 trillion instead of the \$1 trillion the cheap people in Texas might limit him to? We are told that there are only two firms that are providing this advice, so we should have more, and we do. Vivek Ramaswamy is creating one. Egan-Jones is creating one.

I like Mr. Copland for pointing out that these are not frivolous proposals that just get voted down. The reason we are here is because these things pass, and the crony capitalists do not want to be disturbed in their power. This is not about companies that will not publish a 93-page document that used to be a 28-page document. Ms. Mueller and others have said, well, the company should not decide, or the shareholders should not decide DEI policy. They should not decide ESG policy. Who in the hell should decide that? The crony capitalists? Mr. Lander, thank you for pointing out that shareholder proposals have focused on opioids. If only there had been a shareholder proposal that passed at Purdue Pharma, that would have been shareholder value and would have saved thousands, tens of thousands of lives.

Under communism, the party decides who controls the means of production, and we are told now by the chair of the SEC that it is simply illegitimate for the shareholders to have a role in ESG. We are told by others that you have to be an Ebenezer Scrooge investor. You cannot be a John Denver investor. In which country are the capitalists told you have to emphasize profit over the survival of the planet? Should not the shareholders decide that? Materiality is what the shareholders want, not just what is earnings per share.

Mr. Lander, if there was a proposal at a company considering selling the most valuable AI technology, the keys to the 22nd century, the keys to dominance in the world, and the company was going to make a lot of money and big bonuses for management, do you think that would be good shareholder value that you would vote for?

Mr. LANDER. This is such a good example. We are going to need good AI policy in the coming years, and, of course, Congress will have a role in developing and setting it, but the corporations that are operating that technology are clearly going to have a role as well. Of course, shareholders need an ability to weigh in on those issues and not just leave them to managers who indeed have much more short-term and personal interests. So, that is a great example of something that needs to be figured out in this.

Mr. SHERMAN. Now, when the corporation can hire whatever law firm it wants without criticism, they can devise policy without sharing it in advance with the other side, if there is a battle between management and shareholders, should it be a fair fight, or should we have rules as to who you can hire if you are a shareholder, but no rules for who you can hire as in a consultant, if you can?

Mr. LANDER. One thing I think that is important to point out is the SEC already rules for management 68 percent of the time when shareholders bring proposals and managers object to them. So, it is not a we/no we—

Mr. SHERMAN. We should be changing the rules to allow more shareholder democracy. I think Ms. Mueller pointed out how complicated these rules are. We should make them simple and allow shareholder power. I yield back.

Mr. BARR. The gentleman yields. The gentleman from Texas, Mr. Sessions, is now recognized.

Mr. SESSIONS. Mr. Chairman, thank you very much. I want to welcome the panel that we have today. I think each of you have come to Washington, you knew what existed before you came up here, and that is the difference of the sides, not only politically, but also our viewpoint of the marketplace. So, I learned a long time ago that politically driven policy certainly has objectives and it also has outcomes. The outcomes that I think that I follow, as my dear friend, Frank Lucas said, is shareholder value when we are dealing with these companies.

So, Mr. Copland, during the Biden years, over 80 environmental and social shareholder proposals were approved. Yet in the past year, for these proposals, many of these proposals collapsed with no environmental proposals passing and only four social proposals succeeding. Generally speaking, I have heard you and the panel say that they think that the big three passive assets managers had a direction to this outcome. Could you discuss that again for me, please?

Mr. COPLAND. Yes. All three of the passive index fund families—BlackRock, Vanguard, State Street—reduced their support for the environmental and social proposals relative to recent norms. I mean, they previously were not as much behind them, and then there was sort of this bubble up, and then this year they have pulled back. The proxy advisory firms also have been less likely to recommend for some of these proposals. I do think, obviously, the change in leadership in Washington has had a lot to do with that, as well as public—

Mr. SESSIONS. So, is it policy that is political, not so much economic?

Mr. COPLAND. Well, there are economic imperatives, right? I mean, when BlackRock is facing investigation from State attorneys general, when they are seeing advertising campaigns about it, it could hurt their market share, et cetera. I think they have realized some of this, but I do think a lot of it is there is a different sort of an enforcement environment. There is a different rulemaking environment, and so there—

Mr. SESSIONS. Sometimes it is a result of actually how the performance in the marketplace worked. I do not want to just say Tesla. There could be a lot of other things but some of these, the selling of these proposals based on politics, did the outcome not exactly work the way we thought it would, did it?

Mr. COPLAND. No. I mean, it is a strange example to fixate, as some of the members have, on executive pay at a company that has, in the last 25 years, become one of the 10 biggest companies in the world. It is a strange fiduciary obligation that the comptroller is asserting here, and that is part of the problem, right? I mean, we need shareholder oversight, but we need shareholder oversight for people who have skin in the game, that are long-term thinkers, and that are taking significant stakes in companies. Like, real activist investors, saying we are long-term buy and hold in the entire market. The passive index funds are the same way. Why are they well positioned to be dictating this stuff? You know, he is an elected politician.

Mr. SESSIONS. Yes. Mrs. Keel, if you could address for a second the impact. We receive feedback as Members of Congress from companies, many times CEOs, many times board members. Could you tell me what you think they have a feeling about having these, in essence, three big companies, three big asset manager groups to drive the people and their agenda?

Mrs. KEEL. Sure. I mean, every company is going to have to take into account the different constituents, and so there is a lot of engagement. I think there is kind of a misunderstanding sometimes that companies are not engaging with their shareholders. They are, and they are doing it during the season, off season. They are always talking and receiving that feedback. So, I think that companies welcome shareholder feedback. I think that just needs to be clear.

Mr. SESSIONS. Yes, ma'am, but I am talking about specifically that is driven by these asset managers that are attempting to drive what might be political ideas as opposed to necessarily economic as it relates to that company.

Mrs. KEEL. No. So, I can focus mostly on the proxy advisors. I think companies probably feel the sting from the proxy advisors a bit more directly and acutely than the big three, but you are certainly right that each of the big three has their own policies, and they apply those. As a company is evaluating what it is going to do or position it is going to take, it has to look at all of its big stakeholders, each one of their policies, each policy of the proxy advisor, and it is going to have to kind of take into consideration each of those, in addition to the SEC requirements and other regulatory environments that they are subject to.

Mr. SESSIONS. Thank you. Mr. Chairman, I think that this panel, as we have gone across both sides, is answering a lot of important

questions, and I thank them, and I thank the chairman. I yield back.

Mr. BARR. The gentleman yields. Thank you. The gentleman from New York, Mr. Meeks, is now recognized.

Mr. MEEKS. Thank you, Mr. Chairman, and welcome, Comptroller Lander, to Washington, DC. You know, I am sitting here and listening to the questions, and I have been thinking, why are we here today? I think we are here today because Republicans think it is bad that shareholders of companies get to decide how their companies that they own operate. They are upset because that some shareholders of some companies choose to emphasize things like the environment, like diversity, and LGBTQ rights. You know, different studies have been done on the companies that undertake environmental, social, and governance initiatives, and I have had the opportunity to talk to some of the CEOs and others, and you know what they have told me? I said, "Why do you do these things?" Often, what they say to me is because it is good for business. It is good for their bottom line. That is why they do it.

Here we are, and we continue to focus on everything else rather than confronting the President of the United States' gross mis-handling of the economy. I got to tell you, I never expected to see the day where a Republican President is taking 10-percent stake in an American manufacturer on dubious legal authority but you know what surprises me more is that my Republican colleagues in Congress, who say that they are for free market, is entirely silent on this issue, if not supportive, and that is not to mention Donald Trump's trade war against the world. The economy is slowing, prices are increasing, and the unemployment rate is rising. Countries around the world are no longer sending us packages, and postal shipments are now down 80 percent. My Republican colleagues could do something about this if they demanded a vote on repealing the tariffs, or you know what they could do? They could sign my discharge petition to get a vote on these tariffs that raises the taxes on American families, and that is the context for today's hearing. The President wants to bring parochialism to the Potomac, and Republicans in Congress want to look the other way while arguing owners of a company should say less in how their company is ran.

Comptroller Lander, my colleagues on the other side of the aisle, I believe this is what they are trying to do. They are trying to turn ESG into a boogeyman, but I want to ask you to clarify for the American people how this actually works. If a shareholder proposal gets a vote, does it only need 10-percent support to govern the company? Yes or no.

Mr. LANDER. No, Congressman, it needs a majority.

Mr. MEEKS. Oh, more than 25 percent?

Mr. LANDER. Well, I am sorry, more than 10 percent, more than 25.

Mr. MEEKS. More than 40 percent?

Mr. LANDER. More than 40 percent.

Mr. MEEKS. Oh, I am shocked. So, it needs at least, what? A majority is what you say?

Mr. LANDER. Fifty percent plus one.

Mr. MEEKS. Okay. So, a majority is needed to approve a proposal. What are the demographics of the shareholder base? You know, are there young, left-wing activists the main holder of capital in this country?

Mr. LANDER. They are not.

Mr. MEEKS. They are not. Okay. Now, so the shareholders are disproportionately the founders and senior managers of a company, risk-adverse institutional investors, and working Americans interested in saving for retirement rather than cultural wars. Would you say that it better describes who these individuals are?

Mr. LANDER. Yes, it does.

Mr. MEEKS. All right. Now, in the little time I have—I chair—ranking member of the House Foreign Affairs Committee, and I am concerned that Republicans are making moves now that would restrict investor shareholder rights and backfire on us because Europe is actively making itself more attractive to global investors, integrating its financial markets, and rolling out new reforms to deepen market access. For example, the European Commission even rebranded its Capital Markets Union as a new Savings and Investment Union to channel more private investment into EU markets. So, my question is, if we hamstring investors here in the United States by undermining their rights, will not pension funds like New York City now just look other places and go overseas to put their money?

Mr. LANDER. If we allow this to be adjudicated in 50 different State courts, we will see much less investment in U.S. capital markets.

Mr. BARR. The gentleman's time has expired. I now recognize myself for 5 minutes, and it is good to hear my friend from New York extol the virtues of business and capitalism. Maybe he could impart that wisdom on his friend, Mr. Mamdani. Maybe he can learn from you, Mr. Meeks.

Let us be clear. Allowing a small group of left-wing activists to hijack the proxy proposal process to push social, environmental, DEI, or political objectives totally unrelated to the core business of a company does not advance the cause of capitalism. It undermines capitalism. It corrupts capitalism because it results in the misallocation of resources of the company. It undermines the profitability of the company. It hurts the shareholders. It does not advance the value of the shares of the stock. It hurts the value of the shares of the stock. That is what we are talking about here today and let us go to Mrs. Keel because you have seen this in your practice. What is the cost in terms of time, resources, legal fees, of responding/engaging with these petty political shareholder proposals?

Mrs. KEEL. Sure. So, I am happy to kind of tick through what the, especially the intangible costs are, which is deciding whether something has first been substantially implemented. So, a lot of times, these proposals will have been already considered by a board and implemented. That is a cost to determine that in and of itself. You will have to decide whether it is a compliance with law type proposal. So, for example, this season, we saw a lot of illegal deforestation and avocado supply chain proposals. Next, you are going to have to ask, is this something—

Mr. BARR. Avocado supply chain. I mean, this stuff is so absurd. Does any of this advance the profitability of the enterprise?

Mrs. KEEL. I have not seen the financial analysis.

Mr. BARR. So, it is not about what is good for business. It is actually trying to hijack and undermine the business. It is an attempt to politicize the business, totally unrelated to the mission and core mission of the business. Mr. Mueller, how has the SEC's interpretation of significant policy issues evolved over time, and has this evolution contributed to the use of shareholder proposal process for non-pecuniary ends?

Mr. MUELLER. It certainly has during the Gensler Administration. The SLB 14L that we talked about just totally divorced relevance to the company from the shareholder proposal process. It is important to focus on that many of these proposals that are being cited as good examples were all corporate governance proposals, but if ESG matters are good for the companies, then the executives are pursuing that. They do not need the cost and expense of a shareholder proposal to tell them how to run the company best.

Mr. BARR. Explain how the determination of what is a significant social policy issue has changed over the years and why the shifting SEC interpretations are harmful.

Mr. MUELLER. The shifting interpretations are harmful because they really introduce cost to both sides, makes it hard for shareholders to know what is a proper proposal to submit, and it makes it hard for companies to say do we have to fight this at the SEC or should we put it in the proxy statement.

Mr. BARR. Mrs. Keel, why is not the SEC Rule 14a-8(i)(5), which is supposed to exclude irrelevant proposals, and all these proposals are totally irrelevant to the management of the company. Why is that not more frequently used as a basis for excluding shareholder proposals?

Mrs. KEEL. Sure. So, first you have to do a calculation of the 5-percent test. That is fairly straightforward, although it is also unclear how to apply that, but then there is an exception that says unless it is significantly relevant or important to a company. If you give some examples from this season, we saw four that were successful. They related to human rights in India, sugar supply chain, puberty blockers, and the sale of the abortion pill. Those are examples of what was successful in getting them excluded and then the ones that were unsuccessful were reports on religious discrimination, indigenous people's rights, and human rights in Russia and Ukraine. So, you see that it is kind of hard to draw a line—

Mr. BARR. The example that you give about a business that is in the business of selling hammers and nails, and they have a proposal on reproductive rights. I mean, this stuff is out of control, and we need to get rid of the politicization of business. This is not about capitalism. Let us be clear. This is about hijacking capitalism. It is about politicizing businesses. We got to get rid of this rotten stuff, and we got to get back to actual capitalism so that shareholders can actually get a return on their investment and get politics out of this so that shareholders do not lose the returns that they deserve.

With that, I will yield and recognize the gentleman from Georgia, Mr. Scott.

Mr. SCOTT. Thank you very much, Chairman. You know, the stock market is the heart and soul of our financial system. I went to elementary school in Scarsdale, New York, at Fox Meadow Elementary School. Our class project in the sixth grade was to go out, earn our own money, do our own research and purchase stock, and then take the Scarsdale bus down to the New York Stock Exchange and buy stock, and I have been buying it ever since. I can tell you this: proxy advisors provide critical independent research and recommendations that allow shareholders to hold boards of directors accountable and to assess responses to corporate government, and make the investor have some sense of protection. That is all we are talking about here.

So, Mr. Lander, without proxy advisors, what challenges do shareholders face in analyzing thousands of proposals and director slates during the proxy season?

Mr. LANDER. Small shareholders simply would not be able to have information to assess the risks they are facing and vote their interests without the kind of information that the proxy advisors give. Let us remember, these rules come from the SEC's creation out of the Great Depression and the stock market crash specifically to give small investors the ability to competently invest their money in the stock market and getting the information that they need is critical for small investors like you—

Mr. SCOTT. Yes.

Mr. LANDER [continuing]. and many others to be able to engage in investment competently.

Mr. SCOTT. Well, I am glad you make that point that proxy advisors are not dictating outcomes, but they are empowering investors, large and small, with information they would otherwise lack and need, and that is all it is. So, critics argue that ISS and Glass Lewis yield outside influence, address this, but is it not the case that their recommendations are just that, recommendations, and that these investors still make their own voting decisions? Is that—

Mr. LANDER. That is correct. So, we vote all our proxies at U.S. companies. We subscribe to both ISS and Glass Lewis to get information.

Mr. SCOTT. Yes.

Mr. LANDER. My team review that information as we make our independent decisions, so their advice is just advisory. Most of the time, they side with management—

Mr. SCOTT. Mm-hmm.

Mr. LANDER [continuing]. when there is a difference between management and proposal bringers and it is worth remembering that the shareholder proposals themselves are advisory. They do not dictate policy to companies. They let management know the opinions of their shareholders, and the vast majority of the time their advisory is adopted.

Mr. SCOTT. Now, Mr. Lander, what barriers to entry exist for new proxy advisory firms, and what can Congress and regulators do to foster more competition without undermining the independence of the advice provided?

Mr. LANDER. This is a great question, and I think it would be a great topic for the committee to explore how to encourage more in-

formation to be provided. As was mentioned, some new firms are coming on to the marketplace. I do not know that we will subscribe to Mr. Ramaswamy's service but of course, he should be able to provide it and give more information to investors, but the answer cannot be less information for shareholders and investors. It has got to be more.

Mr. SCOTT. Thank you very much. Appreciate it.

Mr. WILLIAMS of Texas [presiding]. The gentleman yields back. I now give myself 5 minutes.

Witnesses, for many small and medium private companies considering an Initial Public Offering (IPO), the decision often comes down to whether the benefits of assessing public markets outweigh the risk of compliance but as we have seen in recent years, the shareholder proposal process can be dominated by a small group of activist investors advancing niche political agendas that have little to do with long-term value creation. At the same time, proxy advisory firms wield outsized influence over voting outcomes and operating with limited transparency and potential conflicts of interest. So, together, these dynamics can create an uncertainty and additional costs that make public markets less attractive.

So, Mr. Copland, can you explain why the existence of both radical shareholder activists and proxy advisory firms can be a deterrent for small and medium cap companies that are looking to go public?

Mr. COPLAND. Certainly. I mean, at the end of the day, you have got these activist forces empowered by a SEC rule that are trying to tell you how to run your business. It is important for shareholders to have oversight, but why do we have shareholder voting rights? It is not to create mini democracies with companies. You do not have to be an expert. I say this in my testimony. You do not have to be an expert in public choice theory to understand that it is hard for the political process to work efficiently. It is good that we have representation here, but this is not a body that is known for its efficiency. Businesses need to be efficient. So, if you are trying to run a business, I mean, certainly we want them to come to public markets. It is a good way to allow original founders of the companies to get liquidity. It is a good way to allow everyday people on the street to get a piece of those returns and when we are making it harder and harder for these public companies to do that, it hurts the average investor out there as well as the company's returns themselves.

Mr. WILLIAMS of Texas. Sorry. As we have seen in recent years, the proposal process has been overtaken by activists who filed dozens of proposals, many of them pushing political or social agendas that are far removed from adding shareholder value. Boards are spending hundreds of hours each proxy season dealing with these kinds of proposals, and while companies are dragged into debates over climate policy, DEI, or other issues that have no place in the boardroom, this politicization undermines the very purpose of shareholder oversight. So, Mr. Mueller, how do you distinguish between a proposal as a legitimate tool for corporate oversight and one that is an illegitimate tool to make a political statement?

Mr. MUELLER. Sure. Well, certainly, corporate governance is the relationship between boards and shareholders, and we have talked

about some of the good corporate governance shareholder proposals but when proposals start interfering with how a company is running a business, and not just asking for information about that, but really seeking to dictate what actions they take, whether the company is pursuing a certain climate change strategy or not, and really remove that from relevance to the company business, those proposals are clearly an activist proposal.

Mr. WILLIAMS of Texas. Okay. In recent weeks, the U.S. District Court for the Western District of Texas, my State, entered a preliminary injunction against the Texas law, SB 2337, which would bring transparency to the proxy duopoly by requiring these firms to file disclosures when their services are based on non-financial factors, such as ESG or DEI considerations, recommend a vote contrary to company management's recommendation, or provide conflicting advice across clients. So, Mr. Copland, again, to you, what benefits do you see as a result of this legislation, if implemented, and how can transparency bring balance to proxy advising?

Mr. COPLAND. Yes, I think it is valuable to have transparency in this market too, right? I mean, at the end of the day, we have these voting rights because of agency costs. The people running the businesses are not necessarily going to act in the best interest of the shareholders. It is why we want these voting rights, but these proxy advisors have more agency costs. Ultimately, I think a Federal solution here would be better, but it makes sense that in the absence of Federal action or with legal contestation and withdrawals of various Federal action in this, that a State is going to stand up for it. Again, corporate governance should be a State-level question, disclosure. This is what my Yale law professor, Roberta Romano, called the genius of American corporate law. Disclosure at the Federal level, substantive rights at the State level, this has worked. This is why we dominate world capital markets, and all of these trends are undercutting the secrets of that success.

Mr. WILLIAMS of Texas. Thank you very much. I yield my time back. The gentleman from Illinois, Dr. Foster, is now recognized for 5 minutes.

Mr. FOSTER. Thank you, Mr. Chair, and to our witnesses. I would like to start by just pointing out that lengthy proxy statements, as was pointed out by Chairman Hill, are not necessarily an intrinsically bad thing by themselves. You know, I looked at the four companies you talked about where the length of the proxy statements has gone up by several hundred percent. Well, the market cap of the companies involved have gone up by well over a 1,000 percent over the same time period. So, it is not necessarily a trend that is out of scale with the increased complexity and size of their operations.

Also, in the future, all of the shareholders are going to do what we are already doing already, which is to ask your personal AI agent to summarize these complex proposals, and they will look at them in whatever level of detail they are comfortable with and want and so, it will be possible for the average shareholder to make a decision on the basis of the amount of information that they can actually absorb. So, I think that same point applies to very complex regulations where we are going to be able to use AI to tolerate very

complex regulations because of the ability to chew through the complexity.

I would also have to say that I am in favor of making some tweaks to this in particular, when I looked over the list of the requirements to bring forth a proposal. The point that you have to be a long-term holder, I think, is fundamental. I am very concerned about sort of the rise of meme stocks with completely disconnected share price from any plausible future revenue stream from the companies, and I was going to choose what hearing to have, that would be it because that is generating huge misallocation of capital in our country. So I would put not only GameStop, but Tesla in that bin. This is not investment advice. I just want to make that clear.

Another point is that political ideas have financial impact on companies, and you cannot really hide from it. You know, we see that in the company I started 50 years ago that now manufactures most of the theater lighting equipment. When our country behaves badly: we saw this when President Bush got us into the war in Iraq by telling a bunch of our allies things that turned out not to be true, that we found foreigners simply did not want to buy American products and if you ask yourself why is it that we are now in our sixth month of a manufacturing contraction since the start of Liberation Day, and this is not new. It is a repeat of what happened in the first term of the Trump Administration where his policies put us into a manufacturing recession one full year before the Coronavirus Disease (COVID) hit, okay? So, reputational risks are real, and a company's stance on the issues of the day matter certainly to their customers of these companies, and that hits the bottom line, so I think it is a mistake to imagine that companies can hide from these things.

Let us see. I was interested, Mr. Lander, you referenced in your remarks that, actually, if you look at companies that have had some of these DEI proposals go through, that it has not been bad, which is sort of the narrative I am hearing from the other side of the aisle. Can you say a little bit about the actual research and the numbers here?

Mr. LANDER. Yes, thank you, Congressman Foster. So, an independent study, I mentioned something specifically looking at shareholder access to the company proxy to nominate directors that came through the work of the New York City pension fund before I got there. An independent analysis found that it added 0.5 percent to shareholder value at the companies who adopted it, potentially adding up to billions across the market and separate from that, a group of business professors at the NYU Stern School of Business evaluated 1,000 studies and found that 58 percent showed a positive relationship between environmental, social, and governance efforts and corporate financial performance, 13 percent had neutral outcomes, and only 8 percent had negative effects.

Mr. FOSTER. So, then, however, I think that there should be maybe some adjustment of the threshold by how significant an issue this is for a reasonable number of the shareholders, and are there simple tweaks? Yes, Mrs. Keel, are there some simple tweaks to simply increase the threshold so you have to make sure this is a major issue for more of the shareholders?

Mrs. KEEL. Sure. I mean, I think that would be the kind of easiest and most straightforward, right, to make sure that somebody who is submitting a proposal has the, as Mr. Copland said, an economic skin in the game to make sure there is an alignment of interest, so that would be, I think, the simplest. I think there are other ideas, too, just about the resubmission thresholds, thinking about whether or not significant social policy should be something that the SEC is deciding or is that something that a company should be thinking about because the reality is that they are actually already thinking about all of these political issues, the tariffs, et cetera. They are thinking about those issues deeply in the boardroom before these proposals even come about.

Mr. FOSTER. Yes, I think that also strengthening the whole—

Mr. WILLIAMS of Texas. The gentleman's time is up.

Mr. FOSTER. Thank you. I yield back.

Mr. WILLIAMS of Texas. The gentleman from the great State of Georgia, Mr. Loudermilk, is now recognized for 5 minutes.

Mr. LOUDERMILK. Well, thank you, Mr. Chairman. My bill, H.R. 3402, would amend the Exchange Act to require that institutional investment managers file an annual report showing how they voted and their alignment in consideration of proxy advisor recommendations. It would also require that institutional investment managers with over \$100 billion in assets under management be required to clarify that shareholders are not obliged to vote on every item and to conduct an economic analysis that a vote is in the investor's best economic interest.

Mr. Copland, can you please explain the relationship between institutional investment managers and proxy advisory firms? In other words, why do institutional investment managers hire proxy advisory firms to start with?

Mr. COPLAND. Well, because it is an extremely complicated thing to vote on all these proxy ballots. I mean, Comptroller Lander talked about they have 10,000 or some odd investments. That is true for a lot of these institutional investors, and they do not really get a competitive advantage. It does not help their investment return to being a better voter. So, a really large family of companies—you know, the Vanguard, the BlackRocks of the world—they have teams on this. Smaller institutional investors do not as a general rule, or at least a lot of them do not, and so they need help to execute this, so there is an economic rationale there. They have also been prodded that way, as was discussed earlier, by both Department of Labor (DOL) rulemaking in the Employee Retirement Income Security Act (ERISA) context, as well as by the SEC in 2003, which sort of created this demand by, for a while there at least, giving a safe harbor to rely on this investment advice.

Mr. LOUDERMILK. Okay. Can you explain what is robo-voting, and why is it used by institutional managers?

Mr. COPLAND. Robo-voting is basically just a catchphrase to discuss we are going to basically effectively outsource our voting to the proxy advisor. We commissioned a study by Professor Paul Rose in 2021 that looked at this, and we found a significant percentage of the market that was doing this, which is why when we studied ISS in 2012, we saw that for these precatory shareholder

proposals, about 15 percent of the voting total was de facto controlled by ISS.

Mr. LOUDERMILK. Okay. So, instead of just taking advice from the proxy advisory firm, they are just handing their vote over to them?

Mr. COPLAND. Right. They are not making an independent assessment.

Mr. LOUDERMILK. Okay. Could robo-voting harm the clients of institutional investment managers? Could it harm their overall returns?

Mr. COPLAND. It could. You know, the complication with this question is that for the individual firm, it is just probably not because of a small percentage of the vote, you are not likely to have an outcome-determinative vote on any of these questions. In the aggregate, I think it harms it, and part of what it is doing there is we are basically creating this Rockville, Maryland-based business owned by the German stock market—

Mr. LOUDERMILK. Right.

Mr. COPLAND [continuing]. is effectively driving 15 percent of the vote for all the publicly traded companies. I mean, that is huge.

Mr. LOUDERMILK. That is huge. Why would a disclosure requirement for large institutional investment managers concerning whether they have engaged in robo-voting be useful?

Mr. COPLAND. I think it is useful because it enables individuals and institutions that put their money with those firms to know that is happening, right, and it could create some pushbacks. It is a softer-form approach than totally banning this sort of thing.

Mr. LOUDERMILK. Right.

Mr. COPLAND. There are some bills out there that are floated on that as well. I think disclosure is a good disinfectant, in general, and I think it is a relatively soft-touch approach but one I think would be quite useful.

Mr. LOUDERMILK. So, you talked about 15 percent being from a German-owned organization, right? Is that theoretically then bringing European ideas and interests and standards into the American marketplace instead of these investment managers making their own votes and decisions?

Mr. COPLAND. Well, it certainly could be. That is the risk, and there are conflicts of interest in all directions for the way ISS and, to some degree, Glass Lewis, the other big player, operates as well. I mean, there was an article in the Free Press just recently that stated NVIDIA has a larger market capitalization than the entire German stock market.

Mr. LOUDERMILK. Wow.

Mr. COPLAND. Yet, the German stock market owns the proxy advisor that controls 15 percent of the vote here.

Mr. LOUDERMILK. Wow. That is amazing. Last question. Do you have any other ideas for regulatory reforms that would reduce the influence of proxy advisory firms without imposing excessive costs on the institutional investment managers or stockholders?

Mr. COPLAND. We have a lot. You know, the time is limited to go through them all, but I reference in my written testimony a paper I co-authored with David Larcker and Brian Tayan at Stanford in 2018 that went through this as the SEC was looking at this.

They did a rulemaking in 2020, and then it was partially rescinded with the administration change, and they have been in court, and three different circuits have been opining on it. So, it is kind of a mess, which is why it would be good for this body to act.

Mr. LOUDERMILK. Yes. Okay. Well, thank you. I yield back.

Mr. COPLAND. Thanks.

Mr. WILLIAMS of Texas. The gentleman yields back. I now recognize the gentlewoman from the great State of Ohio, Mrs. Beatty.

Mrs. BEATTY. Thank you, Mr. Chairman and Ranking Member, and thank you to all of the witnesses for being here today. I just have a couple of questions that I want to try to get through.

Mr. Lander, as you know, many of the attacks on shareholder advocacy, and even ESG investing, argue that these are extraneous, immaterial issues with no relationship to a company's bottom line, and I believe you strongly disagree with these allegations that you are hurting companies financially. Can you explain your perspective on this?

Mr. LANDER. Well, first, I find it especially funny when people attack ESG as not relevant to corporate governance when the "G" stands for governance. So, outlawing ESG proposals, but saying, no, we are fine with a proposal about executive compensation or the role of the board. I mean, just read the words. Like, that is what governance is. Attacks on ESG are attacks on corporate governance. That is what they are and then I thought, actually, that Representative Foster made this very clear: this idea that if you say "pecuniary," somehow you are excluding everything I do not like and only including profit makes no sense at all. You are evaluating risks, like will there be new regulation by Congress on some areas that might be affected by the business we are investing in? You know, we had concerns at Tesla when Elon Musk left as CEO, and there was no CEO, but we also had concerns that if he was pursuing action that was going to make it harder to sell electric vehicles (EVs) through action he was taking here, that was going to be bad for EV sales. Well, that is pecuniary if you are a Tesla investor.

So, there is simply no way to draw a neat line, and that is the job of investors, to evaluate this broad set of regulatory and operational and legal and governance and, sure, environmental and workplace risks. Why stop investors from getting all the information that they need to make their own decisions? If other investors do not want that information, that is fine. I am not telling them how to invest, but I do not understand why Members of Congress are trying to tell me how to achieve my fiduciary duty to my beneficiaries.

Mrs. BEATTY. Thank you, and thank you, Mr. Foster, because I think that was a good segue and allowed you to respond. Let me move on. I am going to stay with you on this next question. While numerous red State treasurers and financial officers have written companies calling them to abandon working together on climate change or to end their diversity, equity, and inclusion programs, I understand that financial officers in blue States have also written to companies they own to invest and investment managers that they use, urging them to stand firm in their support for sustainability programs, citing that it also promotes long-term shareholder

values. I would be interested in hearing your thoughts on why these financial officers are taking public stands in support of maintaining these programs.

Mr. LANDER. Thank you. Let us just use BlackRock for an example for a moment. So, in a letter to investors several years ago, Chairman Fink wrote climate risk is financial risk. Now, everyone knows climate risk is financial risk. You can choose to evaluate it as you see fit, you can have a different political point of view on it, but of course climate risk is financial risk. You might be a utility company, and if there are more wildfires in your area, you might be accused of causing them or you might have to move your infrastructure to address them. So, that does not seem like a complicated or political statement, and yet, red State treasurers declared war on BlackRock and threatened to divest or hold them accountable legally if they did not back off of the simple idea that climate risk is financial risk. I am sad to say that what that has led to is a walk-back of voting for proposals simply to provide disclosure. The proposal I mentioned that JPMorgan Chase ultimately agreed to, BlackRock did not vote for at other companies, denying its customers and other investors simple disclosure.

Mrs. BEATTY. Okay. Thank you, and, Mr. Chair, I yield back.

Mr. LOUDERMILK [presiding]. The gentlelady yields. The gentleman from Ohio, Mr. Davidson, who is also the chair of the Subcommittee on National Security, Illicit Finance, and International Financial Institutions, is now recognized for 5 minutes.

Mr. DAVIDSON. Thank you, Chairman. As chairman of the National Security Subcommittee, The Committee on Foreign Investment in the United States (CFIUS) and its screening authorities grabbed my attention. Foreign investments that could threaten our national security are supposed to get scrutiny. In the case of ISS and Glass Lewis, both foreign-owned companies with an extremely outsized impact on proxy voting in our capital markets, they have not been subjected to CFIUS review. ISS, founded in the United States back in 1985, is now majority owned by Germany's Deutsche Borse Group, the powerhouse behind Frankfurt's stock exchange. That is a foreign-owned entity calling shots in how America's institutional investors vote trillions of dollars with U.S. shares. On May 10, 2024, my colleagues, Congressman Andy Barr and Congressman Bryan Steil, urged Treasury Secretary Janet Yellen to have CFIUS review this acquisition, and here we are over a year later picking up the pieces from the previous administration. Then there is Glass Lewis, started in San Francisco in 2003, but snapped up in 2021 by Peloton Capital Management, a Toronto-based private equity firm.

ISS and Glass Lewis are not small outfits. Together, they dominate 97 percent of the proxy advisory space, influencing votes on everything from board elections to ESG mandates that shape corporate policies and significantly influence America's capital markets. In a world where we are laser-focused on foreign influence in critical sectors like tech and infrastructure, why are we not properly screening foreign companies that control corporate governance in our country? Could these ties inject biases, say European-style green mandates or Canadian anti-growth policies, into U.S. boardrooms, undermining American competitiveness? We need trans-

parency and safeguards to ensure these firms are not advancing agendas that put foreign interests ahead of American shareholders.

Look, the shareholder proposal process under Rule 14a-8 was meant to give real shareholders a say in how companies they own or run, holding boards accountable and driving long-term value for America's retail investors who are saving for retirement but under the Biden Administration and SEC chairman, Gary Gensler, it has been turned into a playground for activists and special interest outfits shoving their ideology and political crusades down the throats of companies that just want to focus on growing their business and raising capital. Why go public in America when you can dodge this regulatory circus? Congress has to get in the game with real reforms to Rule 14a-8, jack up ownership thresholds, so you have got actual skin in the game and a holding period, beef up exclusions for this irrelevant ordinary business meddling, and slam the door on resubmissions for proposals that keep bombing us at the ballot box, all propped up by two proxy advisory kingpins.

Speaking of those kingpins, ISS and Glass Lewis, with their 97-percent stranglehold on the market, they are the real enablers here, steering institutional votes like puppets without a shred of accountability or transparency. Their recommendations are really activism masquerading as advice, turbocharging robo-voting, and it is time to break this duopoly and let free markets actually work.

Mr. Mueller, you have seen thousands of proposals up close. Why has the number of social and environmental ones exploded, and why do they mostly fail, but keep coming back?

Mr. MUELLER. The factors here are really the professionalization of the shareholder proposal process. There are advisors out there deemed, representatives that are out marketing themselves and saying we will handle the shareholder proposal process. You can sit back, and we will submit this proposal, and they are not just asking for information. They are trying to influence outcomes and saying this is what we have done.

Mr. DAVIDSON. With their effort to influence those outcomes, do you worry about threats to American interests or even national security?

Mr. MUELLER. Certainly, I do because they are focusing on one aspect of a company's operations. The management, who also have fiduciary duties to all the shareholders, to all shareholders, know the company best. They, as Mrs. Keel has said, have often already considered these issues. They are often addressing the issues the way they view best for all shareholders.

Mr. DAVIDSON. Thank you so much. Mrs. Keel, I would love to talk to you about your work at Exxon, and in their case BlackRock voted shares that seemed to conflict with Exxon's interests but certainly advanced BlackRock's. So, we have a large range of questions that I will address for the record, and I have some for you too, Mr. Copland. My time has expired, and I yield.

Mr. LOUDERMILK. The gentleman yields back. The gentleman from Illinois, Mr. Casten, is now recognized for 5 minutes.

Mr. CASTEN. Thank you, Mr. Chairman. Thanks to our witnesses, and I want to just preface this by acknowledging that I am going to be a little bit pedantic, but this conversation is—I am trying to find a polite way to say this—it is really dumb. Let us just ac-

knowledge some things that should not be debated, but I cannot believe we are suggesting they are not true.

Shareholders are actually the people who own companies. The executives of a company serve at their pleasure. They are tasked to carry out the will of those shareholders. They are custodians of shareholders' investment, but they are not actually the people in charge, and shareholders are not monolithic in terms of their interests, in terms of how they define value. Hearing my colleagues say the only thing that matters is shareholder value, what the hell does that mean? Maybe I am a shareholder who thinks that a company's free cash-flow should go to paying dividends. Maybe I am a shareholder who thinks that value would be maximized if we re-invested that cash-flow. Maybe I am a shareholder in Kodak who thinks we should be pivoting to digital photography because you are committed to a technology that is not going to survive. Maybe I am a shareholder in a car company who thinks we should be pivoting to EVs. It does not matter whether you are right. You have different opinions about value, and the way that companies adjudicate those disputes is to have a high-functioning board, executives who are competent, people who surface their opinions. We try to resolve them in some collaborative fashion, and if you cannot resolve them in some collaborative fashion, ultimately you go to a majority vote. This is not freaking complicated, right?

Now, the idea that some voters are more worthy of having their opinions heard than others, some voters, only the ones we agree with, understand what value is, I guess, that is on brand for the party of January 6, but that is not actually the way that you make good decisions, right? So, I say this not as a Member of Congress. I say this as someone who spent 16 years as a CEO, who ran a company where I was a minority investor because I did not have the couple hundred million dollars that we needed, so we had a bunch of other money that came in, and sometimes I disagreed with our investors. Sometimes I persuaded them of my opinion. Sometimes they won; Sometimes I won. I maintain I was probably right more often than I won, but it did not matter, right? I did not have the votes, and our board understood and I understood that sometimes my economic interests were at odds with the shareholders, right? Now, I could have come to Washington and said that as an activist for the interests of minorities, I will come here and represent our Nation's poor, underappreciated CEOs, but I do not think that is actually the way economy works.

So, Mr. Mueller, I guess, do you agree that there are conflicts of interest and that, I do not know, like when Enron collapsed, was a part of that because of board oversight failures and conflicts of interest with management? Just yes or no?

Mr. MUELLER. Yes.

Mr. CASTEN. Okay. Do you agree that it is important for boards to have independent directors who are distinct from management?

Mr. MUELLER. Yes.

Mr. CASTEN. Okay, good, so does the New York Stock Exchange. So, does the National Association of Securities Dealers Automated Quotations (NASDAQ). That all makes a lot of sense. Mrs. Keel, would you agree that transparency and executive compensation is a good thing to have in corporate structures?

Mrs. KEEL. Yes.

Mr. CASTEN. Would you agree that shareholders should have a say on board of directors' compensation?

Mrs. KEEL. Yes.

Mr. CASTEN. Under the Dodd-Frank Act, are companies legally required to act in response to a shareholder vote on executive compensation?

Mrs. KEEL. No.

Mr. CASTEN. No, they are not. They are non-binding advisory opinions. In general, are companies legally required to take action on shareholder proxies?

Mrs. KEEL. Technically, no, but effectively, yes.

Mr. CASTEN. Well, your firm said, "Shareholder proposals are typically advisory in nature and not binding on a corporation."

Mrs. KEEL. That is technically true.

Mr. CASTEN. That is all my experience. That is the law. We are talking about the law. We are not talking about technically. We are talking about whether we should change the law, and we are in agreement that the law does not actually say these proposals are binding. The law says they are advisory. They get factored in, and then we have a high-functioning board. You know, Mr. Copland, you had said earlier, I think, on public choice theory and that Congress proves that you should not just decide things by majority vote. That is not how boards work. As we just established, the law says that these are advisory opinions. So, we are sitting here having this whole conversation about a boogeyman who does not exist. This conversation is about do shareholders have rights, do shareholders own companies, and do they have any rights to express their opinions of value in corporate boardrooms? Mr. Lander, do you want to add anything here? Am I missing anything as a fiduciary?

Mr. LANDER. That was very well said.

Mr. CASTEN. I hope our next hearing is not dumb. I yield back.

Mr. LOUDERMILK. The gentleman yields. The gentleman from Tennessee, Mr. Rose, is now recognized for 5 minutes.

Mr. ROSE. I want to thank Chairman Hill and Ranking Member Waters for holding this hearing and thank you to our witnesses for taking time out of your schedules to be with us today. Mrs. Keel, I wonder if you might like to expand on the response there to Mr. Casten about the nature of the issue.

Mrs. KEEL. Sure. So, it is correct that most of the shareholder proposals and the say on pay are technically non-binding, but the reality of how companies are dealing with these is that if they were to pass, there would be immense pressure, and most of that comes from the proxy advisors, actually. So, if a company were to pass or if the shareholders were to vote in favor of one of these shareholder proposals, which is admittedly pretty rare, companies, even if they thought it was a bad idea for the company, would feel this inherent pressure and tension and grapple with the impact, which would be votes against their directors from the proxy advisors' recommendations.

Mr. ROSE. Thank you. I appreciate that. Mr. Mueller, how transparent is the SEC's no-action process, and are there consistent principles, or do outcomes shift from year to year?

Mr. MUELLER. Thank you. If I can just add to the last response—

Mr. ROSE. Please.

Mr. MUELLER [continuing]. I want to note that under Glass Lewis' proxy voting policies, if a proposal gets a vote above 30 percent, not a majority, then the board is expected to take some type of action or risk having Glass Lewis recommend votes the following year. So, some of what we are hearing is not how it operates in the real world. The SEC's proxy rules have really shifted over time, shifted with the political winds. As Mrs. Keel has said, they use vague terms that are open to interpretation and really complicate and make the process more expensive for both proponents and companies.

Mr. ROSE. Thank you. I appreciate that insight, and so, Mrs. Keel, back to you. Can you please explain why it would be useful to raise the resubmissions thresholds that are currently in Rule 14a-8(i)(12)?

Mrs. KEEL. Sure. So, we use the word "shareholder democracy" a lot in wanting to protect shareholder rights. I think the resubmission threshold is so important because if shareholders vote against something 9 to 1, nine against, one for, and we let the proposal go back on the ballot the very next year, I mean, what does it mean to have a voice, right, for those nine shareholders who voted against it? Why are we putting it back on the ballot when it was very clear that there was no support for this? So, I think that is the kind of the first point, is really respecting a shareholder's vote. The other thing that I think we need to really think about carefully as we consider whether to revise the standard is, what does it mean to be substantially similar subject matter? So, it is not just the number of the threshold. It is how it is applied. What is the scope? Is it a carbon copy? Is it a general topic? That is something that we would need a lot more clarity on because right now, the SEC applies it so narrowly.

Mr. ROSE. Sure, I think as a shareholder who actually reads these things and tries to be thoughtful in my responses, I think we all have to acknowledge that when we ignore that the shareholders have rendered a verdict, if you will, yet it comes back, the inevitable inclination is to think, okay, this issue must have more support than it appears to, right? I mean, that is just kind of a natural human response is that something that keeps getting put back in front of you is going to kind of persuade if, for no other reason, that it is present. Do you agree with that?

Mrs. KEEL. Completely.

Mr. ROSE. Does the outcome in these things reflect that kind of natural human tendency?

Mrs. KEEL. Yes, absolutely. It puts a magnifying glass on the issues, and that is the point of my testimony, is that you get to basically buy this megaphone and this platform to put forward these sometimes important issues, but not necessarily relevant to a company. I think that it can kind of distort what companies should be really focused on.

Mr. ROSE. Mrs. Keel, again, do the procedural requirements for a company to exclude a proposal create an excessive and expensive

burden, even for proposals that are clearly non-material? Can you explain why this is?

Mrs. KEEL. Absolutely. So, there are three things. One would be fear of the proxy advisors, right? So, if you know for a fact that a proposal is not accurate—maybe they did not have enough shares, they missed the deadline, some sort of clear procedural deficiency—companies will still ask the SEC for their official no-action relief because they are afraid that the proxy advisors are going to vote against their directors for not doing so. Then they are also afraid of the shareholders themselves and bringing some sort of litigation and joining their annual meeting, which would be an absolute disaster kind of in corporate world and then they are afraid of making the headlines, right? If you go against the grain and do something that is different, it would be problematic.

Mr. ROSE. Thank you. My time has expired. I yield back.

Mr. LOUDERMILK. The gentleman yields back. The gentlewoman from Massachusetts, Ms. Pressley, is recognized for 5 minutes.

Ms. PRESSLEY. Thank you. Diversity, equity, and inclusion matter. Diversity means all people—veterans, LGBTQ, women, rural communities, Black people—equity means fair access to opportunities, and inclusion means having a real pathway to the American Dream. No executive order from Donald Trump is going to change that, and certainly no legislation from my Republican colleagues will, but that does not stop them from trying. Republicans are proposing bills that would make it harder or even impossible for shareholders to increase transparency around diversity hiring and inclusive workplaces.

Shareholders want this information because study after study has affirmed that diverse teams create more money for companies, they are more innovative and are better and faster at making decisions. Diversity, equity, and inclusion is good for business, and it is good for the economy. Mr. Mueller, does Gibson, Dunn & Crutcher value the practice of diversity and inclusion, and just a simple yes or no.

Mr. MUELLER. Yes.

Ms. PRESSLEY. Thank you. Mr. Chair, I would like to enter into the record this webpage from Gibson, Dunn entitled, “Diversity and Inclusion.”

Mr. LOUDERMILK. Without objection.

[The information referred to can be found in the appendix on page 142.]

Ms. PRESSLEY. Mrs. Keel, you are a partner at Jones Day. Does your firm value the practice of diversity and inclusion? Just a simple yes or no.

Mrs. KEEL. Yes.

Ms. PRESSLEY. Thank you. Mr. Chair, I would like to enter into the record this webpage from Jones Day entitled, “Inclusion.”

Mr. LOUDERMILK. Without objection.

[The information referred to can be found in the appendix on page 144.]

Ms. PRESSLEY. Comptroller Lander, do you, as New York City Comptroller, value the practice of diversity and inclusion in your office?

Mr. LANDER. Absolutely.

Ms. PRESSLEY. Thank you. Thank you for your express commitment today. I also want to commend you on your statement in February pushing back against Trump's attacks on DEI, and I would like to enter that statement into the record.

Mr. LOUDERMILK. Without objection.

[The information referred to can be found in the appendix on page 147.]

Ms. PRESSLEY. Now, it is really wonderful to see this type of agreement, bipartisan agreement, by Republican and Democratic witnesses here today. However, the fact remains that the fiscally irresponsible policies from the White House and Republicans in Congress are pushing people out of the workforce. Unemployment is on the rise, and Black women are bearing the brunt of the job losses, but what else is new? We bear the brunt of everything. Black workers are the last hired and the first fired. The alarming spike in Black women's unemployment is the canary in the coal mine, a devastating warning of where our economy is headed. That is exactly why I wrote a letter to Federal Reserve Chair Jerome Powell calling on the Fed to do its job and honor their statutory mandate to promote maximum employment and address this crisis for Black women, but it is not just the Fed who must take action. The SEC must, too.

Comptroller Lander, do the Republicans' proposed changes to SEC rules help or hurt transparency for shareholders?

Mr. LANDER. They hurt transparency for shareholders.

Ms. PRESSLEY. Thank you. We need policies that empower shareholders and protect investors. Diversity, equity, and inclusion matter. It is good for business, it is good for families, it is good for the economy, and the data supports it. I yield back.

Mr. LOUDERMILK. The gentlelady yields. The gentlewoman from Michigan, the Republican Conference Chair, Mrs. McClain, is now recognized for 5 minutes.

Mrs. MCCLAIN. Thank you, Mr. Chairman. I just want to make sure I am in the right hearing. We are here to talk about proxy advisors. Am I—

Voice.

[Inaudible].

Mrs. MCCLAIN. Okay. Just making sure. All right. Let me start by saying this. This is my kind of stance, opinion, and I would like to have a conversation around it. It seems to me that two proxy firms should not be deciding how trillions of dollars in shareholders' votes are cast. Would you agree with that? Anyone disagree with that?

[No response.]

Mrs. MCCLAIN. Thank you. Yet today, every American thinks they are investing in the market, but their votes are actually being hijacked and dictated by unelected, unaccountable foreign proxy advisors. This is not, in my opinion, shareholder democracy. Instead, it is concentrated power that is unchecked, and it undermines the integrity of our capital markets. I believe proxy advisors should stick to providing what they do best: research, right? Their job, their goal is research. They should stick to their job, research, right? I do not believe they should act as shadow regulators of cor-

porate America. I do not know if I am going to get a bunch of disagreement there, but does anyone disagree with that premise that they should not act as a shadow regulator?

[No response.]

Mrs. MCCLAIN. Good.

Mr. LANDER. They neither regulate nor dictate.

Mrs. MCCLAIN. But you would agree with my premise that they should not act as shadow regulators, correct, or do you disagree with my premise?

Mr. LANDER. They neither regulate nor dictate.

Mrs. MCCLAIN. So, that is a great answer to a question, sir, I did not ask. Are you disagreeing with my premise, or are you agreeing with my premise?

Mr. LANDER. You said they were dictating to shareholders how they vote.

Mrs. MCCLAIN. I said I believe proxy advisors——

Mr. LANDER. And they do not dictate to shareholders how they vote.

Mrs. MCCLAIN. So, let me rephrase it, sir.

Mr. LANDER. Okay.

Mrs. MCCLAIN. I believe that proxy advisors should stick to providing research and not act as shadow regulators of corporate America. Would you agree or disagree with that statement? It is a really simple question.

Mr. LANDER. I agree, and they do not do it.

Mrs. MCCLAIN. Thank you very much. Mr. Copland, would you agree proxy advisors, unaccountable, unelected firms, have too much power and direction of the U.S. public companies? Would you agree or disagree?

Mr. COPLAND. Agree.

Mrs. MCCLAIN. Can you expand on why?

Mr. COPLAND. Because effectively, we are talking about controlling 20–25 percent of the shareholder votes. They are non-transparent. They are non-regulated. They are non-American in ownership——

Mrs. MCCLAIN. Wait. They are non-American. Wow.

Mr. COPLAND. Yes, one is owned by——

Mrs. MCCLAIN. I wonder if they have any ulterior motives. I am sorry, sir.

Mr. COPLAND. Yes, one is owned by the German stock market, another is owned by a Canadian private equity firm, and they are deciding huge chunks of the vote in our stock market.

Mrs. MCCLAIN. Thank you. Does that not mean that millions of American votes are being hijacked by foreign proxy advisors? I mean, could one come to that conclusion, and not by the Americans who actually own the shares?

Mr. COPLAND. Well, I mean, hijacked may be a strong word, but I do think that, de facto, they are controlling it. They are controlling it because they are given that authority by a number of institutional investors. Not the New York City funds, not BlackRock, but a lot of institutional investors are giving them that authority. I am really glad to hear a bunch of people talking about shareholder rights here. There is a disconnect between those shareholder

ownership rights and the actual execution of these votes in practice.

Mrs. MCCLAIN. Amen to that. My question is: is that not a betrayal of the fiduciary duty?

Mr. COPLAND. On behalf of the institutional investor? It is debatable.

Mrs. CLAIN. Debatable.

Mr. COPLAND. I mean, at the end of the day, they are trying to execute these votes at low cost. I think it would be helpful to clarify. I mean, the SEC has done this in its own guidance, but it would be helpful to clarify that these institutional investors are not required to vote at all, but they are trying to do this. They do not get an advantage from it. It is an infinitesimal almost disadvantage from being a bad voter, so they are sort of discharging it, and there are no fiduciary duties, let us be clear, for these proxy advisors.

Mrs. MCCLAIN. Interesting. I just want to be clear. There are no fiduciary duties, responsibilities by the proxy advisors. That would be pause for concern.

Mr. COPLAND. Aside from basic anti-fraud? No.

Mrs. MCCLAIN. Yes. Very interesting, do you not think? Mr. Chairman, I am sorry, but I am out of time. Thank you for your witnesses. Thank you for your time.

Mr. LOUDERMILK. The gentlewoman yields back, and the gentlewoman from Texas, Ms. Garcia, is recognized for 5 minutes.

Ms. GARCIA. Thank you to all the witnesses for being here this morning, and I want to give a special welcome to the comptroller because as a former elected city comptroller in Houston, I know the role, I know the business, and I know how busy you are, but thank you for taking the time for being here. I also want to personally thank you for standing tall with the immigrants showing up to court in immigration court in New York. Like you, I have done that, too. I have gone to visit our Houston immigration courts, and it is just shameful what the current felon in the White House is doing to keep people from their day in court. So, thank you for that, too.

Mr. LANDER. Thank you.

Ms. GARCIA. But tell me, this kind of silencing and criminalization of almost everything, I mean, I am where Mr. Casten is. It is like, why are we going through all this? You know, why are we spending so much time on something when, frankly, all these lawyers at the table could just advise their clients to go private? If you do not want to deal with pesky shareholders, then go private, then you do not have to worry about it, but, no, they want it both ways. They want the dollars, they want the investment, and they want the control but why is Wall Street just trying to push shareholders out? Are these companies not rich enough?

Mr. LANDER. The companies are doing well. The CEOs are doing well. I thought \$56 billion was an extremely excessive CEO compensation. I never would have dreamed they would propose a trillion dollars of executive compensation. It boggles the mind, but I can only—

Ms. GARCIA. Can you just repeat it? I think everybody who is watching needs to understand the number of zeros involved in that

when people are just worried about the cost of housing, the cost of healthcare, and the cost of even buying pens and pencils for their kids to go back to school.

Mr. LANDER. So, this is a board. So, Elon Musk sought a pay package of \$56 billion, which was, by enormous amounts, the largest CEO executive compensation ever, even though he was not working full time at the company, which any board would expect their CEO to work full time at the company for \$560,000, much less for \$56 billion. There was some objection from investors, so they re-domiciled the company in Texas. They are seeking to prevent shareholders from bringing shareholder resolutions. They are seeking to prevent shareholders from bringing securities litigation if their rights are violated. Now they are proposing to give him a \$1 trillion payout, which I can only believe is, like, both to enrich him, but also to stick it in the eye of every hardworking person in America.

Ms. GARCIA. You know, it is not a bad part-time job. Where do I sign up, you know?

[Laughter.]

Ms. GARCIA. It just baffles me that things like a shareholder proposal to get a report on the use of child labor law would be considered outrageous, or a proposal for a company to conduct a health and safety audit regarding employee working conditions. I mean, I have seen so many of these. I mean, the words that are being used at this hearing—"activists, out of control"—I mean, if shareholders cannot have a voice because they have invested in the company, well, then, who can, because, if you really do not like the pesky investor—and I am calling them pesky in a very gentle, dear way—then go private. There is an exception for all this, is not there, things that are seen as harmful disruptions that distract from the core business, and really the economic relevance exclusion. I mean, who decides what is relevant or not?

Mr. LANDER. So, the SEC sides with management 68 percent of the time when management objects to shareholder proposals. So, I would think, if anything, the balance might be tipped a bit in the favor of shareholders, not further to the CEOs.

Ms. GARCIA. Because I certainly would consider, if a business was starting in Houston in a flood-prone area close to the waters they should disclose and really reconsider and would support a proposal for them to reconsider if we know that Houston gets hurricanes and floods, and it is something also that they should disclose in their IPO, should they not?

Mr. LANDER. Of course.

Ms. GARCIA. So that, to me, just makes common sense.

Mr. LANDER. Almost all of this is about disclosure, even on DEI. You know, we brought resolutions asking people to disclose their EEO-1s, which they are already giving to the government, so give them to shareholders as well. Most now do. Disclose the matrix you use for determining who is on your board. The idea that is over-reach when it is simple information investors use, I do not understand—

Mr. LOUDERMILK. The gentlewoman's time has expired.

Ms. GARCIA. Thank you, Mr. Chairman. I yield back.

Mr. LOUDERMILK. The gentleman from South Carolina, Mr. Timmons, is recognized for 5 minutes.

Mr. TIMMONS. Thank you, Mr. Chairman. Today's discussion focuses on critical issues of transparency, market competition, and what can only be described as the swing of the political pendulum in regulatory policy. The proxy advisory industry is effectively dominated by a foreign duopoly that controls approximately 97 percent of the market. That level of concentration creates systemic challenges for corporate governance and shareholder engagement. Since 2003, SEC rulemakings on proxy advisors have shifted significantly from one administration to the next, reflecting broader political and regulatory swings. In addition to these concerns, I want to focus today on a growing and often overlooked risk: The potential for foreign influence in U.S. public companies made possible by this proxy advisor duopoly. When two firms wield this much power with so little transparency, the risk is not just economic, it is also a national security concern. These firms frequently push ESG-driven proposals that may align more with left-leaning political agendas than with shareholder value or the long-term health of American businesses.

Mr. Copland, do proxy advisory firms have clients with ties to foreign governments, sovereign wealth funds, or politically motivated international organizations? If so, how transparent is that relationship to the companies they influence?

Mr. COPLAND. They have some relationship, right? I mean, the Norwegian Sovereign Wealth Fund, for instance, is very active in influencing this. You know, they dialog, they colloquy with these proxy advisory firms. It is not very transparent, though, so it is hard to give definitive answers on exactly who might be influencing.

Mr. TIMMONS. Thank you for that. What are the current consequences of this lack of transparency and disclosure?

Mr. COPLAND. Well, I think it is hard for regulators to know what is happening. It is hard for investors necessarily to know what is happening, and there are only a couple of these. I mean, the reality is they are not that big of businesses. They are valued high, but it is probably not just based on their cash-flow. It is probably based on the control that they exert over the market, and we know that because from time to time, they have been subsidiaries of publicly owned companies. So we know that, for instance 15 years ago, it was reported from MSCI that ISS in its proxy advisory business got \$11.5 million in profits. I mean, that is a lot of money, but it is not a lot of money compared to 15 percent of the stock market.

Mr. TIMMONS. Thank you for that. I want to turn briefly to the business model of large proxy advisory firms and the conflicts of interest that result. Firms like ISS not only issue proxy recommendations but also sell consulting services to the same companies they evaluate, including through their ESG corporate rating service. This creates a financial incentive to issue recommendations that could drive more business, raising serious concerns about the objectivity of their guidance. In addition, some proxy advisors are affiliated with advocacy organizations that actively promote specific shareholder proposals often aligned with particular political or ide-

ological agendas. When the same firms are both shaping and scoring these proposals, it becomes difficult to separate impartial analysis from activism. That is a problem for transparency, for market fairness, and for the long-term interests of American investors.

Mrs. Keel, could you walk us through an example of this conflict of interest in practice and discuss the negative consequences that result for both the corporation and everyday shareholders?

Mrs. KEEL. Sure. So, I think one important thing to address first, especially on the influence from abroad, is they are incorporating European standards of investing into the standards that they are then imposing in the recommendations that they give to companies directly. So, in Europe, they have an idea of double materiality. It is this idea that we can consider what is material to us and also to the outside world. That is just not the standard in the U.S., so it is applying an entirely different investment theory, essentially, of materiality to U.S. companies. From a complex perspective, companies are subscribing to the services that tell them to do this, and if they do not comply, the implicit threat is, we will vote against your directors. So, they are stuck between this rock and a hard place. They have to hire them, and they have to do what they say.

Mr. TIMMONS. These are the same Europeans that shut down all of their nuclear power facilities because they were not clean and now buy dirty Russian oil. Interesting. As a follow up to that, do you believe the SEC has the tools it needs to address this kind of conflict of interest, or should Congress consider additional steps to ensure proxy advisors remain neutral and accountable to shareholders?

Mrs. KEEL. There definitely needs to be some sort of regulation at Federal level would be great. They fought tooth and nail against some really commonsense regulatory oversight, which would have just simply had them not make false and misleading statements, right? That is what they were so against, so I think we need some explicit acknowledgment of—

Mr. TIMMONS. Thank you for that. The proxy advisor industry holds too much influence with too little accountability. The absence of transparency, the potential for foreign involvement, and the presence of clear conflicts of interest create serious risk for public companies and for the strength of our capital markets. I am out of time, and I yield back, Mr. Chairman. Thank you.

Mr. LOUDERMILK. The gentleman yields back. The gentleman from California, Mr. Liccardo, is recognized for 5 minutes.

Mr. LICCARDO. Thank you, Mr. Chair. I appreciate all the testimony of the witnesses, particularly the written testimony. Mr. Mueller, I very much appreciate you going through in detail much of the existing regulation. I wanted to refer first to Mrs. Keel's examples that were raised during both your testimony today and in your written statements with regard to several proxy proposals relating to things like reproductive rights, geopolitical issues in China, gun sale regulation, Bitcoin investment. How many of those were actually adopted?

Mrs. KEEL. I do not have the exact passage rates, but I am guessing none of them.

Mr. LICCARDO. Were any of them?

Mrs. KEEL. That is my guess, yes.

Mr. LICCARDO. Okay. So none of them were——

Mrs. KEEL. Correct.

Mr. LICCARDO [continuing]. to your knowledge were actually approved. In fact, there are criteria that exist already, exclude proposals like these, most prominently, that lay into economic relevance under 14a-8(i)(5), ordinary business, that can mitigate micromanaging and so forth. I certainly appreciate that there is time expended, and I think that issue has been raised and a lot of resources expended, but fundamentally, the rules already exist to exclude many irrelevant proxy proposals, and, in fact, the SEC appears to uphold managers' decision to exclude them 68 percent of the time, according to Mr. Lander. So, help me understand better what we are doing here. If the rules exist, why should Congress get involved if rules already exist to exclude irrelevant proposals?

Mrs. KEEL. I am happy to take that one. You know, it is not required to go to the SEC for no-action relief, but it has become the thing that companies do. To deviate from that, there is even an example from a long time ago, before my time, where a company said I am just going to notify the SEC of an exclusion, and the SEC said you have got to go through the normal process, even though it is not required and even though it is just guidance, it is not law but there is this feeling among public companies that you do not want to rock the boat, right? It can be intimidating to make headlines. It can be intimidating to instigate scrutiny from the proxy advisors because the stakes are so high, so they will just fall back on reliance on this system because that is what people are used to, and the alternative is it is the unknown is too scary.

Mr. LICCARDO. I can appreciate the point. I have been in public life for a long time. It is just the fact that executives are uncomfortable and do not feel like that is enough to justify congressional action here.

Mr. Mueller, I appreciate very much both your and Mrs. Keel's excellent written statements, but what I am particularly concerned about is narrowing the definition of "relevance" to the point where very relevant considerations would be included. For example, on page 14 of your written statement, you refer to the proxy proposal requesting JPMorgan Chase to disclose clean energy supply financing ratios. That is the financing of energy generation renewables versus fossil fuels. Now, I know there is a wide variety of opinions here about climate change in this room and perhaps in America, but do you not agree that it would be critical for a lot of investors to understand how JPMorgan's executives have internalized the litigation risks, the regulatory risks, the long-term risks of how it is deciding to finance energy investments?

Mr. MUELLER. Sure. This issue on that is that, and I cannot comment on what JPMorgan was doing, but many of the other banks were already disclosing information about what they were doing with financing fossil fuel and non-carbon energy sources and so, the proposal was not so much about, hey, let us increase the disclosure. The proposal was we want you to do it this way, not the way that management thinks it is best to communicate with the shareholders.

Mr. LICCARDO. Okay. So, you do not disagree that disclosure itself may be quite relevant in that context, because after all,

BlackRock in its 2021 Global Insurance Report consulted 362 insurance company executives, and 95 percent of them confirmed that climate risk would have a significant impact on their portfolio construction over the next 2 years. So this is a relevant consideration. Is that right?

Mr. MUELLER. Yes.

Mr. LICCARDO. It is. Okay. I just want to make sure here in Congress we do not decide to start excluding very relevant considerations from whatever we define to be appropriate proxy proposals.

Mr. MUELLER. I think the issue is what is relevant, and under SLB 14L in the Gensler Administration, the first year that came out, only——

Mr. LOUDERMILK. The gentleman's time has expired.

Mr. MUELLER [continuing]. 35 percent of the proposals were excluded.

Mr. LICCARDO. Thank you.

Mr. LOUDERMILK. The gentleman from Pennsylvania, Mr. Meuser, is now recognized for 5 minutes.

Mr. MEUSER. Thank you, Mr. Chairman. Thank you to our witnesses very much. Last Congress, this committee pushed back against Biden regulators who imposed ESG mandates that elevate social or political agendas above material business decisions. This was most evident in the previous SEC's climate rule. Republicans were largely successful in restoring materiality and the guiding principle in disclosures and the shareholder proposal process. However, proxy advisory firms, through their concentrated influence, often function as de facto regulators by recommending ESG votes for shareholders when voting on board decisions. It is not about being against ESG as an investment choice. If individual investors want to prioritize environmental, social, or governance factors, that is their freedom. What we oppose is when these ideological views are mandated, when investors are forced to comply with burdensome regulations that prioritize political ideology over sound financial decisions.

So, Mr. Mueller, under Chairman Gensler, the SEC issued Staff Legal Bulletin 14L, which required companies to include shareholder proposals on broad societal issues even if they were immaterial to the company. What effect, in your view, did that shift have on companies and their shareholders?

Mr. MUELLER. It resulted in a lot of wasted effort by both the companies handling these shareholder proposals and by shareholders at large, who had to review and vote on these proposals and overwhelmingly voted against them. They said they were a waste of time.

Mr. MEUSER. Thank you. From your perspective, advising large companies as you do, what are the costs in terms of time and resources that you just alluded to for companies to respond to such proposals that have no material connection to its line of business?

Mr. MUELLER. Yes. Both my written testimony and Mrs. Keel's testimony lays out all the actions that are borne by that, and, again, it is important to bear in mind this may be a shareholder who has only owned \$2,000 worth of stock. You know, bless those shareholders, it is good to have small shareholders, but when they

are putting all that burden on the company at large, you have to question whether that is a rational system.

Mr. MEUSER. Okay. Thank you. Mrs. Keel, when the SEC refuses to block an ESG proposal for being immaterial, courts often treat that refusal as a green light. Does that not combine with proxy advisors recommending yes votes to turn immaterial proposals into mandates in practice?

Mrs. KEEL. Yes. I mean, whatever the SEC says is how all of the different stakeholders really interpret whether or not the proposal should be included or excluded, especially the proxy advisors. So, if you were to go against what the proxy advisors recommend, I mean, there would be major consequences, and I think it is relevant what Mr. Mueller has said before, is that there is a 30-percent threshold that Glass Lewis imposes. So, if a proposal gets 30 percent support, they expect you to publicly address how you have engaged with shareholders on the particular proposal. I think it is also kind of interesting that the shareholder proxies influence. We hear some numbers like 20. I commonly see the number 30 percent of what they control for a company. It really depends on company to company, but those numbers are suspiciously similar.

Mr. MEUSER. Okay. Great. Thank you. Mrs. Keel, you have advised companies facing ESG lawsuits. Do boards feel pressured or even threatened to engage with ESG proposals even when their shareholders have rejected them?

Mrs. KEEL. Absolutely, I mean, but the real issue that I would like to also highlight, which I have said earlier, is boards are grappling with these issues in the boardroom not every single day, but at every meeting, right? These are important topics when you see news about the tariffs or you see news about environmental issues. These are raised in the boardroom absent exactly what the proposal is putting forth.

Mr. MEUSER. All right. Thank you. Mr. Copland, proxy advisory firms, like ISS and Glass Lewis, often recommend yes votes on ESG proposals, even when those proposals are not material and shareholders repeatedly reject them. Does that not amount to an ESG mandate in disguise?

Mr. COPLAND. Effectively because of the way they treat this. As we have heard during this hearing, they will no vote directors. Even though it is an advisory proposal, they will no-vote directors if they do not reply. Sometimes even for minority votes, where a majority of shareholders say no, they will no vote directors if the company does not respond.

Mr. MEUSER. My understanding is the performance is not that much worse off, but the idea of mandating and the problems that it causes is serious. Is that your understanding as well?

Mr. LOUDERMILK. The gentleman's time has expired.

Mr. MEUSER. My time has expired. Yes, I yield back, Mr. Chairman.

Mr. LOUDERMILK. The gentleman from Texas, Mr. Green, is recognized for 5 minutes.

Mr. GREEN. Thank you, Mr. Chairman. I thank the ranking member and the witnesses for appearing. Mr. Lander, I would like to visit with you for just a moment, if I may please. There are some CEOs who make more in a day than some of their employees will

make in a year. There seems to be a belief among many that those who are wealthy need more to do more and the poor can do more with less. Is it material for the shareholders to want to see a living wage paid to employees and for those shareholders to insist upon that by using the limited amount of authority that they have, to have a living wage for people who are working and making it possible for CEOs to make these huge salaries? You just talked about the possibility now of a trillion-dollar salary. I mean, that is more than the mind can imagine. Your thoughts, please.

Mr. LANDER. Yes. So, I will start from the people whose money I am managing and who I represent. They are teachers, and school crossing guards, and secretaries, and public hospital nurses, and cops and firefighters, and sanitation workers like hardworking people, who, largely because they organized a union, secured retirement security. They are not making a lot of money every year, but we guarantee them this retirement security, so they are paying attention to how their money is invested and what they mostly have the right to, for me, invested with fiduciary duty, is to make sure that it is invested well with good risk-adjusted returns.

They know that companies will do better if those companies have good workforce management and live up to their own policies. So, many of the companies that we invest in have policies, that they respect the rights of those workers to organize a union, to seek to bargain collectively, and to have good workforce management practices. So, I will give the example on climate policies. It tends to be that our—

Mr. GREEN. Talk to me about the living wage.

Mr. LANDER. Yes. Well, what I was going to say there is all five of our funds, including the police pension fund and the firefighter pension fund, often vote for shareholder proposals asking companies, as they did at Starbucks, where we brought a proposal. We had heard that there were issues of workforce management, refusal to allow people to organize and bargain collectively, so we brought a proposal, and 52 percent of investors voted in favor of asking Starbucks to do an independent assessment of its workforce practices, including its adherence to international labor rights standards. Then, the company agreed to do so and provided that assessment to its investors, including those teachers and cops and firefighters that I represent. That is all we are talking about here at its most aggressive. Usually, those proposals do not get a majority. In this one case where they did, it resulted in a corporate assessment of its workforce policies so that investors could make wise decisions going forward.

Mr. GREEN. I am going to take it that you believe that it is acceptable for the shareholders to push inquiries that would lead to a living wage being paid to workers.

Mr. LANDER. So, let me distinguish. At the policy level, I am a big advocate of living wage policies broadly across the economy and have advocated them as law in New York City and nationally. As an investor, I have fiduciary duty to focus on risk-adjusted returns to shareholders, and so I focus on workforce issues broadly because if you immiserate your workforce and you have such rapid turnover, as Amazon does, for example, that is a risk not only to the workers, but to investors.

Mr. GREEN. I agree and let me say this as we close this. When we are making these decisions to pay the CEOs billions, we do not seem to get into the question of how this is going to have this level of adversity as it relates to the business model that the company has but when we talk about the people who are making \$7.25 an hour or some amount of money that CEOs will give as a tip as they leave a restaurant, it becomes a big issue. We seem to think that the poor can do more with less, and the wealthy, they need more to do more. I yield back.

Mr. MEUSER [presiding]. The gentleman yields back. The gentleman from California, Mrs. Kim, is now recognized for 5 minutes.

Mrs. KIM. Thank you, Mr. Chairman. Welcome, witnesses. Thank you so much for being here.

You know, in California, our drivers, custodians, local law enforcement, and other public employees rely upon the California Public Employees' Retirement System to manage their pensions and ensure that they can have a comfortable retirement. Unfortunately, rather than being focused on securing the highest possible return for its members, the California Public Employees' Retirement System (CalPERS) has been focused on left-wing politics and supporting changes to force companies to adopt these ESG initiatives. One way that we have seen companies forced away from focusing on their products and services is by burdening companies through the shareholder proposal process.

I want to ask my question to Mrs. Keel. What are the steps that a company takes when they receive a shareholder process or proposal?

Mrs. KEEL. Sure. So, first, it will decide whether it is actually substantially implemented already, whether it has considered it. It will then go into whether investors have raised this as a particular issue that they actually care about, and then it will assess what is the harm that could come from this, right? It is a risk mitigation analysis at the end of the day. So, is it going to jeopardize legal privilege? Is it going to disclose some sensitive competitive information? Is it going to disclose sensitive employee information, which is what a lot of the reports would request.

Mrs. KIM. Mm-hmm.

Mrs. KEEL. Is it legal? There are examples of shareholder proposals being put forth that, if they were to be implemented, would actually be illegal. We have seen this in the insurance industry and with respect to diversity and equity and inclusion proposals. Last, you have to evaluate whether it is actually going to harm the company, right? So, then, there are examples of proposals that are effectively trying to hurt a business. One example would be to a pharmaceutical company, asking them to stop issuing patents or to reduce patents. Another example would be asking an energy or oil and gas company to reduce Scope 3 emissions since that would require them to reduce the sales of their actual products. If you—

Mrs. KIM. What about the costs that companies are burdened with when dealing with shareholder proposals that may not be relevant to the business activity?

Mrs. KEEL. You know, there are costs that the SEC has said. It is maybe upwards of \$150,000. There have been other studies that put that at a top of \$600,000. You know, it is nice to have those

dollars and cents, but it is really the intangible energy and effort that goes into these that is really hard to quantify. So, that analysis that I went through is just a kind of drop in the bucket in terms of the focus.

Mrs. KIM. Mr. Mueller, can you talk about whether the investors are the ones that bear the burden of the costs and consequences of non-material shareholder proposals? Can you talk about that, too?

Mr. MUELLER. Yes, they bear those expenses and typically vote down these proposals, particularly in recent years as the proposals have gotten more extreme, more prescriptive. The votes are dropping down, and large shareholders are coming to the company saying why are we even having to deal with this, and so they are not happy either.

Mrs. KIM. Let me talk about another issue. Companies want to be focused on delivering great products or services and continuing to innovate but when they spend thousands of hours attempting to deal with a shareholder proposal regarding whether they will go from plastic straws in their cafeteria to paper straws, that is vital time and resources that is taken away from improving the business and customer experience. CalPERS should return to being focused on its stewardship of the retirement of my constituents and not supporting a left-wing political agenda.

So, another concern I have is with the duopoly in the proxy advisory market and ISS and Glass Lewis' lack of economic analysis. So, in July 2023, ISS testified that the firm does not generally conduct an economic analysis before providing a vote recommendation, and last year, investment stewardship global head of ISS stated on that CNBC interview that the firm leaves the investment thesis up to the investors. So I want to ask you a question, Mr. Mueller. Have you observed anything that will lead you to believe that ISS or Glass Lewis evaluates the specifics of each shareholder proposal at each company?

Mr. MUELLER. No, there is nothing in their voting recommendations report suggesting that they are evaluating other than intangible speculative risks.

Mrs. KIM. Okay. You know, when economic analysis is not the guiding principle of shareholder proposals, then it leaves one to question what the guiding principle is, so—

Mr. MEUSER. The gentlelady's time has expired.

Mrs. KIM. Oh. Can I just finish my sentence?

Mr. MEUSER. Go ahead.

Mrs. KIM. The takeaway that I am left with is that personal and political bias are what guide the recommendations of Glass Lewis and ISS. So, it is also concerning to me that ISS and Glass Lewis appear to have a significant conflict of interest, and I just wanted to share that and put it on the record the concerns I have.

Mr. MEUSER. The gentlelady yields. The gentleman from New York, Mr. Ritchie Torres, is now recognized for 5 minutes.

Mr. TORRES. Thank you, Mr. Chair. Republicans often accuse Democrats of "politicizing capitalism," so I have a simple question for the comptroller. Who is the most efficient allocator of capital, Donald Trump or the free market?

Mr. LANDER. The free market.

Mr. TORRES. Okay, because Republicans believe the answer to that question is Donald Trump, so it sounds to me like you are much more capitalist than your Republican critics. Republicans have no objections to socialism so long as it is Donald Trump doing the socializing. A wise person once said, if you do not have a seat at the table, then you are probably on the menu, and Rule 14a-8 ensures that shareholders have a seat at the table. It promotes the democratization of corporate governance. It brings checks and balances, accountability and transparency where none would otherwise exist. The purpose of securities law, as I understand it, is to correct information asymmetries and to level the playing field between issuers and investors.

Comptroller Lander, do you worry, as I do, that the Stop Woke Investing Act would undermine the very purpose of securities law and radically restrict the flow of material information to shareholders?

Mr. LANDER. Yes, I do.

Mr. TORRES. Republicans often accuse cities like ours, like New York, of “woke investing.” What were the most recent performance returns of the New York City pension system?

Mr. LANDER. Let me get the numbers. We just announced June 30 that for the year ending June 30, we had 1-year returns of 10.3 percent, exceeding the State standard of 7 percent, and saving about \$2 billion for taxpayers.

Mr. TORRES. So, you saved \$2 billion for taxpayers, and so under your financial stewardship, New York City has shown that it is possible to do well and to do good at the same time, that shareholder value and social responsibility can be mutually reinforcing.

Now, under the Stop Woke Investing Act, the word “material” is radically redefined. It will no longer include “any portion of financial risk that primarily relates to events that involve a high degree of uncertainty regarding what might occur in the long-term future.” With that definition in mind, I want to present the following hypothetical to you. I sit on the China Committee, and we in Congress have a bipartisan concern about rising tensions in the Taiwan Strait. So, suppose I were a shareholder of the Taiwan Manufacturing Semiconductor Company, and I had a desire to file a shareholder proposal asking the company to disclose the possible impacts that an amphibious invasion would have on the advanced semiconductor supply chain in Taiwan. It would seem to me that under the Stop Woke Investing Act, my proposal would not qualify as material because it involves a high degree of uncertainty regarding what may occur in the long-term future. So, let that sink in for a moment: an existential risk to the world’s most critical and fragile supply chain would not qualify as material under the Stop Woke Investing Act. Is there any universe in which that makes sense to you as a fiduciary?

Mr. LANDER. Investing is assessing risks exactly like this one, and I agree. As I read the bill, it would not allow you to ask a company where you were an investor to assess and disclose that risk to you.

Mr. TORRES. Okay. Well, look, the cruel, almost Orwellian irony of this legislation is that the most material risk that a company can face, whether it be climate change or war, would no longer

qualify as material under the law, and that, to me, makes a mockery of securities law. As a pensioner in the New York City system, I am pleased with the 10-percent return. Please doubling down on your winning strategy. I will yield back.

Mr. LANDER. Thank you.

Mr. MEUSER. The gentleman yields. The gentleman from Tennessee, Mr. Ogles, is now recognized for 5 minutes.

Mr. OGLES. Thank you, Mr. Chairman, and thank you to the witnesses. I know it has been a long morning or now into the afternoon.

Two proxy advisory firms, mostly through three index funds, are driving corporate governance across the entire economy. No one elected these firms, yet they wield incredible power, and to borrow a phrase from the progressives, they do it with other people's money. Mr. Copland, if BlackRock and State Street are voting tens of billions in retirement assets, most of it from ordinary Americans who never opted in to ESG activism, do you see that as a distortion of shareholder democracy?

Mr. COPLAND. Yes.

Mr. OGLES. Would you agree Congress needs to explore ways to restore some voice to the ultimate beneficiaries, the retirees and workers, instead of leaving it all to intermediaries and advisors?

Mr. COPLAND. Yes.

Mr. OGLES. Thank you. The First Amendment does not let the government force people to take political positions, but through Rule 14a-8, activist shareholders are forcing companies into political speech as the price of being public. That is compelled speech by another name. Mr. Mueller, do you agree that many of these proposals are not about material business issues, but about forcing companies to take sides on divisive social debates?

Mr. MUELLER. Yes, we often say that.

Mr. OGLES. Mr. Copland, you raised First Amendment concerns in your testimony. Would you expand on how compelled corporate speech under 14a-8 mirrors the kinds of unconstitutional-compelled speech that the courts have struck down?

Mr. COPLAND. Yes. I mean, effectively, these companies are being required to put on their proxy ballots political statements that are drafted from people like in the New York City Comptroller's Office, right, and that clearly runs afoul with a lot of compelled speech doctrine. I mean, there is some uncertainty about how this applies in the securities. What is unambiguous is that the way this is operating in practice, there is viewpoint discrimination. I pointed out in my testimony where the National Center for Public Policy Research litigated this into the Fifth Circuit, and it was mooted, et cetera but there was a situation where the SEC staff said you had to include on your proxy ballot a shareholder proposal talking about equal employment opportunity for sex orientation and gender identity, and the exact same language was used by a conservative group as a shareholder proposal saying viewpoint and ideology, and it said, no, you can exclude that, and a no-action letter was granted. I mean, that is the sort of thing that should be troubling. It is a First Amendment issue.

Mr. OGLES. That is right. Well, again, this gets back to the idea that it is more about compelling political speech versus getting

back to the basics of the actuarial component. Most retirees in Tennessee just want their pensions and 401(k) to be safe. They do not sign up to subsidize culture war battles, yet the proxies divert resources away from shareholder value and onto politics. Mrs. Keel, you gave the example of one shareholder forcing a company into expensive proxy fights over issues like DEI or gun policies. From a fiduciary duty standpoint, is that not effectively transferring wealth from retirees to activists?

Mrs. KEEL. Yes. Well, yes, it depends on whether it passes and they implement—

Mr. OGLES. Sure, sure, absolutely, but the intent would be.

Mrs. KEEL. Yes. I think maybe a good example for this would be kind of climate targets, for example, right? You know, proposals are asking a pizza company that I order my Friday night pizza from to impose Scope 3 climate targets. It is kind of hard to see the relevance to certain of these companies, and it, ultimately, kind of feels like an unsanctioned tax really.

Mr. OGLES. I have more questions. I am running out of time. I want to go back to this idea, Mrs. Keel and Mr. Mueller. You both commented on the technical versus effectively with some of these proposals, so my colleague on the other side technically was correct, but when you get back to the boardroom and how it is issued in the markets. Please expand or put a fine point on technically versus effectively.

Mr. MUELLER. Sure. Companies do not want to be out there publicly opposing their shareholders. They want to be focusing on business and not being dragged into political debates. Oftentimes, the vote is irrelevant. The shareholder has gotten the issue into the proxy statement, has forced the company to make a statement about it, and the shareholder does not really care what the vote is. They have achieved their purpose, and that is really kind of effective—

Chairman HILL [presiding]. The gentlemen's time has expired.

Mr. OGLES. Thank you, Mr. Chairman. I yield back.

Chairman HILL. The gentlewoman from Michigan, you are recognized for 5 minutes.

Ms. TLAIB. Thank you, Mr. Chair. Thank you all so much for being here. You know, I just left a number of advocates, or maybe my colleagues like to call them activists, around the housing crisis. It was powerful speeches about just how terrible and horrific the housing crisis is across our country. I am getting back from there and I am thinking, well, I am on Financial Services Committee. Somehow we are going to be able to address the housing crisis. No, that is not what we are doing here. Then I thought, okay, well the President is shamelessly using his office for vast personal gain. I mean, I think he has doubled his net worth since last year, mainly through cryptocurrency and crypto corruption.

I am just saying this because I am like why are we having this hearing? I always like to kind of dig deeper, and then I found out, oh, well, the anti-ESG, which for my residents listening, it means environmental social governance. These are, many of my colleagues will call, activists because they have social causes, and they want to make sure their money is not going to something they do not support, and it is because it is funded by big mega donors, the fos-

sil fuel industry. It is true. You all know it, and figures like Leonard Leo and Peter Thiel.

I would like to submit for the record a fact sheet on the Manhattan Institute from the Center for Justice and Democracy.

Chairman HILL. Without objection.

[The information referred to can be found in the appendix on page 151.]

Ms. TLAIB. Thank you. You know, I think, what \$1.5 million from ExxonMobil and \$3 million from the Koch Brothers. The public takes that seriously, when I have a community in Wayne County that has not met Clean Air Act standards in years, where our kids are literally being poisoned. Their brains cannot develop if they are being poisoned. I say this because we are here because of mega donors. We are here to talk about this whole anti-ESG, whatever they want to call, movement. You know, this issue, to me, is fabricated, but the stakes are real in regard to people having disclosure and transparency. The retirement savings of hardworking families are on the line.

Mr. Lander, can you discuss the issues here? I mean, I am a person that does deeply care about the climate crisis and how the risk to executive compensation and a shareholder proposal can force companies to disclose that and why those issues should be of interest for investors.

Mr. LANDER. I mean, I do think it is extraordinary that what is being demonized is the simple effort to disclose the basic risks that a company is facing, and we have heard this a few times today in ways that are so obviously relevant to the shareholders of that company. Of course, there is a broader set of questions that are critical here, but for many companies, their exposure to climate risk is a simple and straightforward issue. Yes, if you have most of your book of financing for fossil fuel financing, an investor might say I think it would make sense to have more exposure to renewable energy and investment and you could decide, do I want to keep investing here, do I not want to keep investing here, and have that basic information. That is what is being demonized, not any requiring of changes, not dictating, not regulating—

Ms. TLAIB. I mean, they really want to muzzle people's First Amendment speech. I know you all see it that way. Do it all you want. You are getting funded by people. I mean, come on. I am looking at you all, and I am telling you these companies are not my constituents. The 12th Congressional District Congressional District Residents are, and if they want more disclosure and transparency, then they deserve it. Then what is the problem? I mean, somebody said that none of these even proposals pass, but you are all here because of Peter Thiel and Leonard Leo. You all know it. That is exactly why we are here because they donate to my colleagues. This is why we are here.

Nobody cares about what is going on with housing. Nobody cares about the fact that I am literally fighting for HeadStart program dollars. That is what people care about. This is not, like, political. This is me, the girl from Southwest Detroit, looking at this, growing up in the back shadow of the only oil petroleum refinery in the State of Michigan, Marathon Oil. You are telling me that if a teacher and others that are concerned about this that live in that

neighborhood cannot have transparency and disclosures, cannot have a say? See, they call them activists because they politically disagree with them, and most of them were activists before they got here. They were. They might have been activists on issues that I might disagreed with them, but I respectfully disagree because I am like that is your right to disagree.

So, Chairman, I wish we could do more on housing, we could do more on issues of corruption.

Chairman HILL. The gentlewoman's time has expired.

Ms. TLAI. I look forward to that. Thank you.

Chairman HILL. The gentleman from Iowa, Mr. Nunn, you are recognized for 5 minutes.

Mr. NUNN. Well, thank you, Chairman Hill, and thank you for all of you joining us here today. I will say that inflation and rising costs are directly impacting people in the heart of the Heartland, including in my home State of Iowa. So, as opposed to just talking about it, let us get after doing something about it. This situation was made worse by proxy advisor firms and their robo-voting that put millions of Americans' 401(k) and pensions at risk. This is happening as half of Iowans rely on some type of retirement account to pay for their future, their kids' 429th programs, or simply to buy a home. So, let us get to it.

Mr. Copland, are you aware that only two firms control approximately 97 percent of the proxy advisory market, and how does this effective duopoly really limit investors' choices?

Mr. COPLAND. Yes. I mean, the percentage may or may not be exactly that, but it is a massive percentage. Over 90 percent of voting is controlled by the two foreign-owned firms, Glass Lewis and ISS, and how does it limit choices? I mean, listen, it is a hard market to break into, but it is not a big market where you are going to get venture capital throwing money in it. There is not a huge amount of money in it. They are paid a premium because people want control over the voting, not because it is a great business model.

Mr. NUNN. Yes.

Mr. COPLAND. But it also makes it very subject to capture for that reason because it is not a business that could get a lot of public buyback. No individual is hiring ISS or Glass Lewis, and so they can be sort of captured by these activist forces, the professional activist forces. They make more money——

Mr. NUNN. Right.

Mr. COPLAND [continuing]. when they are more supportive of this environmental and social activism because the companies pay them to leave them alone, et cetera, et cetera, so.

Mr. NUNN. I think you are absolutely right here. These are both foreign entities influencing a U.S. market. Mr. Mueller, if investors are 20 percent more likely to oppose a management simply because proxy advisors recommend it. It does not show that these firms wield disproportionate power over the overall investor. Would you agree with that?

Mr. MUELLER. Yes, I do, and it is not just correlation. There is evidence of causation. When these firms flip their votes, occasionally they do it, it is rare, but you see that 20-percent flip right away.

Mr. NUNN. All right. So, now that we have kind of laid the base ground for this, let us consider the influence of proxy firms over voting outcomes. I think you would agree, as you just highlighted, that the practice of robo-voting, especially how robo-voting works, is not only troubling, but where investors automatically adopt a proxy advisor's recommendation silences the First Amendment rights of our retirees. I have got a bill out there. It is called Protecting Americans Savings Act. It requires the SEC to finalize rules prohibiting the use of robo-voting with respect to votes related to proxy advisors. So, Mr. Copland, I am going to come back to you on this. Do you think this would help restore accountability of fund managers? Many of them are handling trillions of dollars in retirement savings.

Mr. MUELLER. Yes. As Mr. Copland said——

Mr. NUNN. Yes.

Mr. MUELLER [continuing]. particularly for many of the smaller administrators, there is no motivation for them to take the time to do an independent review and analysis and actually exercise their fiduciary duties before voting. Instead, they have blind reliance on the proxy advisory firms.

Mr. NUNN. I would highlight here, it also ensures that this voting is optional, which is important to protect our shareholders, particularly our retirees, from being dragged into these often very social-focused political fights and allows them to just really focus on getting their retirement. Mr. Copland, is that true?

Mr. COPLAND. I think that is very important to do statutorily. I mean, the SEC has moved that way in guidance, but these proxy advisors came about in part because first the DOL and then the SEC said, oh, well, you have got a fiduciary duty to vote, here is a safe harbor, and it really empowered these firms. Now, while they have clarified this, this could always swing back, it can always change, so I think making it clear in statute would be very useful.

Mr. NUNN. Mr. Chair, I would like to be able to submit for the record the letter here to the American Securities Association that details of proxy power proposal abuse and the reform rules that we could go that complement the——

Chairman HILL. Without objection.

[The information referred to can be found in the appendix on page 152.]

Mr. NUNN. I would like to just now quickly talk about the SEC rules. Former Secretary Gensler expanded the definition of "solicitation" to cover proxy voting advice. Normally, solicitation means directly asking someone for their vote. Gensler went further. He said even research or recommendations from proxy advisors should count, so just the thought process versus the actual. Mr. Copland, do you believe that the SEC exceeded their authority by going from asking for it to just implying that people should be able to do this?

Mr. COPLAND. I mean, the D.C. Circuit certainly just said that.

Mr. NUNN. They struck it down. You are exactly right.

Mr. COPLAND. But that is why it is important for this body to act in this space, I think, because I do think that the proxy advisory firms should be regulated in some form.

Mr. NUNN. Yes, absolutely. Thank you, Mr. Chair. I would yield back the remainder of my time.

Chairman HILL. The gentleman from Iowa yields back. The gentleman from New Jersey, Mr. Gottheimer, you are recognized for 5 minutes.

Mr. GOTTHEIMER. Thank you, Mr. Chairman. Mr. Lander, if I can direct a few questions to you, and thank you for being here today. The phrase "globalize the intifada" is an antisemitic slogan that refers to a wave of terror that killed more than 1,000 Jews. Mr. Lander, Mr. Mamdani recently said he will "discourage the use of the phrase 'globalize the intifada,'" but has refused to condemn it as antisemitic rhetoric. You have also failed to outright condemn this phrase as antisemitic and a blatant call for violence against Jewish people, which is obviously surprising given that antisemitic violence, as you know, is at an all-time high in this country, including in New York and New Jersey, where I am from. I just want to know if you condemn the phrase "globalize the intifada" as a call to violence against Jewish people?

Mr. LANDER. I have made it very clear on occasions that when I hear that phrase, what is ringing in my ears is violence against Jews in the Second Intifada and, unfortunately, here in the United States recently.

Mr. GOTTHEIMER. So, you condemn the phrase? It is like a yes or no question. You are either for it or against it. I mean, given what you said, I assume——

Mr. LANDER. I make clear that I think when people use it, they are saying open season against Jews.

Mr. GOTTHEIMER. So, we should do everything we can to get them to stop using that phrase, correct?

Mr. LANDER. I would not want a law against the phrase. I guess what I would say, when you say everything we can do, I make clear how I feel about it and what I think when I hear it. Would I want a law saying that it was banned? I would not.

Mr. GOTTHEIMER. So, you think we should allow that? You think we should discourage it or condemn it? What do you think we should do on that phrase? You will not even condemn the phrase? Even if you say we should not have a law, do you condemn the phrase "globalize the intifada?"

Mr. LANDER. I mean, I have made very clear how I feel about that phrase.

Mr. GOTTHEIMER. It is just a "yes" or "no," man. It is not that hard.

Mr. LANDER. But when you say anything we could do, are you saying that you think there should be legislation that would prohibit people——

Mr. GOTTHEIMER. This question——

Mr. LANDER [continuing]. or criminalize people?

Mr. GOTTHEIMER. Sir, I reclaim my time. This question is, do you condemn the phrase "globalize the intifada?" It is a simple "yes" or "no" question.

Mr. LANDER. Tell me what you mean by "condemn."

Mr. GOTTHEIMER. You do not know what the word "condemn" means? You are a very smart guy.

Mr. LANDER. I am afraid it means I think there should be legislation making it illegal to say, and I hate it. I do not like it.

Mr. GOTTHEIMER. Okay. Fine, and do you——

Mr. LANDER. I do not like how it sounds.

Mr. GOTTHEIMER. Do you personally——

Mr. LANDER. But if I condemn, you mean——

Mr. GOTTHEIMER. You cannot condemn——

Mr. LANDER [continuing]. I would support legislation making it illegal to say? I do not think it should be illegal to say.

Mr. GOTTHEIMER. I condemn lots of things that I will make sure the legislation——

Mr. LANDER. If you mean do I think it is awful and I wish people would not say it, then I condemn it.

Mr. GOTTHEIMER. Got it.

Mr. LANDER. If you mean do I think it should be made illegal by legislation, then no.

Mr. GOTTHEIMER. Got it. So, it sounds like I heard you say you condemn it. You personally condemn it. You would not say it. You think it should not be said.

Mr. LANDER. I would prefer people not say it.

Mr. GOTTHEIMER. Okay. Mr. Lander, it is surprising you are advocating for free market policies and good corporate governance, which I support. Do you believe the government should be running grocery stores in New York City?

Mr. LANDER. I am supporting, as you know, Assembly Member Mamdani, and he is supporting five pilot grocery stores throughout the boroughs in order to address grocery store costs by——

Mr. GOTTHEIMER. Yes. So, you think government-run stores are exempt from property taxes and rent. You are not worried they are going to hurt small businesses, like local grocery stores that are owned by long-time residents and immigrants and others, because they have to compete with the government-run ones.

Mr. LANDER. I mean, we do not have enough information to know what the shape or the form of those stores would be and how competition would take place. I love my local bodega. I love my local grocery store. Yes, they are owned by immigrants. I want to see them thrive.

Mr. GOTTHEIMER. Right. It would be tough if they are competing against socialist-driven government grocery stores.

Mr. LANDER. But then we have many places in New York City that are food deserts and have no good grocery store providing decent, nutritious affordable food, and in those places, I do not see any harm offering additional options.

Mr. GOTTHEIMER. You could have incentives like we have had incentives in other places to encourage that.

Mr. LANDER. We have incentives. We have a program called the Fresh Program in New York City, which my office audited and found that it is a pretty ineffective incentive.

Mr. GOTTHEIMER. Got it but having the government going in to run a grocery store is what you think is a solution?

Mr. LANDER. In places where there currently are no grocery stores that are food deserts, what would be the harm?

Mr. GOTTHEIMER. I want to just talk about people from New Jersey who commute to New York to work, to see doctors, to spend money and contribute to the economy.

Mr. LANDER. We love to have them.

Mr. GOTTHEIMER. That is great that you love them. I mean, you have obviously supported the congestion tax, which is hurting them. The Metropolitan Transportation Authority (MTA), as you know, just recently announced that they will be increasing subway fares, the very mode of transportation you are suggesting commuters take instead of driving, which is part of what is encouraged. Do you support those price increases at the MTA?

Mr. LANDER. I support congestion pricing. As you know, we want to welcome folks from New Jersey—

Mr. GOTTHEIMER. What about the fare increases—

Mr. Lander—and we want to pay for—

Mr. GOTTHEIMER [continuing]. the fare increases of the MTA. Do you support those?

Mr. LANDER. I do not support—

Mr. GOTTHEIMER. The subway fares.

Mr. LANDER [continuing]. the fare increase at the MTA.

Mr. GOTTHEIMER. Okay. Great, because I worry about nickels and dimes, folks. It hurts a lot of people, just like supporting Boycott, Divestment, and Sanctions (BDS) Movement would do the same thing and going after Israeli bonds and encouraging divestment, which would really hurt the economy of New York. With that, thank you very much, and Shana Tova.

Mr. LANDER. Shana Tova.

Chairman HILL. The gentleman yields. The chair of our Subcommittee on Capital Markets, Mrs. Wagner from Missouri, you are recognized for 5 minutes.

Mrs. WAGNER. Yes. Thank you, Mr. Chairman, and I want to make clear to my friend, Mr. Gottheimer, that I absolutely condemn the phrase, “globalize the intifada,” so, and I know you do, too.

Now, to the topic at hand. Mr. Mueller, there you are. Okay. I reviewed your firm’s August 8, 2025, report on the most recent shareholder proposal season. It caught my eye that 37 companies received a nearly identical proposal from the same proponent, and that these proposals made up 18 percent of all successful no-action requests this prior year. These numbers seem absolutely staggering to me, so I want to dig in a little bit more. Can you tell me briefly a little bit about this proponent? For example, what did his proposal ask that each company do 37 times?

Mr. MUELLER. Yes. This was an individual named Chris Mueller—no relation—and he submitted three different types of proposals, all really addressing a very technical issue about ownership of stock certificates in a certificate form instead of owning them through your bank or brokerage firm.

Mrs. WAGNER. Was he selling something?

Mr. MUELLER. I am sorry?

Mrs. WAGNER. Was he advocating on behalf of something?

Mr. MUELLER. It was not clear why he was doing this, and he typically owned very little stock.

Mrs. WAGNER. Yes. How many shares of each company did the proponent typically own?

Mr. MUELLER. In most of them, he only owned one or two shares?

Mrs. WAGNER. Yes. So, to be clear, the proponent only had one share of each company. This typically would not meet the Rule 14a-8 ownership threshold, correct?

Mr. MUELLER. That is correct, and you are right that those companies still had to go through all the process—

Mrs. WAGNER. Yes.

Mr. MUELLER [continuing]. that you do for a shareholder.

Mrs. WAGNER. So, given that the proponent did not meet the ownership threshold, did companies ask the proponent to withdraw his proposal? What did he say?

Mr. MUELLER. Yes, many of my clients did. We always try to negotiate and engage with the shareholder proponent, and, typically, his response was, well, if you do what I ask, then I will withdraw my proposal.

Mrs. WAGNER. Well, “if you do what I ask.” Wow. Sounds like blackmail to me. To your knowledge, did some companies simply cave to his demand to purchase the software that he was pitching?

Mr. MUELLER. I am not aware of any of my clients that did. He did say that some clients, companies did, but I do not—

Mrs. WAGNER. So, some did. Okay.

Mr. MUELLER. There is no transparency on that.

Mrs. WAGNER. I am glad none of your clients did, but some certainly have. If it was so clear that his proposal could be excluded, why did companies need to submit no action letters to the SEC because they did, and how do proxy advisory firms play a role in this?

Mr. MUELLER. Yes. So, the proxy advisory firms, both of them have policies that, if a company excludes a shareholder proposal from their proxy statement without having either a court opinion or an SEC no-action letter, that they will view that as bad governance, regardless of the circumstances, and will recommend votes against the directors.

Mrs. WAGNER. Well, this is just one—one—of many examples. It clearly demonstrates, Mr. Chairman, just how broken our shareholder proposal process is, and under this flawed system, companies are often forced to waste valuable time and resources finding proposals that are irrelevant to the company’s bottom line, hurting investors and workers alike.

Mr. Mueller, in your firsthand experience dealing with activist proposals and the bureaucratic hurdles that they create, what changes do you think are necessary to fix this system and ensure that investors—investors again—investors’ interests are put first?

Mr. MUELLER. Sure. There are a number of helpful proposals in the legislation, but raising the threshold that a shareholder has to meet. Certainly, Mr. Lander has skin in the game, but not all of them do, eliminating or raising the resubmission thresholds, and, really, there is also a problem with just serial proponents. There are shareholder proponents who will drop a proposal at a company every year. It may not be the same proposal, but they are just after some other game.

Mrs. WAGNER. Well, and I thank you, and I am sure there are others, and I would like you to submit them for the record. I am proud to have my legislation, the Corporate Governance Examination Act, included as one of the bills the committee is considering in this hearing today. It requires the SEC to conduct a study at

least every 5 years on the shareholder proposal and proxy processes and this is then going to make sure that the process does not become unnecessarily politicized and will help to inform both Congress and the SEC on changes that might be needed to ensure that we put investors first. I thank you, Mr. Chairman, and I yield back my time.

Chairman HILL. The gentlewoman yields back. The gentleman from Florida, Mr. Donalds, you are recognized for 5 minutes.

Mr. DONALDS. Thank you, Chairman. It is good to be here. We said earlier in this committee, actually, a couple of things, that a lot of members who are activists in their way to be coming to Capitol Hill. I was an activist locally in my community before I came to Capitol Hill. The thing we always advocated for was free markets, the United States Constitution, and we did not want to have outside groups wielding this nefarious power to try to shift the very fabric of our capitalist system underneath our noses, and it looks like what these proxy advisory firms have been doing is that very thing. They have been using our system of free information as a way to shift the very nature of free market competitive economics and, actually, substitute that with nefarious, counter-cultural, socialistic policies that are not in the best interest of the United States. ESG policy is very indicative of that fact, and so this is a hearing that, in my view, is long overdue.

Mr. Copland, can you elaborate on how activists have hijacked the proxy proposal process to push left-wing ideology through corporations?

Mr. COPLAND. Yes. A very small percentage of shareholders are introducing virtually all of these shareholder proposals. They are corporate gadflies. There is a guy, John Chevedden, who, this year, himself proposed one-third of all shareholder proposals. Then you have got social investing funds with an express purpose that is different from just maximizing share value that introduces a lot of these proposals, and the other block are really labor-affiliated funds. They could be private labor unions like the contractors' union. They could be public pension funds for public employees, such as the New York City funds that Comptroller Lander works on, and that is really who supports all these proposals. None of the other institutional investors that are simply focused on the markets do that. Now, some of them vote for them—

Mr. DONALDS. Mm-hmm.

Mr. COPLAND [continuing]. in part because the proxy advisors are directing them to, telling them to, and they defer to those proxy advisors, or, in part, because they are passive index funds, and they have been captured. They have gotten a little better in the last year, but they have historically gone for this, but they do not really have skin in the game in any of these companies because they are just mirroring the stock market.

Mr. DONALDS. No, I agree with you, and I found some of those funds, social impact funds, the performance is actually worse than funds that are actually looking for value, which is a detriment to the shareholders across the board. Mrs. Keel, do proxy advisory firms have fiduciary duties to the companies or shareholders that they are advising?

Mrs. KEEL. They do not have any fiduciary duties to the companies that they are advising, and they are imposing these standards on and a kind of an implicit threat to follow their regulations. Some of them, ISS does have a fiduciary duty to its clients because it is regulated under the Investment Advisor Act, but Glass Lewis is not. So, I think that is an important distinction because they do the exact same thing, and so it is a query in my mind as to why one of them is regulated, and I should also mention that it is a very, very light-touch regulation but it does not really make any sense that one would be regulated and one is not.

Mr. DONALDS. Okay. You know, this hearing got really interesting a little bit ago with my colleague from New Jersey. So, Mr. Lander, I have to come to you. You are the comptroller of the city of New York. You talked about the proposal by Mr. Mamdani for government-run grocery stores. Do you think that is a viable proposal for the people of the city of New York?

Mr. LANDER. All around the country, there are quite a few places where there are publicly owned grocery stores designed to offer healthy, nutritious, affordable food in food deserts where people have no other options—

Mr. DONALDS. Mr. Lander—

Mr. Lander—that is working in red and blue States around the country.

Mr. DONALDS. Mr. Lander, you do realize that these grocery stores have less product available. The food is not nearly as good. Some of them shut down. The standards in them are, quite frankly, disgusting. Do you think it is in the interest of the people of New York to open this up? By the way, I am from Brooklyn, New York, so I have grown up in the city. I know what foods—

Mr. LANDER. I am so glad to hear it, but if you grew up in low-income neighborhoods in Brooklyn, you would see that you had—

Mr. DONALDS. Sir, I grew up in Crown Heights, Brooklyn, a low-income neighborhood. The city of New York—

Mr. LANDER. Then you would have seen that many of the privately owned stores nearby—

Mr. DONALDS. The city of New York—

Mr. LANDER [continuing]. had low quality and high prices.

Mr. DONALDS. The city of New York got out of the business of distributing food when I was a kid. The city of New York used to distribute food. They got out of that business. They did when I was a kid. Do you think it is okay to go back?

Mr. LANDER. We still provide a whole lot of free meals in our summer camp programs, in our after-school programs, and in our schools that an enormous number of low-income and working-class families rely on.

Mr. DONALDS. Reclaiming my time.

Mr. LANDER. That is government distributed food. Should we cut it off?

Mr. DONALDS. Reclaiming my time because I have got 10 seconds, yes. Last question for you. Can you condemn the phrase “global intifada”?

Mr. LANDER. I made really clear, I do not think people should say it. I condemn it.

Mr. DONALDS. So, you will not condemn it?

Mr. LANDER. If you want to make it against the law——

Mr. DONALDS. So, you would not condemn the phrase?

Mr. LANDER [continuing]. and send people to jail for saying it——

Mr. DONALDS. You will not condemn the phrase.

Chairman HILL. The gentleman's time has expired.

Mr. LANDER [continuing]. I do not.

Mr. DONALDS. This is why the city of New York is going down the toilet. I yield.

Mr. LANDER. It is doing great. Thank you. You should come back and visit.

Chairman HILL. The gentleman's time has expired. Thank you. Now, the gentleman from Wisconsin, Mr. Steil, who chairs our Digital Assets, Financial Technology and AI Subcommittee, is recognized for 5 minutes.

Mr. STEIL. Thank you very much, Chairman Hill, and thank you for holding today's hearing. This is a really important topic that we need to discuss, but it tells you a lot about the State of the Democratic Party where their witness has to come and defend government-run grocery stores. Tells you a lot about the State of the Democratic Party but let us dive into proxy advisors because I think that is one of the biggest unknown challenges that we face.

The proxy advisor duopoly run by foreign-owned operations, as highlighted by Mr. Copland, that is not properly regulated, as highlighted by Mrs. Keel, sets us up for an opportunity to stop the abuse that has been occurring in Americans' retirement accounts, their 401(k)s and their pension plans, which have been weaponized to deliver a political agenda rather than to prepare them successfully for retirement. I, in particular, want to talk about potential conflicts of interest and whether or not that conflict exists inside ISS and Glass Lewis, who are providing two key services at the same time and claiming that there is not a conflict. On one side of the ledger, they are advising asset managers about the underlying shareholder proposal votes. Is that correct, Mr. Copland?

Mr. COPLAND. Yes.

Mr. STEIL. On the other side, are they also providing advice and consent to the companies that they are advising upon?

Mr. COPLAND. Yes.

Mr. STEIL. So, they are being paid on one side by asset managers to review proposals that will directly impact management, and on the other side they are being paid by management to provide consulting services. Is that right?

Mr. COPLAND. Yes.

Mr. STEIL. That seems like a conflict of interest, right?

Mr. COPLAND. It does to me.

Mr. STEIL. So, one of the best ways that we address conflicts of interest is we disclose information to the public. Sunlight is often the best disinfectant, and so it would be rational to me that the Securities and Exchange Commission would come in and force ISS and Glass Lewis to disclose any conflicts of interest when they are on both sides of the ledger. Do you agree that is a reasonable proposal, Mr. Copland?

Mr. COPLAND. It is reasonable to me.

Mr. STEIL. Does the Securities and Exchange Commission require this type of disclosure?

Mr. COPLAND. It does not. There were efforts made. So, in 2020—

Mr. STEIL. There were efforts made, right, and you come in, and we had a proposal that then is struck down by Chairman Gensler, but you could come in under this Securities and Exchange Commission, and Atkins and the team at the SEC could come in and force those disclosures by ISS and Glass Lewis, ultimately, right?

Mr. COPLAND. It has been litigated in court, and courts are coming down in slightly different ways. I mean, I think it is why this body ought to act, probably, because proxy advisors, I think you have got a bill in here that would have them be registered, right, with the SEC.

Mr. STEIL. My bill does exactly that. Mrs. Keel, your comment that only ISS has some basic level of regulatory regulation on them—Glass Lewis is pretty much outside the structure—you would encourage that Congress to pass legislation that puts both of them under a regulatory environment in the Securities and Exchange Commission, right?

Mrs. KEEL. Absolutely. I think that it would be welcome to have regulation at the Federal level.

Mr. STEIL. Mr. Mueller, would you agree?

Mr. MUELLER. Yes.

Mr. STEIL. What do you think the risk is, Mr. Mueller, to folks that are saving for retirement, people that have funds that are ultimately being voted on by these large asset managers as they prepare for retirement, could be in a 401(k), could be part of a pension plan, that the underlying vote on shareholder proposals is being driven by two proxy advisors, one ISS and both Glass Lewis, which are owned by entities outside the United States. What does that say to Americans saving for retirement?

Mr. MUELLER. The concern is whether Americans can trust that their votes are being used productively or whether they are being used to help enrich these two firms with their advisory services.

Mr. STEIL. Have you seen instances of that? Have you seen, for example, oil companies being told to stop producing fossil fuels, or have you seen an insurance company being told to price insurance based on race, which is obviously illegal? Have we seen these types of recommendations by this duopoly?

Mr. MUELLER. We have seen them supporting shareholder proposals that ask to interfere with the company's business, yes.

Mr. STEIL. So, not in the best interest of Americans who are trying to prepare and save for retirement. Instead, we have seen it hijacked by duopoly, foreign-owned entities not disclosing conflicts of interest. This seems incredibly problematic. We have an opportunity to act here. I have had legislation that I have introduced time and time again. It is time that we move this all the way across the line, the Securities and Exchange Commission comes in, ends this duopoly, and finally stands up for the American people who are working their tails off to save for retirement so that their retirement funds are not being hijacked to deliver the political agenda of these proxy advisors.

Chairman HILL. The gentleman's time has expired.

Mr. STEIL. I yield back.

Chairman HILL. The gentleman yields back. The gentleman from New York, Mr. Garbarino, the chair of the House's Homeland Security Committee, you are recognized for 5 minutes.

Mr. GARBARINO. Thank you very much, Mr. Chairman. I thank the witnesses for being here today. Urgent reform is necessary for the shareholder proposal process. What once was a mechanism for democratizing shareholder oversight has been increasingly utilized by activist shareholders to push niche policy objectives that do not align with maximizing shareholder value. This untethered activism diverts significant resources and management attention from fundamental business matters, thereby undermining market efficiency and discouraging firms from becoming publicly traded. Mr. Copland, do companies feel that they have to hold votes on certain proposals for fear of public scrutiny?

Mr. COPLAND. Yes, under the current rules.

Mr. GARBARINO. So, what are some of the ramifications that they are afraid of?

Mr. COPLAND. Well things can be mis-portrayed in the press. The proxy advisory firms can treat these advisory or precatory proposals as effectively binding and vote against their directors if the company does not act. If the board does not say, with our fiduciary duty, we disagree, they could be asked to violate that, or we are going to vote no on your directors next time as a proxy advisor, and they will do that. Glass Lewis expressly does it when 70 percent of the shareholders vote no on the proposal. I mean, that is insane.

Mr. GARBARINO. It is definitely insane, goes after what these directors are supposed to be doing, what the company is supposed to be doing for their shareholders. Under former SEC Chair Gensler—thank God he is gone—changes to proxy rules made it easier for special interest groups to include politically motivated shareholder proposals in annual statements, reversing prior reforms. From 2020 to 2024, the total number of proposals grew with environmental and social proposals on topics such as climate change, DEI, human rights, and lobbying, seeing a 59-percent increase and becoming a dominant part of the shareholder landscape. Mr. Copland, I mean, this is an obvious answer, I think, but is the shareholder proposal process being abused by these special interest groups?

Mr. COPLAND. Yes.

Mr. GARBARINO. Yes. So, I want you to go on record and talk about some of the examples for this abuse.

Mr. COPLAND. Yes. I mean, and I have pointed to these for years where a shareholder will buy a small amount of shares, for instance, an animal rights group like People for the Ethical Treatment of Animals (PETA) and Levi's and talk about, like, leather patches on the jeans, and get on the agenda with small amounts of shares on this.

Mr. GARBARINO. When you say "small," what do you mean?

Mr. COPLAND. A few thousand dollars—

Mr. GARBARINO. Yes.

Mr. COPLAND [continuing]. which would be enough to get over the threshold. I mean, if the thresholds go up, they will get a little more. We commissioned a study when Comptroller Lander's predecessor, Scott Stringer, launched his Boardroom Accountability Project, and really—

Mr. GARBARINO. Great.

Mr. COPLAND [continuing]. as Representative Velázquez said the New York City pension funds have been playing politics for years with corporate proxies, but he really ratcheted it up to another level. So, we commissioned a study by Tracie Woidtke at University of Tennessee and found not only a negative association in terms of sheer value with the environmental and social activism that public pension funds were engaging in, but we found they typically invested less relative to other companies than the companies they were engaging with. So, they were not really putting their money where their mouth was. They were buying enough stock in these companies, but not as much.

So, we have seen individual shareholders make a living out of this. I mean, the late Evelyn Davis was one of the early corporate gadflies. She used to make \$600,000 a year selling a 12-page booklet to corporate CEOs, and you had to buy two and she charged like \$650 per booklet, basically, because they wanted to stay in her good graces. They did not want her to target them. I mean, it is rife with abuse.

Mr. GARBARINO. Absolutely, and what is even worse is I think a lot of these proposals, less than 30 percent of participation vote totals indicates that this is out of step with most shareholders. Switching gears a little, investment advisors rely on proxy advising firms to help meet their fiduciary duty by providing research, voting guidelines, and support for thousands of votes each year. While we can all acknowledge a need for reform, we must also take into account the costs that come with the legislation for advisors of all sizes. How can Congress, Mr. Copland, and regulators ensure reforms preserve the independence and availability of these services without adding costs or barriers that impair advisors' abilities to vote for their clients?

Mr. COPLAND. Well, I think the colloquy we had with Representative Steil a minute ago was instructive. I mean, I think they should be registered. I think they should have oversight. I think there should be disclosure. I think there should be disclosure on the institutional investor side if they are utilizing the services, certainly if they are robo-voting the services, if they are just deferring to the proxy advisors. All of these things could help.

Mr. GARBARINO. Thank you. I yield back. Thank you.

Chairman HILL. The gentleman yields back. The gentleman from Wisconsin, Mr. Fitzgerald, you are recognized for 5 minutes.

Mr. FITZGERALD. Thank you, Mr. Chair. I would first like to ask unanimous consent to submit a letter titled, "Proxy Power and Proposal Abuse," to the record.

Chairman HILL. Without objection.

[The information referred to can be found in the appendix on page 155.]

Mr. FITZGERALD. Thank you, gentlemen, for being here, and, Mrs. Ferrell Keel, thank you. Trying not to be redundant, but I wanted to go back to something and say it kind of just in black and white, and that is, ISS and Glass Lewis leverage their control of the proxy advisory market to encourage U.S. companies to purchase their consulting services. That is happening. Creating that appearance and doing so, it may help to avoid the negative voting

recommendations, but, Mr. Mueller, in your experience working with public companies, what risks do you see when proxy advisory firms issue voting recommendations while also selling consulting and advocacy services?

Mr. MUELLER. I will address three really quickly. I mean, first, it encourages the firms to have a lack of transparency so that you have to buy their services to know how they are going to recommend on something. It also encourages kind of a check-the-box approach by the proxy advisory firms because they do maintain an ethical wall, but if both sides of that wall have the same checklist, then that wall does not matter. There is still a conflict of interest and then, of course, shareholders and companies are the ones that are suffering from the votes. The customers of ISS, as we have heard, may not have the economic incentive to exercise a lot of scrutiny on those voting recommendations, but they are not the ones that are hurt. It is the shareholders at large and the companies that suffer from the voting recommendations.

Mr. FITZGERALD. So, in your estimation, is there any way for this to be kind of shifted or changed in a way that would eliminate the conflict, or is the only way to really get rid of this the way we are addressing this with legislation, which is to simply sever the ability to do that, to get rid of the conflict?

Mr. MUELLER. There should certainly be regulations because right now, the SEC has its arms tied behind its back on this, and yes, they should certainly evaluate. I mean, certainly, for example, audit firms are not allowed to both audit a client and give certain consulting services to those clients. It is just an irreconcilable conflict and is prohibited, and that may be the solution here.

Mr. FITZGERALD. Mr. Copland, turning to you. Based on your research and analysis of the shareholder proposal process, can you discuss how recurring or the duplicative proposals affect the efficiency and the clarity of the proxy materials that people are receiving very often and in a way that sometimes is nonchalant? It is simply mailed to them, and they are overwhelmed.

Mr. COPLAND. Yes, it can be hard to figure out. I mean, if you have got two proposals on similar subject matter, are you going to really tease those apart well and then what if shareholders vote “yes” on one and “no” on another and it is sort of ambiguous, or there are conflicts, a recurring issue, because the resubmission thresholds have traditionally been so low, proponents can get these on the ballot year after year after year after year. The proxy advisors take the odd position that if it fails year after year after year after year, and then 1 year it gets a majority, they have got to act on that or we may vote against your directors, even though it could potentially flip back the next year. So, it is kind of a mess. I did not put much in this testimony about it, but I put a lot more in my 2016 testimony and in common letters to the SEC in 2020 and 2022 on this issue, and they are all referenced in my written testimony.

Mr. FITZGERALD. Yes. So, you currently believe the thresholds for resubmitting the failed proposals, which is kind of a whole other area. You did not get the outcome you wanted, so you simply bring it back again, maybe with different verbiage, right?

Mr. COPLAND. Could be different. Could be the same verbiage. If it hits above those relatively modest thresholds, they can keep doing it year after year. So, if you get a proxy advisory firm that likes it, it is going to stay on the ballot in perpetuity, effectively, even if the vast majority of shareholders vote against it year after year.

Mr. FITZGERALD. Thank you, Chairman. I yield back.

Chairman HILL. The gentleman yields back. The gentleman from Nebraska, the chair of our Housing and Insurance Subcommittee, Mr. Flood, you are recognized for 5 minutes.

Mr. FLOOD. Thank you, Mr. Chairman. As we have talked about today, we have an increasingly alarming problem as it relates to shareholder proposals in this country. Sixty-two percent: that is the number I want you to remember. In 2024, environmental and social proposals made up 62 percent of total shareholder proposals, according to a report from ISS corporate. Think about that: more than 60 percent of shareholder proposals last year were related to environmental and social topics. That is a really staggering total, and it is one that should alarm everybody on this committee. We have activists treating public companies as their own personal forum for social and environmental change, and, quite frankly, it is a waste of time, and it is a waste of money, and it is ultimately sucking productivity out of our economy and into organizations that seek to perpetuate endless social and cultural war in corporate America.

Something that I do not think proponents of progressive social and environmental shareholder proposals fully understand is that with the door open to political shareholder proposals, we are now seeing politically motivated shareholder proposals coming from, now, both directions. According to a Financial Times article from last week, U.S. shareholders did not pass a single environmental shareholder proposal in 2025. On the other hand, anti-ESG proposals are increasing in frequency. According to a recent study, anti-ESG proposals increased—get this—67 percent from 2023 to 2024 in the 500 largest U.S. public companies by revenue. So, if we do not act, I fear we are seeing the beginning of what is likely to become a pattern. In years when the cultural momentum is moving to the left, we have a surge of environmental and social proposals, and in years when we have a cultural movement to the right, we are going to see more anti-ESG shareholder proposals. The end result is that we never actually address the underlying issue of activist shareholder proposals. Instead, these investors will use our public companies as a political football, and we will see them whipsaw from one set of cultural objectives to another.

Mrs. Keel, in your testimony, you highlighted one example of a shareholder proposal that would have asked a store that sells hammers and nails to make a public statement on abortion. Let us use that particular proposal as an example. What kinds of costs would the company incur on a single proposal like that in terms of money, employee time, and legal fees?

Mrs. KEEL. Sure. So, when you think about how a company would analyze that coming in, they would have to think about their internal policies, procedures, how they are currently addressing these issues of healthcare with their own employees, what sort of

information would they have to disclose with what this report is requesting of them. I think the bigger point maybe is the intangible kind of cost, right, of taking a stance on something that is so polarizing and personal. They are being asked to come out and take a stance on something that employees, customers, suppliers, everyone is going to have a different view, and it really has nothing to do with the business and so query why they are having to address it in their proxy statement.

Mr. FLOOD. I appreciate that. Think about a steel worker in my hometown. Believe it or not, we make steel in the middle of the prairie in Norfolk, Nebraska. Their retirement is underpinned by mutual funds and investments in public companies. They go to work every day, and they watch that balance, and they want to know that if America is booming, so are they, but instead, some activist shareholder get in there and start messing with that steelworkers' future and their balance, and I think you make a very good point there.

I think it is important to highlight these are frivolous proposals that are not victimless, and they are not costless. These activists are using our capital markets to play these games. I would like to speak briefly on the proxy advisor firms and their extreme power in this story. In an article recently published by the Financial Times, I was struck by a quote about the proxy advisor firm, ISS. Marc Lindsay of Jasper Street, which is a firm that advises public companies for shareholder proposals, said the following. We asked why zero environmental shareholder proposals passed this year. He said, "Every environmental proposal that has passed had ISS as a supporter, and this year, no proposals have ISS as a supporter." Mr. Copland, can you speak to the weight of an ISS recommendation in the result of shareholder proposals?

Mr. COPLAND. Studies vary on it. We did one in 2012, and what we found using the data set we were looking at was that an ISS recommendation was about a 15-percentage point bump in favor of a shareholder proposal. I have seen higher estimates. I have seen lower estimates. It probably depends a lot on company size in terms of how much delegation to ISS there would be on the part of the institutional investors.

Mr. FLOOD. I appreciate that, and with that, I yield back.

Chairman HILL. The gentleman yields back. The gentleman from Indiana, Mr. Stutzman, you are recognized for 5 minutes.

Mr. STUTZMAN. Thank you, Mr. Chairman. The shareholder proposal process we are discussing today was originally designed to give investors a voice in the companies they are shareholders of, but today, the process has been hijacked. A small group of activists will buy just enough shares to qualify under the law, then flood companies with radical social and political proposals that have nothing to do with profits, jobs, or innovation. Instead, they force businesses into costly and divisive debates on things like climate change, DEI, abortion, and gender ideology, and it is not just companies on Wall Street in the crosshairs. It is businesses across the country, including those in Indiana, that are targets as well.

Cummins, headquartered in Columbus, Indiana, was the target of a resolution demanding that it tie its executive pay to unrealistic climate targets that would destroy its business. Eli Lilly, another

Indiana-based company, activists demanded that it divert critical resources toward a report on DEI hiring quotas instead of focusing on its core mission of developing lifesaving medications. These activists are not hiding the ball either. Groups like As You Sow flaunt their proposals on their website, and I encourage those watching at home to look for themselves and see how extreme these proposals truly are. Here is one for Amazon in which activists successfully pressured the company into hiring an expensive law firm to conduct a full-fledged racial equality audit. In fact, over 30 American companies, ranging from Uber to Chipotle, have been pressured into similar audits. Here is another for Coca-Cola that demanded they study how to increase abortion access for their employees. Here is a similar proposal for McDonald's that asked the company to explore gender-affirming care for employees' children. Since the barriers to entry are so low, all it takes is a few thousand dollars for these activists to propose these radical ideas and have them included for a vote.

Thank you all for being here today. Mrs. Keel, I know you spend a lot of time working with companies that receive these types of proposals. How difficult is it for companies to combat these proposals, and what are the costs for those that choose to do so?

Mrs. KEEL. Sure. So, there are a few different ways you can go about it, and I think one important word to focus on is "combat," right? It would be ideal, right, if we were not thinking of it in that direction and, instead, we were able to think of it as, we are deciding what is material to our investors and what we are going to put on our proxy statement. Are we exercising a legal right by going to court and trying to understand the application of these rules? I would not consider those combative. I would explain those as exercising one's legal rights. Yes, it is inordinately expensive, both in terms of legal fees, but then also in terms of making the headlines, right? Navigating the discussions with your shareholders and customers and suppliers, that is very taxing on companies.

Mr. STUTZMAN. Are you seeing a lot of activity in relation to this sort of action, and investors that are pushing companies, has this calmed down a little bit, or are we still seeing quite a bit of activity?

Mrs. KEEL. It is heightened more than ever, and I think we see that because we see both left and right activists, right? To Mr. Copland's point, we will see that on the same proxy statement, a pro-DEI proposal and an anti-DEI one, and a company can be a bit stuck in the middle, if you will, on how to address that.

Mr. STUTZMAN. Yes. Mr. Copland, I have got a question for you. Something we have heard about today is the need for more transparency from proxy advisory firms, and there is little doubt about the influence these firms have over the outcomes of proxy voting and their lack of transparency, and it is certainly cause for concern. Just two proxy advisory firms, ISS and Glass Lewis, control 90 percent of the market, yet lack any sort of meaningful oversight. As a result, we have little information about the independence of their recommendations or potential bias. Do these proxy firms tend to favor certain types of proposals and also specifically, do they give more support to left-leaning ESG and DEI proposals than do proposals that might reflect conservative concerns?

Mr. COPLAND. Historically, yes, right? I mean, as has been mentioned, there was sort of a pullback this year from ISS on some of its recommendations, but historically, we have seen upwards of 70 percent, upwards of 50 percent, upwards of 30 percent of various sort of left-leaning ENS-inflected proposals and essentially never support for more free market or conservative proposals on the other side.

Mr. STUTZMAN. Very good. Thank you, Mr. Chairman, for having this hearing today. I have seen this up close and personal in some of the companies in my private activity before, and it can cause real problems. So, thank you for bringing awareness to this, and I appreciate the witnesses' testimony as well. I yield back.

Chairman HILL. Thank you. The gentleman yields back. The gentleman from New York, Mr. Lawler, you are recognized for 5 minutes.

Mr. LAWLER. Thank you, Mr. Chairman. Mr. Lander, the New York State comptroller, Tom DiNapoli, just put out a report that \$1.2 billion in taxpayer money was spent paying for healthcare premiums for Medicaid recipients who no longer live in New York State. Have you seen that report?

Mr. LANDER. I have not reviewed that report.

Mr. LAWLER. Are you going to review that report?

Mr. LANDER. I am absolutely going to review that report, and I assume you are representing it accurately, doing anything like that.

Mr. LAWLER. This is Tom DiNapoli's own report.

Mr. LANDER. I believe you. I just have not had the chance to—

Mr. LAWLER. Okay. So, you will be evaluating the impact on New York City?

Mr. LANDER. Absolutely.

Mr. LAWLER. Okay. Do you support the use of taxpayer money that has been used over the last few years in New York to provide healthcare for illegal immigrants?

Mr. LANDER. I mean, the short answer is yes. Where folks are undocumented, but they are working in New York City, it is so much better for them to have access to primary healthcare than it is for them to wind up in emergency rooms in ways that bear much greater cost.

Mr. LAWLER. So, you just distinguished if they are working. If they are not working, do you support the use of taxpayer money to provide free healthcare for illegal immigrants that are not working?

Mr. LANDER. I mean, the primary care approach is what we generally try to use through our federally qualified health centers. If someone is brought to an emergency room, do I think that their life should be saved rather than worrying about their immigration status—

Mr. LAWLER. That is the law.

Mr. LANDER [continuing]. or how they can pay for their healthcare?

Mr. LAWLER. That is the law.

Mr. LANDER. I do think so, yes.

Mr. LAWLER. That is the law, and hospitals do provide that care, but specifically in New York, billions of dollars of taxpayer money

have been used to provide free housing, clothing, food, education, and healthcare to illegal immigrants, regardless of whether or not they are working or not. We have seen, obviously, in New York City in particular, the city of which you are the comptroller, billions of dollars of taxpayer money being used. Do you support the use of those funds to provide free healthcare to illegal immigrants? That is what I am asking. It is “yes” or “no.”

Mr. LANDER. I answered yes. Billions of dollars are being generated by folks who are undocumented in taxes and revenue for New York City and New York State as well.

Mr. LAWLER. There is no question that immigrants contribute greatly to our economy. The issue here has been, as you well know, in New York, okay, hundreds of thousands of migrants coming into the city. The city has crippled under the weight of that cost, okay? Those are the words of the mayor. Those are the words of elected officials—

Mr. LANDER. I have financial oversight. I can tell you that each year we—

Mr. LAWLER. Those are the words of the elected officials in New York City, that New York City voters duly elected. Now, you called yourself in 2016 a Brooklyn Jewish Democratic Socialist, and so my question to you is—

Mr. LANDER. I am pilloried in that article, just to be clear.

Mr. LAWLER. My question to you is, what is your relationship with the Working Families Party of New York and the Democratic Socialists of America of New York City chapter?

Mr. LANDER. Of the Working Families Party, I am a member and a donor. Of the Democratic Socialists of America, I am not a member or a donor.

Mr. LAWLER. Do you support the Democratic Socialists of America (DSA) of New York City?

Mr. LANDER. I am not a member or a donor to the DSA of New York City.

Mr. LAWLER. There is a lot of overlap between the DSA of New York City and the World Food Programme (WFP) of New York. Do you support the work of the DSA of New York City?

Mr. LANDER. There are things they have proposed that I have supported, like raising the minimum wage, and there are things they have proposed that I do not support, like BDS.

Mr. LAWLER. Okay. So, with respect to BDS, and I am glad you brought that up, the DSA of New York City just adopted a resolution as part of this national convention. They want to expel members who do not comply with their extremist views and, specifically, anyone who supports Israel’s right to defend themselves. Do you oppose that position in their platform?

Mr. LANDER. Yes.

Mr. LAWLER. Okay. Zohran Mamdani, who you support for mayor, is fully endorsed and embraced by the DSA of New York City, and, in fact, just the other day said that Israeli bond investments violate New York City values. Do you agree with your endorsed candidate for mayor that Israeli bond investments violate New York City values?

Mr. LANDER. So, I am the fiduciary for New York City’s investments, and I make those decisions based on that fiduciary obliga-

tion. First, I will broadly say, I do not support BDS, as I said. New York City's pension funds, under my watch, have over \$300 million invested in Israeli companies. We do not have Israeli bonds because we do not broadly have foreign bonds in other countries, in Canada or England or France.

Mr. LAWLER. Do you think Israeli bond investments violate New York City values? Do you agree with Zohran Mamdani?

Mr. LANDER. My job as comptroller is not to assess alignment of value.

Mr. LAWLER. It is a pretty straightforward question that you as comptroller should be able to answer—

Mr. LANDER. No, no, I have a fiduciary duty to figure out best risk adjusters.

Chairman HILL. The gentleman's time has expired.

Mr. LAWLER. So, you slightly support it?

Chairman HILL. The gentleman's time has expired.

Mr. LANDER. I did not think that the Israeli bonds that were held in the—

Chairman HILL. Mr. Lander, the time has expired. I am sorry. You can continue this in writing at the request of Congressman Lawler or after the meeting in the hallway.

Chairman HILL. We now recognize the gentleman from Montana. Mr. Downing, you are recognized for 5 minutes.

Mr. DOWNING. Thank you, Mr. Chair, and thank you to the witnesses here. As a former commissioner of securities, I had certain interactions with the former administration of the SEC, Gary Gensler. When he would bring things down, such as rule promulgation, non-mandatory climate disclosures, and some other things, I would reach out to him and say, my job as the commissioner of securities is to protect investors, your job is to protect investors. Let us both stay in our lanes here, and that was a common refrain there.

Another short story is, I was also the commissioner of insurance, and I had a meeting with a reinsurance group, I will not name here, talking about the risk that they were pulling out of oil and gas. They were pulling out of, they said, animal rights issues and some other things, and that kind of raised my interest, and I said, hey, I come from a State where we have more cows than people, and we plan on eating them. Is that going to be a problem, and their response was, we are not sure. So fast forward a little bit, I had under the condition of confidentiality, a reinsurance group came up to me telling me about their shareholders, their proxy votes. They said we are being pressured to take these positions on ESG issues that we do not believe are in the interest of our business, and that really caught my attention.

So, all of this stuff that I am dealing with as a commissioner of securities and insurance is coming from something that has another goal, and my theory there was that folks that did not like certain industries, that did not like oil and gas, did not like agriculture, whatever it is they did not like, could not shut it down from the front door, so they were trying to come from the back door and make sure you did not have access to capital markets and make sure you did not have access to insurance. I am going to start here on proxy advisors. Thank you for bearing with me on that.

Today, we have a duopoly with ISS and Glass Lewis, making up 97 percent of the proxy advisory market, and often it seems like these firms care more about pushing a social and environmental agenda on public companies than doing what is best for their shareholders. In fact, proxy advisor firms have no legal obligation to act in the best interest of their shareholders despite having enormous sway. I am going to start with Mr. Copland. How does this lack of a fiduciary duty for proxy advisory firms impact the quality and the objectivity of their recommendations?

Mr. COPLAND. Well, I mean, it has to. There is really no check on them. They can say, to some degree, whatever they want. I mean, there are going to be anti-fraud repercussions they could face, et cetera, but it is not a clear fiduciary situation, right? I mean, they are contracted with other fiduciaries.

Mr. DOWNING. Right.

Mr. COPLAND. So, it is tricky, but it certainly affects the quality.

Mr. DOWNING. Yes, it really is a shame that the previous administration focused on the needs of activists rather than the needs of everyday investors. The SEC, under the previous leadership, essentially encouraged activists to force companies to consider and adopt policy changes that Joe Biden and the Democrats could not get through Congress. Thankfully, SEC chair, Paul Atkins, has already rescinded some of these decisions that permitted the worst abuses of the shareholder proposal process.

I am going to move on to Mrs. Keel. In June, the D.C. District Court upheld the SEC's 2020 amendments to Rule 14a-8, which set eligibility requirements for submitting shareholder proposals and proxy statements. The Court found that the SEC acted appropriately in updating the rules to increase ownership thresholds and support levels required for proposal resubmission. Do you think the SEC should consider raising the current submission and resubmission thresholds further?

Mrs. KEEL. I definitely do. From an ownership standpoint, I think it is important in a lot of areas of securities we really try to align the people with influence with an economic interest and skin in the game, so we do that for directors. We do that for the kind of real activists, not the activists that we are talking about today, we do that for employees and executive officers, but here, we do not really have any economic alignment there to kind of safeguard against somebody exploiting it with their own interests. On the resubmission thresholds, definitely I think that when we ignore the majority of a shareholders' vote on something, it is really ignoring their voice, and so if we are talking about shareholder democracy, we really should respect what they have to say.

Mr. DOWNING. All right. Thank you. Shifting gears a little bit, there are obviously costs in terms of time, resources, legal fees, and responding to engaging with shareholder proposals. Do you have any thoughts on whether these costs increased during the Biden Administration and roughly by how much?

Mrs. KEEL. I do not have a dollar amount, but I would say that the cost is indirect really because it has been the pressure on the companies to adopt these disclosure standards. One statistic I found is that it would take about half a million dollars to do a kind of sustainability report this year.

Chairman HILL. The gentleman's time has expired.

Mr. DOWNING. Thank you, Mr. Chair. I yield back.

Chairman HILL. The gentleman yields back. The gentlewoman from South Texas, Ms. De La Cruz, you are recognized for 5 minutes.

Ms. DE LA CRUZ. Thank you, Mr. Chairman, and thank you to all of our witnesses for being here today. As a South Texas Member of Congress, I come from a district where we are hardworking, blue-collar, entrepreneurial, and really business-driven. Most people I know walking into my local grocery store and familiar faces, I can tell you that the money that they earn and that they invest, they want to know that money is growing for their future, for their family's future, and not to promote a political agenda. So, I am grateful for you all to be here today to discuss this important issue because there are some activists that are using this system to advance their agendas rather than maximize shareholder value for our constituents.

That being said, Mrs. Keel, I think that for some people back home, it is hard to understand what the Rule 14a-8 really is and just the basics of it, how it impacts. So, if you were talking to my person in rural Texas, could you give us some basic information about this rule and how it greatly impacts their life in George West, Texas?

Mrs. KEEL. Sure. So, the rule, basically, it came into effect in the 1940s, and the purpose of it was to bring matters of concern to their fellow stockholders, so it is meant to have stockholders have access to management but over the years, what we have seen is that it is not really bringing matters of concern to their fellow stockholders. It is bringing matters that are concerning to them and very narrowly just them. So, right now, we will see lots of shareholder activists from both the left and the right will submit proposals relating to all sorts of issues. Some are governance, some are compensation, and then we have a lot of proposals on what we call the E&S, so the environmental and the social, and those are going to be addressing highly politicized topics that reasonable minds can certainly disagree on. Once they submit those to a company, a company will be obligated to consider that and put it on its proxy statement unless it decides to exclude it, and then there is an entire process for going through that process.

Ms. DE LA CRUZ. So, you mentioned that these are activists from the far right and the far left, that there is an issue here that we need to address, and that issue needs to be rational guardrails to put in place, so this should really not even be a partisan issue. This should be a commonsense issue. What guardrails could you share with my constituents listening today that would be very effective?

Mrs. KEEL. Sure. The simplest one is really a threshold of ownership, right, to ensure that there is some sort of alignment, that somebody is not just buying \$2,000 worth of stock, which is not to say that is not a lot of money, but to be able to influence the policy of a Fortune 500 company for that amount, there is a big gulf there. So, I think that is what would be the most important thing is that they, as shareholders in the pension funds, the 401(k)'s that they have worked so hard with, they want people to be bringing proposals of value to the stockholders, that they can consider inter-

esting ideas, not ideological agendas that are narrowly, sometimes tenuously would be maybe a generous word, connected to a company.

Ms. DE LA CRUZ. So, what I hear is ownership is vital to having a voice and putting your opinion into the agenda and into the future proposals. Is that correct?

Mrs. KEEL. Yes.

Ms. DE LA CRUZ. Thank you. I thought that your written testimony, especially your explanation on the company intake and response process to shareholder proposals, was helpful in showing just how costly and time consuming they can be. Can you please briefly walk us through this response process?

Mrs. KEEL. Sure. When someone gets a proposal, first, they are going to say if they have ever actually already addressed it. In many instances, they will have already considered it, but if not, a company will have to think about how it could impact the company. A lot of potential harms here: legal privilege, disclosing confidential information, disclosing strategies, disclosing sensitive information for employees. Sometimes it will not even be legal, right, so they have to analyze that, and then they have to analyze whether it would harm the business or whether there would be a cost-benefit, having to understand what that connection is and whether it merits the investment.

Ms. DE LA CRUZ. Thank you. I yield back.

Chairman HILL. The gentlewoman yields back. I want to thank our panel for their testimony today, for the great interaction with all of our members on both sides of the aisle.

Without objection, all members will have 5 legislative days to submit additional written questions to the witnesses to the chair. Questions will be forwarded to the witnesses for your response. Witnesses, we invite you to respond no later than October 15, 2025.

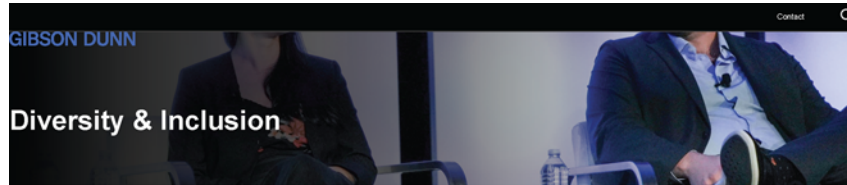
[The information referred to can be found in the appendix.]

Chairman HILL. This hearing is adjourned.

[Whereupon, at 2 p.m., the committee was adjourned.]

APPENDIX

MATERIALS SUBMITTED FOR THE RECORD



Diversity Overview

Gibson Dunn believes that diversity and inclusion are essential to our continued success as one of the leading law firms in the world. For more than two decades, the firm has been focused on building an inclusive culture that enables all to thrive.

Our Vision

We deliver the highest quality legal services by fostering a culturally fluent, inclusive, and open environment that welcomes individuals from diverse backgrounds and perspectives to achieve Gibson Dunn's core values of excellence, fairness, and individuality. The firm is an equal opportunity employer and does not discriminate on the basis of race, color, religion, sex, national origin, age, veterans status, disability, or any other characteristic protected by applicable law.

Inclusion and Belonging

Gibson Dunn engages with its attorneys, staff, clients, and recruits through a range of programs designed to celebrate culture and heritage, foster a sense of inclusion and belonging and support recruiting and career development efforts, all while cultivating connection and community within and beyond the firm.

+ Culture and Heritage

Each year, Gibson Dunn hosts hundreds of firmwide and local all-personnel programs celebrating heritage months and other cultural holidays and observances. Recent highlights include:

- A Conversation with Don Liu (Executive Vice President and Chief Legal & Risk Officer at Target);
- A Conversation with Actor and Writer Simu Liu in celebration of AAPI Heritage Month;
- Pride Month Celebration: A Conversation with Gibson Dunn Partner Stuart Delany;
- LA Area Black History Month Celebration featuring Gibson Dunn Partner Marcellus McRae;
- Juneteenth Celebration: A Conversation with Deon Jones (Artist, Activist and Truman Scholar);
- Ramadan Commemoration: Ifar Dinner and Panel with Amin Kassam (Deputy General Counsel, Bloomberg);
- Holocaust Remembrance Day: A Conversation with Holocaust Survivor Fred Schoenfeld;
- Hispanic Heritage Month Celebration: A Conversation with Dr. G. Cristina Mora (Author, Making Hispanics); and
- Women's History Month Celebration with Carla Hayden (Librarian of Congress)

+ Recruiting and Career Development

We believe that cultivating diversity in all forms and providing an environment inclusive of all viewpoints, experiences and competencies is integral to maintaining our history of excellence. To that end, we undertake extensive efforts to reach out to law students from a diverse array of backgrounds, perspectives, and experiences. Gibson Dunn understands that attorneys and aspiring attorneys who join the firm will need many tools to thrive in their practice. To that end, the diversity and professional development teams offer a range of supportive resources to all of our lawyers, including coaching and panels related to demystifying the path to partnership, maximizing the year-end review process and navigating law firms as first-generation professionals. We also facilitate discussions featuring Gibson Dunn alumni practicing in other contexts.

+ Flexibility and Work-Life Integration

Gibson Dunn attorneys are encouraged to take advantage of the firm's best-in-industry work-life integration policies, all while remaining on partner track; indeed, we routinely promote lawyers on reduced hours schedules to the partnership. The firm offers generous parental leaves, reason-blind leaves, flex-time arrangements, and other supportive mechanisms, including a transition

period policy that enables caregivers returning from extended leaves the ability to temporarily practice on a reduced schedule while receiving full pay.

In addition, Gibson Dunn offers fertility and surrogacy benefits for partners, of counsel, and associates, providing up to \$60,000 in coverage for eligible participants. We also support our working parents through the Gibson Dunn Families program, which provides individual coaching to expecting and new parents to help with off-ramping, on-ramping, and adjusting to having a new baby, and through local parenting affinity groups.

Affinity Groups

Every year, we host hundreds of diversity and inclusion programs; in 2024, we hosted more than 350 events across the firm. In addition, Gibson Dunn is proud to support over 15 active firmwide affinity groups, which host programming and activities designed to facilitate a sense of community for our attorneys. Below is a list of our affinity groups:

- Asian American Affinity Group
- Black Affinity Group
- Christian Bible Study Groups
- Disability Affinity Group
- First Generation Professionals Affinity Group
- Hispanic/Latino Affinity Group
- Jewish Affinity Group
- LGBTQ+ Affinity Group
- LGBTQ+ Women's/Non-Binary Affinity Group
- Middle Eastern and North African (MENA) Affinity Group
- Muslim Affinity Group
- Parenting Affinity Group
- Real Estate Attorneys of Color
- Sabbath-Observant Affinity Group
- South Asian Affinity Group
- Veterans @ Gibson Dunn
- Women's Affinity Group
- Women of Color Affinity Group

We also have local affinity groups in each of our U.S. offices and many of our international offices, including our Europe-Middle East-Asia (EMEA) Women's Initiative. Gibson Dunn's affinity groups and their events are open to all lawyers, regardless of background.



[SEARCH](#)
[LAWYERS](#)
[PRACTICES](#)
[INSIGHTS](#)
[LOCATIONS](#)
[VALUES](#)

[FIRM](#)
[NEWS](#)
[INCLUSION](#)
[PRO BONO](#)
[CAREERS](#)
[PRINT](#)
[LANGUAGES](#)



INCLUSION

HOME > FIRM > INCLUSION

SHARE [in](#) [en](#) [es](#)

THE COMMITMENT

FIRMWIDE COMMITTEE

OPPORTUNITY

AFFINITY GROUPS

1L PERSPECTIVES & PATHWAYS CONFERENCE

OPPORTUNITIES

DIVERSITY FIRSTS

At Jones Day, you will see lawyers from diverse backgrounds leading client engagements, practice groups, and offices around the world. This reality reflects not only a long-standing Firm commitment to providing equal employment opportunities but, more profoundly, a recognition that a broad, diverse group of lawyers is important to our Firm culture and meets the needs of our clients in a diverse world. We share this commitment with our clients and undertake this responsibility with them.

We pursue hiring, retaining, and developing lawyers from historically underrepresented groups and backgrounds. This approach is not box-checking or something that we do in addition to our normal work. It is integral to all of it, from recruiting and hiring to staffing, mentoring, and advancing each lawyer. By mentoring and promoting women, people of all races and backgrounds, members of the LGBTQ+ community, and people with disabilities, we tap the unique strengths and experiences of very talented lawyers. In all circumstances, we make employment decisions based on the merits. We do not provide preferences based on race, gender or any other protected category. For more insights into Inclusion at Jones Day, listen to our "Perspectives and Pathways" podcast available below.

Our tools to support an inclusive and diverse environment are both general and specific, including Firmwide committees to implement our efforts in each office and practice, affinity groups, training and support for pipeline programs, and a Conference for first-year law students.

[Learn more about our commitment to diversity.](#) (PDF)

JONES DAY TALKS®: Exploring Law Firm Opportunities As A First Generation Law Student



Watch on [YouTube](#)

"First Gen" law students and lawyers often face challenges different than those encountered by their peers. In this edition of Perspectives and Pathways, Jones Day partner Rasha Shields and associate Eli Jones talk about their backgrounds, discuss making the move from law school to life as a lawyer, and share tips for students and new lawyers coming from similar circumstances.

CONTACTS



YVETTE MCGEE BROWN
Partner-in-Charge of Inclusion & Advancement
Columbus | +1.614.281.3867
ymcgeebrown@jonesday.com
Practice: Business & Tort Litigation

Why Jones Day?

One Firm Worldwide

- > Singular Tradition of Client Service and Engagement with the Client
- > Mutual Commitment of, and Seamless Collaboration by, a True Partnership
- > Formidable Legal Talent Across Specialties and Jurisdictions
- > Shared Professional Values Focused on Addressing Client Needs

ONE FIRM WORLDWIDE

**JONES DAY TALKS®: Perspectives And Pathways:
Choosing A Firm That's Right For You**

Jones Day partners Miguel Eaton and Jenny Plagman and associate Stephen Scott discuss what candidates should think about when selecting firms for on-campus interviews, interview preparation, and what they need to ultimately consider in choosing a law firm.

Substantive Work Early On



Jones Day Partner Caitlin Cahow explains why access to meaningful client engagement and substantive work projects is important to the development of a young lawyer.

Invest In Your Career



Partner Mahesh Parlikad talks to law students about thinking long-term and becoming the best lawyer you can be.

FEATURED NEWS

SEPTEMBER 2024 | AWARDS & RANKINGS

Jones Day's Richard H. Deane, Jr., installed as President of the American College of Trial Lawyers; Jeff Schenk inducted as a Fellow



SEPTEMBER 2025 | FIRM NEWS

Jones Day welcomes back Veronica Dragalin, former Chief Prosecutor of the Anti-Corruption Prosecution Office in Republic of Moldova

AUGUST 27, 2025
| FIRM NEWS

Real estate lawyer Jeffrey Ruskin joins Jones Day as partner in New York

AUGUST 08, 2025
| AWARDS & RANKINGS

Jones Day partner Cristina Pérez Soto named to Global Investigations Review's 2025 "Women in Investigations"

AUGUST 03, 2025
| FIRM NEWS

Labor & Employment partner James Hall joins Jones Day in Brisbane

JULY 29, 2025 | FIRM NEWS

Government pricing and reimbursement lawyer Stephen Forster joins Jones Day as partner in Washington

VIEW ALL

ATTORNEY ADVERTISING CONTACT US DISCLAIMERS PRIVACY COPYRIGHT



© 2025 Jones Day



[Newsroom \(https://comptroller.nyc.gov/newsroom/\)](https://comptroller.nyc.gov/newsroom/) / [Press Releases & Statements \(https://comptroller.nyc.gov/newsroom/press-releases/\)](https://comptroller.nyc.gov/newsroom/press-releases/) / New York City Comptroller Brad Lander, Pu...

New York City Comptroller Brad Lander, Public Advocate Williams, Rev. Al Sharpton, Pension Fund and Investment Leaders Celebrate “Emerging Managers Week” and Commit to Staying the Course on Diversity, Equity, and Inclusion Despite Federal Attacks and Misinformation

February 12, 2025

Pension funds investing with diverse asset managers lead to robust returns that deliver for members and beneficiaries

New York, NY – New York City Comptroller Brad Lander, Public Advocate Jumaane Williams, Reverend Al Sharpton, and investment leaders gathered today to celebrate the first coordinated, multi-state “Emerging Managers Week” (<https://comptroller.nyc.gov/newsroom/nyc-comptroller-brad-lander-nys-comptroller-thomas-dinapoli-and-leading-national-public-pension-plans-announce-inaugural-emerging-managers-week-to-foster-new-opportunities-for-diverse-and-emerging-a/>) dedicated to helping pension funds invest with emerging asset managers, many of whom are MWBE-owned, consistent with their fiduciary duty.

The inaugural week offers emerging and MWBE-owned asset management firms the opportunity to attend conferences and events with investment staff of 12 public pension funds, from 6 states, with over \$1 trillion in assets under management (participating funds in Emerging Managers Week are listed below).

The pension funds are seeking to engage with asset managers who can significantly contribute strong, risk-adjusted returns consistent with the fiduciary duty and investment objectives of pension funds.

“New York City’s pension funds are best positioned to deliver for every member and beneficiary when they have the opportunity to work with **all** high-performing investment managers. Expanding the pool of asset managers who are responsible for investing the assets of our pension funds is an essential part of our investing strategy and integral to delivering robust long-term returns for current and retired municipal employees. The repeated attacks from Donald Trump’s administration have sown unnecessary fear throughout the public and private sector. As fiduciaries, we focus on numbers, not rhetoric. We are standing tall, backed by data and common sense, and we encourage others to follow suit,” said **New York City Comptroller Lander**.

During the press conference today, Comptroller Lander, joined by Public Advocate Jumaane Williams, Rev. Sharpton, Robert L. Greene, President and CEO of the National Association of Investment Companies, Grace Reyes, President and CEO of The Investment Diversity Exchange (TIDE), and Daniel Bruijs, Managing Director at Reverence Capital Partners, announced their commitment to continue advancing and promoting DEI, despite attacks and misinformation stemming from the Trump Administration, including the [recent memo \(https://www.justice.gov/ag/media/1388501/dl?inline\)](https://www.justice.gov/ag/media/1388501/dl?inline) directing the use of Department of Justice’s (DOJ) resources to criminally investigate companies’ DEIA initiatives.

Lander emphasized that investing with diverse managers has led to robust returns that deliver for members and beneficiaries of public pension funds. Diversity, equity and inclusion are crucial elements of a sound asset management strategy and bring measurable investment value. Investment teams that are diverse in race, gender and professional background offer a broad range of perspectives and lead to stronger decision making and risk management. Research has repeatedly shown that diverse investment teams that have tapped into a wider pool of qualified talent outperform their non-diverse peers.

For the New York City pension funds, MWBE-owned investment managers are among the best performers throughout their portfolios. In a [recently released report \(https://comptroller.nyc.gov/newsroom/new-york-city-pension-investments-with-mwbe-asset-managers-reach-record-of-23-1-billion-for-fiscal-year-2024-grew-nearly-40-during-comptroller-landers-tenure/\)](https://comptroller.nyc.gov/newsroom/new-york-city-pension-investments-with-mwbe-asset-managers-reach-record-of-23-1-billion-for-fiscal-year-2024-grew-nearly-40-during-comptroller-landers-tenure/), fiscal year 2024 data showed that for private markets MWBE firms in the New York City pension funds’ portfolio have outperformed their respective benchmarks with an average public markets equivalent (PME) spread of 5% for the past decade, contributing to the funds’ strong overall performance. Over the past two years, assets under management with MWBE managers have increased over 36%, from \$17 billion to \$23 billion. In FY24, the City’s five pension funds achieved a combined net return of 10.0%, saving over \$1.8 billion for New York City taxpayers.

Other pension funds across the country, including the New York State Common Retirement Fund and the Connecticut Retirement Plans and Trust Funds, have also seen strong returns while continuing their work to promote investing with diverse-owned asset managers.

The [New York State Common Retirement Fund’s Emerging Manager Program \(https://www.osc.ny.gov/common-retirement-fund/emerging-manager\)](https://www.osc.ny.gov/common-retirement-fund/emerging-manager) is a leader in building relationships with

new, diverse, and growing investment firms with approximately \$10.9 billion invested with or committed to emerging managers and \$36.8 billion invested with or committed to Minority- and Women-owned Business Enterprises (MWBE), representing nearly 24% of its investments with outside managers. These investments helped spur the Fund's 11.56% overall return on investments in its most recent fiscal year ending March 31, 2024.

Connecticut State Treasurer Erick Russell, who presented at the Emerging Managers Conference and Reception on Tuesday, said emerging and diverse asset management firms remain crucial to the long-term investment strategy for Connecticut Retirement Plans and Trust Funds (CRPTF). Of the funds' \$60 billion in total assets under management, 27% (\$16 billion) are managed by minority and women-owned enterprises, and the strong performance of MWBE managed assets has played a critical role in the state's improved investment performance. In the last fiscal year, the CRPTF generated a net 11.5% return, exceeding the performance of most funds in its peer group.

"DEI exists because there has historically been a lack of focus on and fairness in diversity. Comptroller Lander, with the support of Taffi Ayodele, had the courage to take a stand, which paid off by expanding opportunities for Minority- and Women-owned Business Enterprise asset managers to deliver in a way that's benefiting everybody. We cannot be intimidated into backing off from DEI when it has consistently proven to drive better returns and stronger business," said **Reverend Al Sharpton**.

"Diverse managers have helped increase, not decrease, the funded status of pension plans and have consistently demonstrated outperformance. DEI has been integral to broadening the aperture to get more talented people into the system, so when we discuss DEI, we must realize that we are talking about people that have assembled extraordinarily talented teams of people, produced a track record that merits the opportunity that they are given and developed investment strategies that have produced extraordinary returns," said **Robert L. Greene, President and CEO of the National Association of Investment Companies**.

"The time is now to triple down on inclusion—widening the aperture for talent strengthens teams and drives progress," said **Grace Reyes, President and CEO of The Investment Diversity Exchange**.

"Emerging and diverse asset managers have contributed to the success of Connecticut's pension funds in recent years, and they will play an even bigger role in our strategy going forward," said **Connecticut State Treasurer Russell**. "In fact, we expanded the Connecticut Inclusive Investment Initiative (CI3) in January to offer even more opportunities to firms that can help us reach our long-term investment goals. Each diverse and emerging manager brings their unique background and strategy to our portfolio, but all share one common goal: reliable, risk-adjusted returns for Connecticut's retired teachers and state workers."

"New York's strength will always be its diversity. As the global capital of finance, we have the advantage of attracting talent from every community and background. The New York Common Retirement Fund is a national leader in partnering with emerging investment managers and tapping into the next generation of top performing talent. We remain committed to pursuing the best from the widest, deepest and most diverse pool of candidates to maximize our investment returns," said **New York State Comptroller Thomas P. DiNapoli**.

"At a time when some government officials and businesses around the country have scaled back their commitment to racial equity, diversity, and inclusivity," said **Linda Tigani, Chair and Executive Director of the NYC Commission on Racial Equity (CORE)**, "CORE proudly retains its mandate to advance community-voiced equity priorities, including closing racial disparities in city contracting—whether in asset management or afterschool programs—and looks forward to working with the city to implement these priorities, as required by the NYC Charter, through its forthcoming Racial Equity Plan."

###

Press Contact

Press

Press@comptroller.nyc.gov,

Shaquana DeVissiere

(646) 761-2751

sdeviss@comptroller.nyc.gov

Share This

[\(Facebook\)](#) [\(Twitter\)](#) [\(LinkedIn\)](#) [\(Email\)](#)

<https://www.addtoany.com/share?url=https%3A%2F%2Fcomptroller.nyc.gov%2Fnewsroom%2Fnew-york-city-court%2F&title=New%20York%20City%20Comptroller%20Brad%20Lander%2C%20Public%20Advocate%20Will%20%20Office%20of%20the%20New%20York%20City%20Comptroller%20Brad%20Lander>

The Office

One Centre Street
New York, NY 10007
(212) 669-3916

Suspect Wasteful Spending?
Call (212) NO-WASTE

Follow Us

<https://bsky.app/profile/nyccomptroller.bsky.social>
<https://www.facebook.com/ComptrollerNYC>
<https://twitter.com/NYCComptroller>
<https://www.instagram.com/NYCComptroller/>
<https://www.youtube.com/c/nyccomptroller>
<https://www.threads.net/@nyccomptroller>
<https://www.flickr.com/photos/nyccomptroller/>
<https://www.linkedin.com/company/nyccomptroller/>

Navigate

[About \(/about/\)](#)
[Services \(/services/\)](#)
[Reports \(/reports/\)](#)
[Newsroom \(/newsroom/\)](#)
[Employment \(/jobs/\)](#)
[Contact Us \(/about/contact-our-office/\)](#)

Join Mailing List

Get the latest news in your inbox.
[Sign Up \(/newsletters\)](#)



[ABOUT](#) [ISSUES](#) [DONATE](#) [PRESS ROOM](#) [FAQ](#) [CONTACT US](#)

[Home](#) » [Fact Sheet](#)

Fact Sheet: Manhattan Institute

The Manhattan Institute for Policy Research is an extremely conservative, corporate-funded, New York-based policy group.

- The Manhattan Institute was founded by former CIA director William J. Casey in 1978. It was originally called the International Center for Economic Policy Studies, renamed the Manhattan Institute in 1980.
- The Manhattan Institute is funded largely by major corporations and conservative foundations. According to the group's 10-year review, published in 1990, "by 1989, total contributions had grown to \$2,113,000, 41 percent of which came from conservative and/or corporate foundations. Thirty-three percent came from Fortune 500 corporations, chiefly insurance companies and pharmaceutical and chemical manufacturers including \$50,000-plus each from Aetna and State Farm Insurance and \$15,000-plus each from Prudential, Exxon, RJR Nabisco, Philip Morris, Bristol-Myers and Pfizer. Total revenue has grown to about \$6 million, according to the 1997 edition of *The Right Guide*. See, Chesebro, "Galileo's Retort: Peter Huber's Junk Scholarship," 42 Am. U.L.Rev. 1637 (1993).
- Some Manhattan Institute research on the civil justice system has been heavily criticized in law journals. In 1993, attorney Kenneth J. Chesebro wrote a lengthy and scathing attack on Manhattan Institute fellow Peter Huber's book, *Galileo's Revenge*. After meticulous research, Chesebro found Huber's book to rely "almost exclusively on anecdotal information and inflated rhetoric, misrepresent[ing] numerous aspects of its subject matter, and present[ing] no considered, objective or empirically-based measure of the extent of the 'junk science' problem." He called *Galileo's Revenge*, "perfectly described with Huber's own words as a 'catalog of every conceivable kind of error: data dredging, wishful thinking, truculent, dogmatism and, now and again, outright fraud'.... Galileo would quickly become exasperated at the unsupported thesis of Huber's book, its numerous material misrepresentations and omission, and its manipulative and evasive method of argument." Chesebro, "Galileo's Retort: Peter Huber's Junk Scholarship," 42 Am. U.L.Rev. 1637 (1993). See also, Hager, "Civil Compensation and its Discontents: A Response to Huber," 42 Stan. L. Rev. 539 (1990).

[Fact Sheet](#)



September 10, 2025

The Honorable French Hill
Chairman
Financial Services Committee
U.S. House of Representatives
Washington, DC 20515

The Honorable Maxine Waters
Ranking Member
Financial Services Committee
U.S. House of Representatives
Washington, DC 20515

Re: September 10th Hearing Entitled “Proxy Power and Proposal Abuse: Reforming Rule 14a-8 to Protect Shareholder Value”

Dear Chairman Hill and Ranking Member Waters:

The American Securities Association (ASA)¹ submits these comments for the scheduled Financial Services Committee hearing to examine current federal proxy rules and abuse of the proxy system by special interests and activists pursuing political agendas. We appreciate the Committee’s ongoing leadership on this important topic.

The Politicization of the U.S. Capital Markets

The September 10th hearing will rightfully examine some of the finer points of certain Securities and Exchange Commission (SEC) rules and how the proxy process can be reformed in a way that protects investors, does not politicize the capital markets, and reduces costs for small businesses who want to enter the public markets.

We urge members not to lose sight of a systemic issue impacting our capital markets more broadly: the increased politicization of American financial markets over the last decade.

Political activists have weaponized SEC shareholder proposal rules to advance their own personal ideological agendas without regard to the cost it imposes on ordinary investors saving for retirement or their child’s education.

Unfortunately, the SEC has encouraged and permitted these activists to use its rules to further their political agenda. As a result, annual proxy seasons have devolved into contentious debates

¹ ASA is a trade association that represents the retail and institutional capital markets interests of regional financial services firms who provide Main Street businesses with access to capital and advise hardworking Americans how to create and preserve wealth. ASA’s mission is to promote trust and confidence among investors, facilitate capital formation, and support efficient and competitively balanced capital markets. This mission advances financial independence, stimulates job creation, and increases prosperity. ASA has a geographically diverse membership base that spans the Heartland, Southwest, Southeast, Atlantic, and Pacific Northwest regions of the United States.



American Securities Association
1455 Pennsylvania Ave. NW, Suite 400
Washington, D.C. 20004



AmericanSecurities.org
@amersecurities



202.621.1784



over cultural and social policies that should be addressed through the democratic process, not by financial regulators at the SEC.

Pendulum swings regarding environmental, social, and governance (ESG) or other hot button cultural issues from administration to administration inflict uncertainty that does not benefit companies or their shareholders. To restore credibility to this process, the SEC must be perceived as an objective regulator focused solely on its statutory mission, and not one that sides with the echo-chamber of demands from a well-funded vocal minority.

A Broken Shareholder Proposal System

Under the previous administration, the SEC exacerbated longstanding problems with the shareholder proposal system by issuing Staff Legal Bulletin 14L (SLB 14L) in November 2021. SLB 14L prohibited companies from excluding a shareholder proposal under Rule 14a-8 if the proposal deals with a topic that has a “broad societal impact.”

The term “broad societal impact” was never actually defined by the SEC, and it granted SEC staff wide latitude in determining whether a proposal would go forward with a vote.² This led to a substantial increase in the number of social and politically-motivated proposals issued at public companies, even if the underlying subject matter of a proposal had absolutely no nexus to an underlying company.³

Thankfully, earlier this year, the SEC rescinded SLB 14L and issued updated guidance that reiterated the SEC’s longstanding position that shareholder proposals must have a direct nexus to a company’s business to be included with the company’s proxy materials.

While this new guidance brings some rationality to the process, it also highlights the fact that the SEC’s views towards Rule 14a-8 can change suddenly and drastically. This makes it difficult for companies and investors to understand or predict how a proxy season will play out. Congress must codify this standard so it can no longer be abused by partisans at the SEC to promote their political agendas.

We are encouraged that the SEC’s most recent regulatory agenda indicates the Commission will undertake a 14a-8 rulemaking sometime in the coming months. We hope this is used as an opportunity to get the SEC out of the business of deciding polarizing political and social questions year after year, imposing enormous costs on shareholders and disincentivizing companies from going or staying public.

² Written Statement of Jonathan Berry, Managing Partner, Boyden, Gray, PLLC; “Reforming the Proxy Process to Safeguard Investor Interests”; Hearing Before Subcommittee on Capital Markets, House Committee on Financial Services; July 13, 2023; available here: <https://docs.house.gov/meetings/BA/BA16/20230713/116207/HHRG-118-BA16-Wstate-BerryJ-20230713.pdf>

³ <https://www.gibsondunum.com/shareholder-proposal-developments-during-the-2022-proxy-season/>



American Securities Association
1455 Pennsylvania Ave. NW, Suite 400
Washington, D.C. 20004



AmericanSecurities.org
@amersecurities



202.621.1784



Proxy Advisory Firms

ASA appreciates that the hearing will also focus on the ongoing influence proxy advisory firms have on corporate governance in the United States. The proxy advisory industry is an oligopoly made up of two firms that control over 90% of the market.⁴

These firms – Institutional Shareholder Services (ISS) and Glass Lewis – recommend to institutional investors how to vote on annual proxies, including on matters such as executive compensation and shareholder proposals. Yet, these foreign enterprises both operate with major conflicts of interest and have a long track record of making errors when constructing voting recommendations. Past SEC actions have helped to entrench proxy advisors in the corporate governance ecosystem, but both firms operate with little regulatory oversight.

Congress should also examine whether foreign-owned proxy advisory firms continue to support ESG and DEI related shareholder proposals, directly and indirectly through their consulting businesses, in violation of state law, federal law, and the Constitution.

ASA supports several bills that the Committee will consider as part of the hearing, including legislation to prohibit the practice of “robovoting” when institutional investors blindly rely on proxy firm recommendations, and a bill that would directly address proxy advisor conflicts of interest by prohibiting these firms from operating a corporate consulting business alongside a proxy voting business.

Conclusion

ASA commends the Committee for holding this important hearing and we will continue to serve as a helpful resource for members on both sides of the aisle.

Sincerely,

Christopher A. Iacovella

Christopher A. Iacovella
President & Chief Executive Officer
American Securities Association

⁴ NAM Calls for Reining in Proxy Advisory Firms, June 26, 2025, available here: <https://nam.org/nam-calls-for-reining-in-proxy-advisory-firms-34301/>



American Securities Association
1455 Pennsylvania Ave. NW, Suite 400
Washington, D.C. 20004



AmericanSecurities.org
@amersecurities



202.621.1784



Charles Crain

*Managing Vice President,
Policy*

September 9, 2025

The Honorable French Hill
Chairman
Committee on Financial Services
U.S. House of Representatives
Washington, DC 20515

The Honorable Maxine Waters
Ranking Member
Committee on Financial Services
U.S. House of Representatives
Washington, DC 20515

Re: Proxy Power and Proposal Abuse: Reforming Rule 14a-8 to Protect Shareholder Value

Dear Chairman Hill and Ranking Member Waters:

The National Association of Manufacturers—the largest manufacturing trade association in the United States, representing small and large manufacturers in every industrial sector and in all 50 states—appreciates the opportunity to provide this statement in advance of the Committee's September 10 hearing on "Proxy Power and Proposal Abuse: Reforming Rule 14a-8 to Protect Shareholder Value."

The NAM is the voice of the manufacturing community and the leading advocate for a policy agenda that supports and empowers the 13 million people who make things in America. As the largest manufacturing association in the United States, the NAM's membership includes businesses of all sizes, across all industrial sectors, and in all 50 states. Manufacturers collectively contribute \$2.94 trillion to the U.S. economy—and right-sized, commonsense regulations are critical to sustaining the manufacturing strength that underpins our nation's prosperity.

I. Manufacturers Have Been Negatively Impacted by the Politicization of the Proxy Process

Manufacturing is a capital-intensive industry. As such, the industry's strength depends in large part on companies' ability to raise the funds necessary for critical investments in equipment, machinery, facilities, and R&D. Many manufacturers turn to the public market to access this capital, which supports job-creating projects and robust partnerships with businesses of all sizes, including small and medium-sized businesses, throughout the manufacturing supply chain.

When manufacturers offer their shares to the public, it allows everyday Americans to participate in the industry's success, largely through passive investments like mutual funds, pension plans, and 401(k) accounts. The fiduciary relationship between publicly traded companies and their shareholders lies at the bedrock of America's world-leading capital markets. Manufacturers' management teams and boards of directors must act in Main Street investors' long-term financial best interests, and those investors have the right to hold company leaders accountable

via the proxy ballot.

While the Securities and Exchange Commission reviews proxy statements as part of its oversight of corporate disclosures, the proxy process itself is governed by state law, with required proxy votes generally limited to significant items like the election of the board of directors or referenda on the sale of substantially all of a corporation's assets. These votes allow a shareholder to exercise appropriate oversight of a company while also ensuring that its board and management can act, consistent with their fiduciary duty, in the financial best interests of the entire shareholder base.

The SEC's Rule 14a-8 outlines economic, procedural, and substantive requirements for investors who wish to have their proposals put to a shareholder vote via a company's proxy statement. Each proxy season, the SEC's Corporation Finance Division staff informally¹ rules on several hundred "no-action" letter requests from companies that ask the staff to concur with their arguments² for excluding a specific proposal.

In recent years, manufacturers have experienced an influx of third parties seeking to divert the proxy ballot from long-term value creation for shareholders and toward a political and social agenda with little if any nexus to a company's business. This parade of activist groups and proxy advisory firms were enabled by a lack of appropriate regulatory oversight from the SEC during the previous administration. Under then-Chairman Gary Gensler, the Commission took proactive steps to support and empower these third-party actors—rescinding much-needed guardrails, limiting companies' ability to exclude activist proposals from the proxy ballot and encouraging environmental, social, and political agendas unrelated to long-term business growth and shareholder returns. Manufacturers have been targeted by activists on both sides of the political aisle, who seek to use the corporate proxy ballot to raise funds and amplify ideological viewpoints that have little connection to a particular company's circumstances or long-term value.

The increasing politicization of the proxy ballot has had a significant impact on manufacturing. For public companies, each shareholder proposal can impose direct costs in excess of \$150,000, to say nothing of the public relations risks associated with being pressured to opine on controversial topics over which they have little control. Those funds would be more efficiently utilized to invest in job-creating projects and groundbreaking R&D, especially as companies receive more proposals each year, driving up the aggregate cost. Every dollar spent on manufacturing investment has a total impact of \$2.60 on the U.S. economy, and every job created in manufacturing leads to 4.4 jobs elsewhere—so the resource diversion associated with publishing and responding to activist proposals can be particularly damaging in our

¹ As the Commission explains on its website, "The determinations reached by the staff in connection with these submissions do not and cannot adjudicate the merits of a company's position with respect to the proposal. Only a court, such as a U.S. District Court, can decide whether a shareholder proposal can be excluded from a company's proxy materials." Division of Corporation Finance: Informal Procedures Regarding Shareholder Proposals, available at [SEC.gov | Division of Corporation Finance: Informal Procedures Regarding Shareholder Proposals](https://www.sec.gov/division/corporation-finance/informal-procedures-regarding-shareholder-proposals).

² Notwithstanding the informal nature of the staff determinations, very few companies that fail to receive no-action relief then opt to go to court, given the limited time (sometimes only a few days) between when the SEC staff makes a decision on a specific no-action request and the company's deadline for printing proxy materials. Because of these timing constraints, these staff rulings play a major role in determining which shareholder proposals appear on proxy ballots.

industry.³ These impacts are particularly acute for smaller businesses, both those directly impacted by activists and those operating within public companies' supply chains.

Given the continuing risk that politicization of the proxy process poses to manufacturers, we applaud the Committee for scheduling this hearing and considering legislative proposals to impose commonsense guardrails on proxy advisors and shareholder proposals.

II. Lawmakers and the SEC Must Act to Rein in the Pervasive Influence of Proxy Firms

Proxy advisory firms play a central role in the proxy process by providing voting research, recommendations, ratings, and other services to institutional investors. Two firms—ISS and Glass Lewis—are estimated to control more than 97% of the U.S. proxy advice market. Yet as this duopoly's influence has increased in recent years, due in large part to the increase in institutional ownership of American stocks, the regulatory guardrails under which proxy firms operate have failed to keep pace. Today, there is no meaningful regulation of these powerful entities and minimal accountability for their conflicts of interest, opaque methodologies, rigid and inflexible policies, propensity for errors and misleading statements, and their unwillingness to engage with publicly traded companies. For example:

- Proxy firms operate with undisclosed and unaddressed conflicts of interest. Of particular concern, ISS operates a consulting business that counsels companies on equity incentive plans and other governance policies on which the advisory side of the firm makes recommendations. Glass Lewis provides consulting on equity plans and offers "stewardship" services to assist activist campaigns.
- Proxy firms apply a one-size-fits-all approach to corporate governance that does not take into account differences in companies' business models and the flexibility allowed under securities law. Increasingly, these firms seek to shape rather than analyze and report on corporate behavior, particularly as it relates to environmental and social issues.
- The guidelines on which proxy firms based their recommendations, and the recommendations themselves, are developed with minimal transparency or consideration of corporate input. The lack of transparency associated with these quasi-regulatory standards is a significant contrast to the rigorous notice-and-comment procedures that the SEC and other regulators are required to follow.
- Proxy firm reports and recommendations often include errors and misleading statements, ranging from specific incorrect facts to mistaken assumptions about, for instance, a company's peer group or compensation practices. The recommendations also feature terms with common market meanings like "total shareholder return" but often use opaque calculation methodologies that vary from traditional market practice.
- Proxy firms have steadfastly resisted engaging in a productive dialogue with companies to correct errors and misunderstandings. Indeed, following the finalization of the SEC's

³ The deluge of activist shareholder proposals, many of which are supported by proxy advisory firms, has imposed additional work and costs on both individual and institutional investors who must parse through a confusing array of both "pro" and "anti" proposals on environmental, social, and political topics that typically are not material to a company's long-term share value.

2020 proxy firm rule, ISS rescinded the limited issuer engagement practices it had previously had in place.

- Proxy firms routinely engage in the automatic submission of proxy votes on behalf of their clients in a practice known as “robo-voting.” Robo-voting deprives asset managers—and by extension the Main Street investors they represent—of an opportunity to review a proxy firm’s recommendation and make an informed voting decision.

In 2020, the SEC finalized a long-awaited rule to provide oversight of proxy advisory firms. This rule, developed over the course of a decade, instituted commonsense safeguards designed to increase transparency into these powerful actors. In particular, the rule required proxy firms to provide copies of their final recommendations to companies and to have a mechanism in place by which investors could become aware if a company submitted a response to the firm’s recommendation. It also required proxy firms to disclose their conflicts of interest and clarified that proxy firms are subject to the proxy solicitation rules’ anti-fraud standards. Alongside the final rule, the SEC issued guidance to asset managers outlining instances in which relying on proxy firms’ robo-voting services instead of reviewing all information available to them and making an informed voting decision could implicate their fiduciary obligations to Main Street investors.

Notably, the 2020 rule’s issuer engagement requirements were significantly less strict than what the SEC had proposed in 2019. The 2019 proposal would have required proxy firms to allow companies to review and provide feedback on their draft recommendations—a policy idea that dates back to the SEC’s 2010 Concept Release on the U.S. Proxy System. Proxy firms also would have been required to disseminate company responses to their clients alongside their voting advice. The NAM strongly supported, and continues to support, the draft review and feedback provisions from the 2019 proposal.

In 2021, the SEC proposed a rule to rescind critical provisions of the 2020 rule, including the compromise requirement that proxy firms share their recommendations with impacted companies after they are finalized and take steps to ensure that investors have access to any company responses to those recommendations. The rescission, which manufacturers strongly opposed, was finalized in July 2022. Concomitant with the rescission of the 2020 rule, the SEC also rescinded the 2020 robo-voting guidance. The NAM sued to challenge the rescission of the 2020 rule. In June 2024, the U.S. Court of Appeals for the Fifth Circuit ruled that the SEC’s actions were “facially irrational” and not “reasonable or reasonably explained.”⁴ The Fifth Circuit directed the SEC to reinstate the issuer review and feedback provisions of the 2020 rule.

However, ISS filed a separate lawsuit against the SEC and challenged the Commission’s authority to regulate proxy voting advice as a proxy solicitation under the Securities Exchange Act of 1934. The NAM intervened in that case to ensure that the views of our members were represented. After a district court judge ruled in ISS’s favor in 2024, the Gensler SEC abandoned its defense of the Commission’s regulatory authority. The NAM then appealed that ruling to the U.S. Court of Appeals for the District of Columbia Circuit. Regrettably, the appeals court failed to fully appreciate the pervasive influence of proxy firms and ruled in July 2025 that the SEC does not have authority under the Exchange Act to regulate proxy advice. As a result of this decision, proxy advisors remain as the only participants in the U.S. proxy voting process that are not subject to direct SEC oversight. Public companies, activist investors, investment

⁴ See *Nat’l Ass’n of Mfrs. v. SEC*, 105 F.4th 802 (5th Cir. 2024).

managers, transfer agents, and other intermediaries are all subject to SEC scrutiny, but not proxy advisory firms, even though they routinely sway 20% to 30% of the shareholder vote at companies' annual meetings.

Following the D.C. Circuit's decision, it has become even more imperative for Congress to act to pass legislation that reaffirms the SEC's authority to regulate proxy advice under the Exchange Act. The NAM strongly supports the discussion draft bill before this Committee that would amend the Exchange Act regarding the solicitation and influence of proxies. We believe this bill would provide the Commission with clear authority to craft a commonsense federal⁵ rule to improve proxy research by addressing conflicts of interest and allowing companies to review report drafts and provide feedback before investors start voting.

In addition, the NAM⁶ would welcome lawmakers' support for SEC rulemaking that includes the following safeguards:

- A proxy advisory firm must provide all U.S. public companies that are covered by its proxy research with a reasonable opportunity (at least three business days) to review the proxy firm's draft report (including voting recommendations) to check for errors, analytical flaws, or other concerns. If a company provides a written response to the draft report, that response should be included (via a hyperlink or an attachment) when that research is initially distributed to the proxy firm's clients.
- The Commission should prohibit the proxy firms from offering proxy research that is tainted by conflicts of interest (such as providing consulting services on equity plans, say-on-pay, or other ballot items covered by the firm's proxy research reports).
- At the very least, the SEC should mandate that any conflicts of interest (such as a consulting relationship between the proxy firm and a company or a shareholder activist) be clearly disclosed on the cover page of any proxy report that addresses the company or activist so that proxy firm's clients can readily access that information.

In addition to the reforms listed above, we believe that the SEC's Investment Management Division should use its existing authority under the Investment Advisers Act of 1940 to ensure that investment managers fulfill their fiduciary duties to clients when retaining proxy firms. Accordingly, the SEC should:

- Publish updated guidance (to replace the "robo-voting" guidance rescinded by the 2022 rule) to investment managers on their fiduciary duties to their clients when using the proxy firms' automated voting systems.

⁵ The NAM believes that federal oversight of proxy firms would be more effective than leaving the matter to the states, an approach that could result in a 50-state patchwork of conflicting regulations and increase uncertainty and costs for public companies, investment managers, and the proxy firms.

⁶ For more on the NAM's views on proxy firms, please see the Testimony of Charles Crain, Managing Vice President, Policy, National Association of Manufacturers, Before the U.S. House of Representatives, Committee on the Judiciary Subcommittee on the Administrative State, Regulatory Reform, and Antitrust, Hearing on "The Proxy Advisor Duopoly's Anticompetitive Conduct" (25 June 2025), available at <https://judiciary.house.gov/sites/evo-subsites/repUBLICANS-judiciary.house.gov/files/evo-media-document/crain-testimony.pdf>.

- Propose a rulemaking to amend Rule 206(4)-6 of the Advisers Act to set specific standards for the firms hired by investment managers to provide advice on proxy voting. The NAM believes that an investment manager who retains a proxy firm should only be allowed to cleanse itself of potential conflicts of interest if the proxy firm meets certain minimum standards regarding conflicts of interest and research accuracy.

III. The Need for Shareholder Proposal Reform

Modern portfolio theory, which prioritizes diversification to protect against downside risk, means that most Main Street investors hold shares in dozens if not hundreds of companies—whether individually or through investing vehicles like mutual funds. It is simply not practical for shareholders to be involved in the day-to-day operations of each of these companies. Instead, investors depend on corporate leadership to act in their long-term financial best interests by increasing the value of the business and thus enabling everyday Americans to save for retirement, a new home, or a child's education.

The proxy ballot protects shareholders by granting them oversight of the company leaders who are charged with safeguarding their investments. But activist groups from both sides of the political aisle have hijacked the ballot in pursuit of narrow agendas unrelated to long-term business growth and shareholder value creation.

The NAM has long supported reforms to Rule 14a-8—which dictates which shareholder proposals companies must include on their proxy ballot—in order to protect the integrity of the proxy process and limit activists' influence. In 2020, manufacturers supported an SEC rule to increase the share ownership thresholds under Rule 14a-8 that enable activists to take *de minimis* positions in a company's stock for the sole purpose of forcing the entire shareholder base to consider a politically motivated proposal. The 2020 rule also increased Rule 14a-8's resubmission thresholds, which allow activists to place a proposal on the proxy ballot year after year, even when it has been resoundingly rejected by the vast majority of shareholders.

Unfortunately, Gensler's SEC took steps to undermine these critical reforms and acted to empower activists at the expense of public companies and their long-term shareholders. In 2021, the SEC's Corporation Finance Division issued Staff Legal Bulletin 14L, which effectively prohibited companies from excluding from the proxy ballot any shareholder proposal related to environmental and social topics of "broad societal impact." The 2020 rule was designed to prioritize the needs of long-term shareholders over the agendas of activist investors—but SLB 14L effectively granted activists special access to the proxy ballot to pursue environmental and social causes of their choosing. During the 2022 and 2023 proxy seasons, shareholder proponents submitted a record number of proposals. Fully 60% of the 2022 proposals ultimately included on companies' proxy ballots involved environmental or social issues, an all-time high. Most of these proposals come from a small cadre of activists—just 10 proponents accounted for more than 60% of all proposals submitted in 2022—yet these individuals' agendas force companies to expend significant resources and court controversy by wading into political topics unrelated to the business.

Fortunately, the SEC's new leadership has reversed course and started to address shareholder proposal abuses. In February 2025, the Commission published Staff Legal Bulletin 14M, which rescinded SLB 14L and returned the SEC staff to its historical approach when evaluating proposals that relate to social policy issues. In June, the Commission withdrew proposed amendments to Rule 14a-8 on duplicate, resubmitted, and substantially implemented resolutions that would have undermined the commonsense reforms adopted in 2020. While we

are pleased by this progress, we remain concerned that the next SEC chair could rescind SLB 14M and open the floodgates again to a torrent of environmental, social, and political proposals.

The NAM supports the following reforms to depoliticize the shareholder proposal process:

- Make it clear that public companies are not required to include proposals that seek to raise “significant social policy issues,” if those issues are not material to the specific company. In ruling on no-action requests based on materiality, the SEC staff should defer to a company board’s determination about whether a particular issue is material instead of second-guessing those decisions.
- Raise the outdated \$2,000 economic threshold for long-term investors to ensure that all proponents own a sufficiently meaningful stake in the companies where they file proposals.⁷
- Increase the minimum support requirements to resubmit substantially similar proposals from 5% (if previously voted on once), 10% (if voted on two times), and 25% (if voted on three or more times) to 10%, 20%, and 40%, respectively.
- Adopt a new “momentum” requirement to augment the resubmission thresholds. We believe that issuers should be permitted to exclude shareholder proposals that have been considered three or more times if the most recent vote on the matter represented a 10-percentage point decline in support from the previous vote. This reform would allow companies and shareholders to avoid the time and cost associated with the consideration of proposals that have exceeded the resubmission thresholds but are declining substantially in shareholder support.
- Consider imposing absolute limits (based on a company’s market capitalization) on the total number of proposals that may appear on a proxy ballot to ensure that investors are not overwhelmed by a flood of proposals.

IV. Legislative Proposals to Address Proxy Advisory Firms

Manufacturers commend the members of the Financial Services Committee for their work on legislation to reaffirm the SEC’s authority to regulate proxy firms, require proxy firms to register, limit robo-voting, prohibit proxy firms’ conflicts of interest, prevent asset managers from undermining their fiduciary duties by over-relying on proxy firms, and require the SEC to study the firms’ influence on the market.

Amending the Exchange Act Relating to the Solicitation and Influence of Proxies

As noted earlier, the NAM strongly supports draft legislation that would amend Section 14(a) of the Exchange Act to provide the SEC with the clear authority to adopt rules to regulate the providing of advice, recommendations, advice, analysis, or ratings relating to proxy voting. This

⁷ We suggest raising the minimum economic threshold for long-term investors to at least \$10,000 and provide for automatic increases in Rule 14a-8’s thresholds every five years to reflect inflation. A \$10,000 threshold is merited given the growth of the stock market and the rate of inflation since 1998 when the \$2,000 threshold was first adopted. A \$2,000 investment in the Russell 3000 index in 1998 would be worth \$12,712 today (assuming the reinvestment of dividends). While \$10,000 would be significantly less than the costs incurred by public companies, it would be a more meaningful sum than \$2,000.

bill would close a regulatory loophole and enable the SEC to impose commonsense safeguards to protect public companies and Main Street investors from the abusive practices of the proxy firm duopoly.

HR 4098, Stopping Proxy Advisor Racketeering Act (Rep. Fitzgerald)

The NAM supports HR 4098, sponsored by Rep. Scott Fitzgerald (R-WI), which would prevent proxy firms from offering proxy voting advice that is poisoned by a conflict of interest resulting from their consulting services. This prohibition would ensure that the proxy voting advice on which investors rely remains objective, and that companies are no longer forced to pay for consulting services in order to avoid negative proxy firm recommendations.

HR 3402, Investment Manager Disclosures on Use of Proxy Firms (Rep. Loudermilk)

The NAM supports HR 3402, sponsored by Rep. Barry Loudermilk (R-GA), which would require investment advisers, asset managers, and pension funds relying on the services of a proxy firm to explain how the firm's recommendations impacted their proxy votes, analyze their voting decisions based on investors' economic best interests and the institution's fiduciary duty, and disclose the degree to which the institution voted in line with the firm's recommendations. These institutions would also be required to certify that their voting decisions were made based solely on the economic best interests of their customers and beneficiaries. These safeguards would ensure that the institutions charged with protecting Main Street investors' retirement security are acting in those investors' best interests.

Proxy Firm Registration (Rep. Steil)

The NAM supports draft legislation, sponsored by Rep. Bryan Steil (R-WI), that would require proxy firms to register with the SEC. As a condition of registration, proxy firms would be required to:

- Provide companies with the data and information underpinning their recommendations, and grant companies an opportunity to share feedback to correct errors and misrepresentations;
- Employ an ombudsman charged with engaging with companies and resolving issues identified by impacted businesses;
- Include any company statements responding to the firm's recommendations in its final report to clients;
- Certify that the firm has sufficient staff and resources to provide voting advice based on accurate information and in the economic best interests of shareholders;
- Provide disclosures on the firm's procedures, methodologies, organizational structure, professional qualifications, and code of ethics; and
- Adopt policies to identify, disclose, and manage any conflicts of interest.

Additionally, proxy firms would be prohibited from providing advisory or consulting services that present a conflict of interest with respect to their proxy vote recommendations. The NAM thanks Rep. Steil for his years of leadership on this critical issue, and manufacturers strongly support his draft legislation to bring appropriate oversight to the proxy advice industry.

Protecting Americans' Savings Act (Rep. Nunn)

The NAM supports draft legislation sponsored by Rep. Zach Nunn (R-IA) that would prevent institutional investors from outsourcing proxy voting decisions to proxy advisory firms via the firms' robo-voting services. This prohibition on automatic voting would ensure that asset managers actually review the information available to them before casting proxy votes that

could impact the direction of a business and the performance of everyday Americans' investments.

Corporate Governance Examination Act (Rep. Wagner)

The NAM supports Subcommittee Chair Ann Wagner's draft bill to direct the SEC to conduct a comprehensive study on the proxy process. The study would examine the impacts of Rule 14a-8, the role of proxy advisory firms and the costs of politically motivated shareholder proposals. This is critical information necessary for Congress and the SEC to fully understand what changes are necessary to protect companies of all sizes from costly and undue influence.

V. Legislative Proposals to Address Shareholder Proposals and Other Topics

While the SEC has announced that it will propose rulemaking on shareholder proposal modernization,⁸ we welcome the Committee's efforts to encourage the Commission to adopt meaningful and long-lasting reforms to depoliticize the proxy process.

Performance over Politics Act (Rep. Fitzgerald)

The NAM supports draft legislation from Rep. Fitzgerald that would increase the resubmission thresholds under Rule 14a-8 to require a more substantial level of shareholder support before allowing a failed proposal back on a company's proxy ballot. Specifically, to qualify for resubmission, a proposal would have to achieve at least 10% support if voted on once, 20% support if voted on twice, or 40% support if voted on three or more times. These reforms would prevent companies from being forced to include proposals that have been rejected by an overwhelming majority of shareholders.

Businesses Over Activists Act (Rep. Norman)

The NAM supports draft legislation, sponsored by Rep. Ralph Norman (R-SC), that would prevent the SEC from compelling public companies to include any shareholder proposal on their proxy ballots. Such a bill would protect companies' First Amendment rights and prevent manufacturers and their shareholders from being forced to consider irrelevant and politically motivated proposals on an annual basis.

Exclusion of Proposals on Significant Social Policy Issues (Rep. Rose)

The NAM supports draft legislation, sponsored by Rep. John Rose (R-TN), that would allow companies to omit shareholder proposals based on traditional Rule 14a-8 exclusion criteria, irrespective of whether they relate to a "significant social policy" issue. This bill would help ensure that the proxy process is focused on business growth and investor value.

Exclusion of Proposals on Environmental, Social, or Political Issues (Rep. Donalds)

The NAM supports draft legislation, sponsored by Rep. Byron Donalds (R-FL), that would clarify that companies can always exclude shareholder proposals that seek to advance environmental, social, or political agendas unrelated to their business. This change would ensure that the proxy ballot remains focused on issues that are relevant to long-term growth and shareholder value creation.

Empowering Shareholders Act of 2025 (Rep. Huizenga)

The NAM supports draft legislation from Rep. Bill Huizenga (R-MI) that would require managers of passive investment funds to stay passive—which is to say, to defer to the judgment of companies' boards of directors and to rely on those directors' fiduciary duty to shareholders.

⁸ Securities and Exchange Commission, Agency Rule List, Spring 2025.

Unless instructed otherwise by their clients, passive funds would be required to vote in alignment with a company's voting recommendations on most proxy ballot measures, with exceptions for issues like director elections and executive compensation. Passive funds could also choose to abstain from voting. These reforms would ensure that fund managers are appropriately representing Main Street investors who have chosen passive investing.

Justification of Non-Material Disclosure Requirements

The regulatory overreach under SEC Chairman Gensler has resulted in disclosure obligations for public companies that are not grounded in materiality. The NAM supports draft legislation that would require the SEC to maintain a list of non-material disclosure requirements and provide a justification for why each disclosure is necessary. This bill would also clarify that a company choosing not to disclose non-material information would not be subject to a private right of action.

Mandatory Materiality Requirement Act (Rep. Huizenga)

The NAM supports the Mandatory Materiality Requirement Act, a draft bill sponsored by Rep. Huizenga, which would direct the SEC to require disclosure only of information that is material to a shareholder's voting or investment decisions pursuant to the U.S. Supreme Court's materiality definition in *TSC Industries, Inc. v. Northway, Inc.* Limiting the SEC's authority to mandate immaterial disclosures would reduce costs for public companies while also ensuring that their reports are useful to investors.

Public Company Advisory Committee Act (Rep. Lucas)

The NAM endorses a draft bill from Rep. Frank Lucas (R-OK) that would establish a Public Company Advisory Committee at the SEC. Manufacturers and other non-financial issuers are the only major constituency that is not represented by one of the Commission's existing advisory committees. We believe that such a committee, which could include representatives from various industries and companies with varying market caps, could help highlight emerging regulatory concerns, allow companies to offer input to agency staff before new rules are formally proposed, and allow issuers to provide feedback on existing rules, disclosure, and enforcement.

* * * *

The NAM thanks the Committee for holding this hearing, and manufacturers look forward to working with you to depoliticize the proxy process for America's public companies.

Sincerely,



Charles Crain
Managing Vice President, Policy

AFL-CIO

LEGISLATIVE ALERT

September 8, 2025

The Honorable French Hill, Chairman
The Honorable Maxine Waters, Ranking Member
U.S. House Committee on Financial Services
2129 Rayburn House Office Building
Washington, DC 20515

Dear Chair Hill and Ranking Member Waters:

I am writing on behalf of the AFL-CIO to express our strong opposition to the various bills noticed for discussion at the House Committee on Financial Services' hearing on September 10, 2025 titled "Proxy Power and Proposal Abuse: Reforming Rule 14a-8 to Protect Shareholder Value." If enacted, these bills will disenfranchise the voices of working people in the companies we own through our retirement plans by limiting the ability of investors to submit shareholder proposals and cast informed proxy votes at companies' annual shareholder meetings.

Many of these bills seek to impose burdensome regulations on proxy advisors and their clients. For example, H.R. _____, "a bill to amend the Securities Exchange Act of 1934 to provide for the registration of proxy advisory firms" (Steil), will require proxy advisors to comply with extensive requirements that will increase the cost of providing proxy voting advice. Remarkably, no institutional investor has requested more government regulation of proxy advisors. Rather, political support for these misguided bills has come from corporate CEOs who do not like their shareholders voting independently of corporate management's recommendations.

Of even greater concern, these misguided efforts appear to be designed to discourage investment managers from voting for shareholder proposals at annual shareholder meetings. For example, H.R. 3402, "a bill to amend the Securities Exchange Act of 1934 to require certain disclosures by institutional investment managers in connection with proxy advisory firms" (Loudermilk), would require investment managers to perform a burdensome economic cost benefit analysis before voting on shareholder proposals. Tellingly, this bill does not impose similar requirements when voting on proposals made by corporate CEOs and their boards of directors.

Other bills under consideration seek to disenfranchise investors from submitting shareholder proposals to a vote at annual shareholder meetings. For example, H.R. _____, the "Businesses Over Activists Act" (Norman), will eliminate the Securities and Exchange Commission's shareholder proposal rule altogether. The Securities and Exchange Commission's shareholder proposal rule has been an integral part of shareholder democracy in the United States for the past eight decades.

In conclusion, these bills represent the latest in a long line of misguided efforts to interfere with shareholder democracy and reduce corporate accountability to shareholders including workers' retirement plans. For these reasons, we urge you to protect Americans' freedom to invest, submit shareholder proposals, and vote our proxies free of government interference by voting against these bills.

Sincerely,

A handwritten signature in black ink, appearing to read "Jody Calamine", written in a cursive style.

Jody Calamine
Director, Government Affairs



The Honorable French Hill
Chairman
House Committee on Financial Services
Rayburn House Office Building
Washington DC, 20515

The Honorable Maxine Waters
Ranking Member
House Committee on Financial Services 2129
2129 Rayburn House Office Building
Washington DC, 20515

September 10, 2025

Dear Chairman Hill and Ranking Member Waters:

Thank you for the opportunity to enter testimony for the **Hearing on Proxy Power and Proposal Abuse: Reforming Rule 14a-8 to Protect Shareholder Value**.

Quakerism is a nearly 400-year-old Christian religious tradition based on the life and ministry of Jesus and grounded in universal values including justice, mercy and humility. As you will see from the attached, Friends Fiduciary Corporation (FFC) is a Quaker faith-based investment firm, headquartered in Philadelphia, with over \$800 Million in assets under management. Founded more than 125 years ago, FFC's mission has always been to support Quaker meetings, churches, schools, and other Quaker institutions with competitive returns by investing in businesses that serve a beneficial purpose to society, contributing positively to a peaceful, sustainable world.

To further our mission, FFC witnesses to universal, Quaker values—including peace, integrity, community, equality, and stewardship—through dialogue with the companies we own. This witness ensures long-term shareholder value by promoting best practices to mitigate corporate risks associated with negative impacts on people and planet. For us, company dialogues represent a partnership between investors and management. Such dialogues are not only fundamental to the mandate we serve, but critical to the long-term success of the companies we hold on behalf of Quakers around the country.

The ability to file shareholder proposals through Rule 14a-8 is vital to these company dialogues and our freedom of religious expression. While we typically file at most one shareholder proposal for every ten or more company engagements, without 14a-8 we would lose the leverage we need to ensure Quakers have a seat at the table with management. This long-established rule provides a well-understood mechanism for communication between management and ownership. It preserves discretion for management while giving company owners, including Quakers, an appropriate oversight role. We therefore ask you to protect the right of long-term investors to file shareholder resolutions, without further restrictions to a process that already includes significant thresholds around ownership and materiality.

Friends Fiduciary treasures the right of shareholders to engage with invested companies to protect and enhance long-term shareholder value, mitigate risk, and support a resilient society and sustainable economy. We respect and deeply value our ability to engage in dialogue with the companies we hold on issues of concern to our Quaker constituents. A democratic shareholder engagement process that protects the rights of investors and companies alike is vital to economic and human prosperity. We ask you to uphold it.

Sincerely,

A handwritten signature in black ink, appearing to read 'EB', with a stylized flourish at the end.

Ethan Birchard
Executive Director
Friends Fiduciary Corporation

Enclosure: FFC Investment Philosophy Document



Quakerism is a nearly 400-year-old Christian religious tradition based on the life and ministry of Jesus and grounded in universal values including justice, mercy and humility. Friends Fiduciary Corporation (FFC) is a Quaker faith-based investment firm headquartered in Philadelphia with over \$800 Million in assets under management. Founded more than 125 years ago, FFC's mission has always been to support our Quaker constituents and invest in businesses that serve a beneficial purpose to society, contributing positively to a peaceful, sustainable world. Today, FFC serves over 450 Quaker meetings, schools and organizations across the United States.

FFC's investment philosophy includes screening out companies whose goods and services do not align with broadly held Quaker values such as simplicity, peace, integrity, community, equality, and stewardship. To further our mission, FFC also witnesses to Quaker values through dialogue with the companies we own, to ensure long-term shareholder value by promoting best practices that mitigate risks associated with negative impacts on people and planet. This witness is vital to our work for several reasons:

■ **Freedom of religious expression**

We serve a mandate to invest in alignment with our religious values and to witness to these values through active engagement with the companies we hold. We file resolutions infrequently—less than one resolution for every ten dialogues we hold—but without this fundamental shareholder right, we cannot hope to voice our values with the companies we own. Quakers are called not only to “be” but also to “do.” The right to file shareholder proposals is not one we take lightly; it underpins our calling to make the world a better place.

■ **Alignment of fundamental human values with long-term shareholder value**

We believe that universal Quaker values are good business values. As shareowners with a long-term, values-based approach, our corporate engagement is intended to support long-term thinking by management. When we are empowered within this partnership, we can help identify potential risks and improve the fundamentals of the companies we own—thereby enhancing long-term shareholder value and investment returns for constituents.

■ **Shareholder rights: owners bear risk as much as they benefit from opportunity**

As asset stewards and long-term Quaker values investors, our responsibility to protect our constituents' financial returns is paramount. Shareowners play a critical role in ensuring companies are aware of and addressing risks. Historically, shareholder dialogue and proposals relying on long-term risk frameworks have identified material threats early (forced labor and human trafficking, opioids, predatory lending, climate change), in some cases prompting corporate action before crises develop.

■ **Integrity means accountability**

As Quakers, our focus on integrity and justice, as well as investment returns, prompt us to seek accountability from the companies we invest in. Corporate power must not be insulated from shared responsibility for emerging, long-term risks and issues that affect the broader economy and our universal values. Companies and investors alike depend on a sustainable economy and society. It is not only our right, but our responsibility as company owners to identify systemic risks and ensure companies are accountable in addressing them.



INTERFAITH CENTER ON CORPORATE RESPONSIBILITY
Inspired by faith. Committed to action

U.S. House Committee on Financial Services
 September 19, 2025
 The Honorable French Hill, Chairman
 The Honorable Maxine Waters, Ranking Member
 U.S. House Committee on Financial Services
 2129 Rayburn House Office Building
 Washington, D.C. 20515

Dear Chairman Hill and Ranking Member Waters:

I am writing on behalf of the Interfaith Center on Corporate Responsibility, to offer further supplemental information for the record related to the House Committee on Financial Services' hearing on September 10, 2025 titled "Proxy Power and Proposal Abuse: Reforming Rule 14a-8 to Protect Shareholder Value." We also want to express our strong opposition to the various bills noticed for discussion at the hearing, as we are concerned that if enacted, these bills would severely impact the rights of concerned shareholders to submit shareholder proposals and cast informed proxy votes at companies' annual shareholder meetings.

ICCR is a broad coalition of more than 300 institutional investors collectively representing over \$4 trillion in invested capital. ICCR members, a cross-section of faith-based investors, asset managers, pension funds, endowments, and other long-term institutional investors, have more than 50 years of experience engaging with companies on environmental, social, and governance issues that are critical to long-term value creation.

The proxy process has over 70 years of history and is regularly used by a diverse set of investors with trillions of dollars of AUM to raise issues with companies that have proven time and again to have a clear and demonstrable impact on long-term shareholder value. We have highlighted this process and given evidence of the positive impact over many years in the recent paper that we drafted with the Shareholder Rights Group and US SIF, entitled [Shareholder Proposals: An Essential Investor Right](#), which we attach here for the record.

Our paper catalogues the role of proxy proposals in opening communication with corporate boards and management about ways to mitigate what informed investors view as material and long-term risks, including ways to build and protect shareholder value. While it is not unusual for business leaders and investors to disagree about what constitutes long-term business risk, the healthy debate generated by shareholder proposals affirms the rights of proponents as part-owners to introduce new ideas and perspectives, encourages corporate transparency and disclosure, discourages board and management insularity, and, importantly, gives all shareholders a voice in corporate decision-making through their vote at the annual meeting.

Shareholder proposals are precatory, and as such, companies are under no obligation to adopt them. However, proposals are an articulation of interest by an informed and interested stakeholder who provides the very capital that allows for the business to exist and, for this reason, should never be easily dismissed. Any company's effort to restrict or silence that voice is an attempt to deny critical corporate stakeholders a fundamental right.

We also want to highlight our [*"ICCR Member Statement on Faith-Consistent Investing"*](#) for the record. The statement emphasizes that religious organizations steward their organizational finances and the investments managed on behalf of their constituents and beneficiaries in alignment with the beliefs, teachings, and values of their respective faiths. Many religious organizations develop investment guidelines, which include strategies such as screens to exclude industries that they believe cause injury to society, shareholder engagement with portfolio companies to mitigate environmental and social harm, and investing in companies or projects that are making a direct and positive impact. Faith-based investor engagements with portfolio companies, through dialogue and the filing of shareholder proposals, are a natural extension of these beliefs and are central to both our duties as trusted fiduciaries seeking competitive returns and our responsibilities as faithful stewards supporting the fundamental values of our religious traditions.

In sum, we are deeply concerned with attempts by legislators or policymakers to interfere with investors' fundamental freedom to make investment choices and/or engage with portfolio companies in alignment with their fiduciary duty, investment philosophies and institutional values.

Sincerely,

A handwritten signature in black ink, consisting of a stylized 'J' and 'Z' intertwined.

Josh Zinner
Chief Executive Officer

Timothy Smith
Senior Policy Advisor



Why Faith Groups Have Historically Practiced Sustainable and Responsible Investing

Religious organizations steward their organizational finances and the investments managed on behalf of their constituents and beneficiaries in alignment with the beliefs, teachings, and values of their respective faiths. Many religious organizations develop investment guidelines, which include strategies such as screens to exclude industries that they believe cause injury to society, shareholder engagement with portfolio companies to mitigate environmental and social harm, and investing in companies or projects that are making a direct and positive impact. This practice, known as faith-consistent investing, is one form of what today is commonly referred to as sustainable and responsible investing. Faith-consistent investing is a fundamental right protected under the First Amendment, which guarantees both free speech and religious freedom, and ensures that investors are able to make their investment decisions in accordance with their beliefs.

The Interfaith Center on Corporate Responsibility (ICCR) is a coalition of over 300 faith and values institutional investors who, for more than 50 years, have been leaders in faith-consistent and sustainable investing. Our [genesis](#) as an organization is grounded in the advocacy of multiple faith groups to address the racist apartheid regime in South Africa. Faith-consistent investing leads religious investors to assess how corporate policies and practices may adversely impact the health of people and the planet, which has a direct impact on the long-term performance of their portfolios. Faith-based investor engagements with portfolio companies, through dialogue and the filing of shareholder proposals, are a natural extension of these beliefs and are central to both our duties as trusted fiduciaries seeking competitive returns and our responsibilities as faithful stewards supporting the fundamental values of our religious traditions. For this reason, we are concerned about any attempts by legislators or policymakers to interfere with investors' fundamental freedom to make investment choices and/or engage with portfolio companies in alignment with their investment philosophies and institutional values. This includes letters received from the House Judiciary Committee in 2024 by several of ICCR's faith-based members requesting informational disclosures under the pretense of exploring violations of antitrust laws.

While each faith institution has its own set of priority issues that it addresses through its respective ministries and advocacy work, there are many issues where faith investors' interests converge. Actions to mitigate the climate crisis ravaging our planet, to uphold human rights, including the fair treatment of workers, and to ensure equitable and affordable access to healthcare are just a few examples of priority issues of common concern among many faiths. The [2016 Edinburgh Finance Declaration](#) is one example of the world's leading faiths articulating their shared values. We believe that companies that adopt forward-looking policies and practices to mitigate environmental and social risks are well-positioned for long-term financial success and value creation. Conversely, companies that ignore these risks may

endanger the performance of the capital we are called to steward and impose enduring external costs on society, the economy, and the planet that sustains us. A few examples, but by no means an exhaustive list, of faith-consistent investment guidance from prominent religious organizations are below:

- [Episcopal Church](#)
- [Islamic Finance Council](#)
- [Presbyterian Church](#)
- [Quakers \(The Religious Society of Friends\)](#)
- [Roman Catholic Church](#)
- [United Church of Christ](#)
- [United Methodist Church](#)
- [Unitarian Universalist Association](#)

Over the past 50+ years, ICCR member engagements with corporations on these issues have resulted in improved conditions for various stakeholders, including workers, customers, communities, and shareholders. For instance, most of the world's faiths emphasize stewardship of the planet, care for creation, and moral responsibility toward the environment, which makes them deeply concerned about the climate crisis. Faith investors working in climate-vulnerable communities witness firsthand how climate change adversely affects these areas. Without the adoption of meaningful climate mitigation and adaptation measures, extreme poverty and inequality, risks to land, food and water security, forced migration and geopolitical conflict, along with global health risks, will all intensify. Consequently, faith investors often align with other like-minded investors to tackle climate risk and advocate for a reduction of GHG emissions from our portfolio companies. Faith-based investors actively promote worker justice, which includes workplace health and safety protections, the provision of a living wage, and the freedom to associate and engage in collective bargaining. Faith-based investors have advocated for health equity, engaging with the world's largest healthcare companies to ensure that medicines and healthcare services are affordable and accessible reaching those most in need.

Importantly, while we often cooperate in investor spaces around strategies to spur corporate action, we make independent investment decisions to provide risk-adjusted returns to our individual constituents and beneficiaries in line with our respective faith beliefs. The U.S. Constitution provides that "Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof," and the First Amendment protects the religious liberty that is foundational to this great nation. This ban against government interference in faith-consistent practices is essential when considering all aspects of the life and work of religious institutions, including their investment decisions. It preserves their autonomy to invest their organizational assets and the pensions of their millions of beneficiaries in a manner consistent with their religious beliefs. In recognition of the constitutional limits of entanglement between the federal government and religious institutions, Congress included a Church plan exemption in the Employee Retirement Income Security Act of 1974 (ERISA).

We want to reiterate our belief that companies committed to addressing their impacts on society and the environment are better positioned for financial success over the long term. For this reason and because

our faith calls us to do so, we will continue to invest and engage with our portfolio companies to realize that goal.



The Honorable French Hill
Chairman
House Committee on Financial Services
2129 Rayburn House Office Building
Washington DC, 20515

The Honorable Maxine Waters
Ranking Member
House Committee on Financial Services
2129 Rayburn House Office Building
Washington DC, 20515

September 8, 2025

Re: Full Committee September 10th “Proxy Power and Proposal Abuse: Reforming Rule 14a-8 to Protect Shareholder Value” Hearing

Dear Chairman Hill and Ranking Member Waters:

Americans for Financial Reform writes to oppose the bills noticed for the September 10th “Proxy Power and Proposal Abuse: Reforming Rule 14a-8 to Protect Shareholder Value” hearing and to express its concern over alarming corporate governance developments we believe the House Financial Services Committee should be focusing on instead. A coalition of 40 investors, labor unions, and public interest organizations wrote to oppose these bills last Congress.¹

Corporate boards and executives have long sought to curtail shareholders’ ability to file proposals about important issues that affect their investments — and undermine the proxy advisors who sometimes recommend votes in their favor. But the right of shareholders to file and vote on proposals — and the ability of proxy advisors to provide research and recommendations not unduly influenced by corporate leadership — are crucial to identifying and pushing corporations to address important risks related to unsound governance practices, climate change, union busting, racial discrimination, worker health and safety issues, lobbying activities, and more that affect corporate performance and shareholder returns.

For example, corporate governance scholars note that “shareholder proposals have proven to be an effective stewardship tool for bringing about governance changes at large numbers of public companies.”² Indeed, between 2003 and 2018, shareholder proposals were behind the increased adoption of corporate governance changes including declassifying the board, establishing an independent board chair, and adopting a majority vote standard, proxy access, say-on-pay, and a

¹ Americans for Financial Reform et al. [“Re: Opposition to anti-ESG bills that threaten workers’ retirement security and our financial system, and weaken tools of corporate accountability.”](#) Letter to Members of the U.S. House of Representatives. September 17, 2024.

² Bebchuk, Lucian and Scott Hirst. [“Index Funds and the Future of Corporate Governance: Theory, Evidence, and Policy.”](#) Columbia Law Review. December 2019 at 2040.

shareholder right to call a special meeting.³ These changes reverberated beyond the companies where shareholder proposals were filed.⁴

The real threat to corporate governance comes from a race to the bottom in state corporate law triggered by Elon Musk, as well as from other players in the corporate governance ecosystem that are consolidating power over corporate decision-making — not from minority shareholders trying to get their voices heard on important issues through shareholder proposals that are generally non-binding.

When a Delaware judge invalidated Musk's Tesla pay package, calling it “an unfathomable sum,”⁵ he derided her and Delaware corporate law, and led the reincorporation of Tesla and SpaceX in Texas. Since then, Delaware and Texas have both changed their corporate laws to make them more favorable to corporate insiders and less favorable to retirement savers and other investors who want to protect their investments.

Delaware changed its laws to make it easier for corporate insiders to escape scrutiny for conflicted transactions by, amongst other changes, creating a generous safe harbor for transactions involving conflicted corporate insiders, redefining what it means to be an independent director and controlling shareholder, and limiting what documents shareholders can request from corporations.⁶

Texas has passed three laws undermining the rights of minority shareholders and insulating corporate insiders from accountability: one allowing corporations to amend their bylaws to require a 3 percent ownership threshold to bring shareholder derivative lawsuits, another allowing corporations to amend their bylaws to require a 3 percent or \$1 million ownership threshold to file shareholder proposals, and another requiring proxy advisors to falsely say they incorporated “nonfinancial factors” and “subordinated the financial interest of shareholders” if they take into account environmental, social, or governance factors when making recommendations to clients to cast votes against the recommendations of corporate management.⁷

Meanwhile, the four largest asset managers — BlackRock, Vanguard, State Street, and Fidelity — now have de facto regulatory power over public companies. Instead of using this power to compel public companies to address important risks, they use it to further their own private, short-term interests in retaining and gaining assets under management and avoiding government regulation.

³ Papadopoulos, Kosmas. “[The Long View: The Role of Shareholder Proposals in Shaping U.S. Corporate Governance \(2000-2018\)](#),” Harvard Law School Forum on Corporate Governance. February 6, 2019.

⁴ Kastiel, Kobi and Yaron Nili. “[The Giant Shadow of Corporate Gadflies](#),” Southern California Law Review: 2021 at 584.

⁵ Hals, Tom. “[Judge voids Elon Musk's 'unfathomable' \\$56 billion Tesla pay package](#),” Reuters. January 31, 2024.

⁶ Annunziata, Michelle J. et al. “[Delaware Changes Its Corporate Law: What Litigators and Clients Need to Know about Senate Bill 21](#),” Mayer Brown. April 30, 2025.

⁷ Gallogly, Niko. “[New Texas Laws Open a Wild West for Corporate Governance](#),” New York Times. August 16, 2025.

These incentives have come to the fore in the last few years, as large asset managers have responded to political pressure by increasingly siding with management in their votes, instead of with minority shareholders pushing them to address important risks.⁸

We therefore urge the Committee to focus on these concerning corporate governance developments that threaten the retirement security of millions, not the below bills that would make matters worse.

- *AFR Opposes [H.R. 4098](#), [Stopping Proxy Advisor Racketeering Act](#)*

This bill would effectively prohibit proxy advisory firms from operating and subject them to civil penalties if the firm “possesses a conflict of interest, direct or indirect.” Individuals can also be subject to civil penalties. A proxy advisor “being a member of any organization that supports a shareholder-sponsored proposal that is, or is substantially the same subject matter as, the proxy voting advice” is listed as falling within the prohibited conduct.

This language is broad and vague and has the potential of creating paralyzing uncertainty regarding what could be considered a conflict of interest that could subject the firm *and* individuals to liability. It would also unduly restrict proxy advisors’ ability to join membership organizations.

- *AFR Opposes [H.R. 3402](#), [a bill to amend the Securities Exchange Act of 1934 to require certain disclosures by institutional investment managers in connection with proxy advisory firms, and for other purposes](#)*

This bill would require institutional investment managers to file an annual report with the Securities and Exchange Commission (SEC) that explains how they voted in every shareholder proposal, what percentage of votes were consistent with proxy advisers’ recommendations, and more. The bill would also require asset managers with at least \$100 billion in assets under management to tell their clients that they are not required to vote on every proposal, provide an economic analysis when voting against management in a shareholder proposal, and include it in their annual report to the SEC. This bill was introduced as [H.R. 4648](#) in the last Congress.

This bill is a solution in search of a problem, as institutional investment managers already have a fiduciary duty to vote proxies in the best interests of beneficiaries and the SEC enhanced proxy voting disclosures by investment funds as recently as 2022.⁹ The bill would serve to further tilt the playing field in favor of management by incentivizing either voting against shareholder proposals or not voting on them at all.

⁸ Masters, Brooke and Kenza Bryan. “[BlackRock’s support for ESG measures falls to new low](#),” Financial Times. August 21, 2024; RI Journalists. “[ESG round-up: Vanguard supported no E&S proposals at US firms in 2025 proxy year](#),” Responsible Investor. August 28, 2025.

⁹ Securities and Exchange Commission. “[SEC Adopts Rules to Enhance Proxy Voting Disclosure by Registered Investment Funds and Require Disclosures of ‘Say-on-Pay’ Votes for Institutional Investment Managers](#),” November 2, 2022.

- *AFR Opposes [H.R. _____](#), a bill to amend the Securities Exchange Act of 1934 to provide for the registration of proxy advisory firms, and for other purposes*

This bill would require proxy advisory firms to register with the SEC, set up a process for companies to have a say before voting recommendations go out to investors (including by having an ombudsman to resolve issues raised by companies), allow companies to sue proxy advisory firms in cases where they recommend voting in favor of shareholder proposals later found by a court to be illegal, and require an annual report that includes economic analyses used to make recommendations in favor of shareholder proposals (a requirement absent from recommendations related to company-sponsored proposals and shareholder proposals the proxy advisor recommends voting against). This bill was introduced as [H.R. 4589](#) in the last Congress.

This bill would allow corporate management to inappropriately influence what are supposed to be independent recommendations that proxy advisory firms give their clients. It would also make voting recommendations against management more difficult, costly, and legally risky.

Lastly, the part of the bill that would allow companies to sue proxy advisory firms if they recommend voting in favor of shareholder proposals that were later found to be illegal appears to be a nod toward attempts — including by the Trump administration and some Republican Attorneys General¹⁰ — to paint diversity, equity, and inclusion and other efforts to address racial inequities as unlawful. However, as some Democratic Attorneys General noted, “corporate efforts to recruit diverse workforces and create inclusive work environments are legal and reduce corporate risk for claims of discrimination.”¹¹ If passed, this bill would inappropriately influence proxy advisory firms’ advice to their clients about shareholder proposals related to investigating or addressing issues related racial inequity.

- *AFR Opposes [H.R. _____](#), a bill to amend the Securities Exchange Act of 1934 to provide for liability for certain failures to disclose material information or making of material misstatements, and for other purposes*

This bill would make proxy advisory firms liable for the “the failure to disclose material information (such as a proxy voting advice business’s methodology, sources of information, or conflicts of interest) or the making of a material misstatement regarding proxy voting advice.” It was introduced as [H.R. 4590](#) in the last Congress.

While the Business Roundtable, National Association of Manufacturers, and other corporate management groups have long claimed that proxy advice is rife with errors, there is little evidence that this is the case. A study that purports to document proxy advisor errors alleges just 39 factual

¹⁰ Thadani, Trisha. “[Republican attorneys general warn companies against ‘race-based quotas.’](#)” The Washington Post. July 13, 2023.

¹¹ Olander, Olivia. “[Democratic AGs blast Republicans trying to ‘intimidate’ corporations on diversity efforts.](#)” Politico. July 19, 2023.

errors over nearly three years (or 0.1% of more than 30,000 reports by proxy advisory firms Institutional Shareholder Services (ISS) and Glass Lewis during that period).¹² However, the Council of Institutional Investors' analysis of the study found that no more than 17 of the claimed factual errors had any merit.¹³

This bill appears designed to intimidate proxy advisory firms into siding with management more often by increasing the tools available to companies to challenge their recommendations and increasing their exposure to liability.

- *AFR Opposes [H.R. _____](#), the Mandatory Materiality Requirement Act*

The Mandatory Materiality Act would require SEC to “expressly provide” within each of its disclosure rulemakings that disclosures are required only “if the issuer has determined that such information is important with respect to a voting or investment decision regarding the issuer.”

If enacted, this legislation would functionally make all SEC disclosure requirements discretionary, and it would limit the ability of SEC or investors to scrutinize determinations by issuers that certain disclosures were not important and seek additional information. Issuers would receive unquestionable authority to determine what information is important to investors.

Issuer-determined materiality has often yielded incomplete and incomparable information for investors.¹⁴ Making the entire SEC disclosure regime based on this principle would be disastrous. This bill was introduced as [H.R. 4168](#) in the last Congress.

- *AFR Opposes [H.R. _____](#), the Empowering Shareholders Act*

The bill would require asset managers of passively managed funds to vote based on the instructions of beneficiaries, with management, or not at all, except when it comes to “routine matters,” defined, largely, as votes management wants, like director elections, approvals of executive pay, and mergers and acquisitions. This bill would tilt the playing field more dramatically in favor of management when it comes to proxy voting by passively managed funds. This bill was introduced as [H.R. 4645](#) in the last Congress.

- *AFR Opposes [H.R. _____](#), the Public Company Advisory Committee Act*

¹² Placenti, Frank M. “[Are Proxy Advisors Really a Problem?](#)” Harvard Law School Forum on Corporate Governance. November 7, 2018.

¹³ Council of Institutional Investors. “[Re: File No. 4-725 Proxy Advisor Regulation](#).” Letter to the Securities and Exchange Commission. October 24, 2019.

¹⁴ See SEC Investor Advisory Committee's Investor-as-Owner Subcommittee. “[Recommendation of the SEC Investor Advisory Committee's Investor-as-Owner Subcommittee regarding Human Capital Management Disclosure](#).” September 21, 2023. See also Miller, Rena S., Gary Shorter, and Nicole Vanatko. “Climate Change Risk Disclosures and the Securities and Exchange Commission.” Congressional Research Service. February 17, 2022.

The “Public Company Advisory Committee Act” would amend the Exchange Act to establish within the SEC a new “Public Company Advisory Committee.” The proposed new advisory committee would exclusively represent the interests of the management of public companies within the SEC. The advisory committee — whose members would be executives and directors of public companies and professionals who work for them — would provide advice on rules, regulations, and policies and be entitled to “such staff as the chairman of the Committee determines are necessary” and a swift public response to its findings and recommendations.

The proposed legislation’s core goal is to increase the influence that top executives of public companies have on the SEC. The proposed Advisory Committee is both unnecessary and at odds with the Commission’s three part statutory mission that includes investor protection — not the protection of the management of public companies. This bill was introduced as [H.R. 4652](#) in the last Congress.

- *AFR Opposes [H.R. _____](#), the Performance Over Politics Act*

This bill would require the SEC to significantly increase the percentage of votes a shareholder proposal must obtain in order for a proposal that “address[es] substantially the same subject matter” to be resubmitted for consideration within five years.¹⁵

If enacted, H.R. 4641 would make it much more difficult for shareholders to have their voices heard by the management of public companies they are invested in by increasing the threshold shareholders’ proposals need to break through and have an impact. Shareholder proposals play an important role in identifying, raising awareness, and addressing risks at public companies. A high resubmission threshold would mean emerging risks important to investors are more likely to go unaddressed. This bill was introduced as [H.R. 4641](#) in the last Congress.

- *AFR Opposes [H.R. _____](#), the Businesses Over Activists Act*

This bill would prohibit the SEC from mandating companies include shareholder proposals or discussions of shareholder proposals in their proxy statements. This could functionally end the ability of shareholders to have a meaningful opportunity to bring important issues to the attention of the management of public companies by gutting the shareholder proposal process as we know it. This bill was introduced as [H.R. 4655](#) in the last Congress.

- *AFR Opposes [H.R. _____](#), the Protecting American’s Savings Act*

This bill would prohibit voting automatically based on the recommendations of a proxy advisory firm or pre-populating votes on a proxy advisory firm’s electronic platform with the proxy advisory

¹⁵ Under the bill, a failed proposal would need 10% shareholder voting support the first time it is voted on, 20% the second time it is voted on, and 40% the third time it is voted on to be resubmitted (within a five-year period). This would significantly increase the thresholds from the current 5%, 15%, and 25% respectively.

firm's recommendations "without independent review and analysis." The bill also prohibits institutional investors from outsourcing voting decisions and prohibits any requirement to vote at all.

This bill ignores the fact that the Investment Advisers Act already requires investment advisers to vote their clients' shares in their best interests and implement policies and procedures reasonably designed to ensure their clients' shares are voted in the best interests of its clients.¹⁶ If passed, this bill would put the thumb on the scale against voting by making it more difficult and costly for investors to cast their votes — which ultimately would benefit the management of public companies. This bill was introduced as [H.R. 4656](#) in the last Congress.

- *AFR Opposes [H.R. _____](#), a bill to clarify that an issuer may exclude a shareholder proposal pursuant to section 240.14a-8(i) of title 17, Code of Federal Regulations, without regard to whether such proposal relates to a significant social policy issue*

This bill would allow companies to exclude proposals "without regard to whether [it] relates to a significant policy issue." This bill would undermine the viability of shareholder proposals seeking to address important issues. This bill was introduced as [H.R. 4657](#) in the last Congress.

- *AFR Opposes [H.R. _____](#), a bill to authorize the exclusion of shareholder proposals from proxy or consent solicitation material if the subject matter of the shareholder proposal is environmental, social, or political*

This bill would allow public companies to exclude proposals if they are about "environmental, social, or political (or a similar subject matter)" issues. In other words, the bill would specifically take away corporate accountability tools from shareholders with respect to many issues that have an impact on the value of their investments — for example, workplace safety,¹⁷ racial equity,¹⁸ climate change,¹⁹ and workers' freedom of association²⁰ — and that shareholders care about. This bill was introduced as [H.R. 4640](#) in the last Congress.

- *AFR Opposes [H.R. _____](#), the Corporate Governance Examination Act*

This bill would require the SEC to waste resources conducting a needless study after the bill's passage and every five years after that. The list of topics to study and their framing makes clear that the intention is to put the thumb on the scale of management in the proxy voting process and undermine investors' ability to hold companies accountable. For example, the study would scrutinize "the economic analyses, if any, conducted by proxy advisory firms and institutional shareholders

¹⁶ 17 CFR Part 275 ([Proxy Voting by Investment Advisers](#))

¹⁷ See Fonrouge, Gabrielle. "[Dollar General shareholders pass proposal to improve worker safety](#)." CNBC. May 31, 2023.

¹⁸ See SOC Investment Group. "[Racial equity audit](#)."

¹⁹ See Majority Action. "[Climate in the Boardroom: 2024 Proxy Season](#)." February 2025.

²⁰ See Committee on Workers' Capital. "[Shared Prosperity: The Investor Case for Freedom of Association and Collective Bargaining](#)." November 29, 2022.

when recommending or voting in favor of shareholder proposals,” while such scrutiny would be absent from management-friendly votes. This bill was introduced as [H.R. 4662](#) in the last Congress.

- *AFR Opposes [H.R. _____](#), a bill to amend the Securities Exchange Act of 1934 to require the Securities and Exchange Commission to disclose and report on non-material disclosure mandates, and for other purposes*

This bill would require the SEC to have a public list of all its legal mandates and regulations that require disclosure of “non-material” information, along with an explanation of why that disclosure is required. Every five years, the SEC would have to present a report to Congress justifying the disclosures on the list. It would also prohibit private lawsuits against entities that fail to disclose “non-material” information.

This bill is designed to minimize a company’s responsibility to disclose information that investors need to make better decisions about their investments by requiring the SEC to engage in an unnecessary and wasteful exercise. The bill would also close an avenue for investor accountability by prohibiting private lawsuits over “non-material” information that is nonetheless important for investor protection and informed decision-making. This bill was introduced as [H.R. 4628](#) in the last Congress.

- *AFR Opposes [H.R. _____](#), a bill to amend the Securities Exchange Act of 1934 with respect to prohibitions relating to the solicitation and influence of proxies*

This bill would effectively outlaw proxy advisory services altogether. Proxy advisors help investors analyze thousands of corporate ballot items. They are information intermediaries, providing investors with independent research and voting recommendations. Proxy advisors’ recommendations are just that — recommendations. Investors are free to vote in whatever way they believe is in their best interest. Proxy advisors are a resource that investors use to make informed decisions and exercise their voting rights on important issues that impact their investments. Taking away this resource would undermine the ability of shareholders — especially those that are not well-resourced — to meaningfully engage in the proxy process and protect their investments.

For all the reasons stated above, we urge you to oppose these bills that would be detrimental to the proxy process by unduly favoring the interests of the management of public companies at the expense of shareholders pushing them to address important risks. Thank you for your consideration of our perspective. Please do not hesitate to contact Natalia Renta at natalia@ourfinancialsecurity.org if you have any questions.

Sincerely,

Americans for Financial Reform

Shareholder Proposals: **An Essential Investor Right**



**Shareholder
Rights Group**

US/SIF
US Sustainable Investment Forum

Acknowledgments

February 2025

This report was written by Cynthia Simon (Policy Director) and Sanford Lewis (Director and General Counsel) of the Shareholder Rights Group.

We would like to thank Rick Alexander (The Shareholder Commons), Brittany Blanchard Goad (Ceres), Mike Garland (Office of the Comptroller, New York City), Greg Hershman (PRI), Susana McDermott and Tim Smith (Interfaith Center on Corporate Responsibility), Bryan McGannon (US SIF), Tejal Patel (SOC Investment Group), Brandon Rees (AFL/CIO) and Natalia Renta (Americans for Financial Reform Education Fund) for their careful review and valuable feedback. All errors are the authors'.

About



The Interfaith Center on Corporate Responsibility (ICCR) is a broad coalition of more than 300 institutional investors collectively representing over \$4 trillion in invested capital. ICCR members, a cross-section of faith-based investors, asset managers, pension funds, foundations, and other long-term institutional investors, have over 50 years of experience engaging with companies on environmental, social, and governance ("ESG") issues that are critical to long-term value creation. ICCR members engage hundreds of corporations annually in an effort to foster greater corporate accountability. Visit our website www.iccr.org and follow us on [LinkedIn](#), [Bsky](#) and [X](#).

Shareholder Rights Group

The Shareholder Rights Group is an association of investors formed to defend the shareholder's right to engage with public companies on governance, corporate accountability and long-term value creation. Visit our website at www.shareholderrightsgroup.com.



US SIF works to ensure that the US capital markets play an active role in driving investments toward more sustainable and equitable outcomes. The US SIF and its members are the leading voices of sustainable investment. We aim to create a level playing field in Capital Markets which includes increased transparency and disclosure across the industry. US SIF's 200+ Members represent trillions in assets under management. The Membership includes actors across the entire capital markets value chain—including asset owners, financial advisors, asset managers, institutional investors, community investment institutions and data & service providers. Visit our website at www.ussif.org.

Table of Contents

1. Foreword	4
2. Executive Summary	4
3. Introduction: Shareholder proposals and the freedom to invest	6
4. What is a shareholder proposal?	8
5. Who files shareholder proposals and why	9
a. An essential engagement tool	9
b. Governance proposals and the role of individual investors	10
c. Evidence of sustainable value raised in environmental and social proposals	12
d. Barriers to proposal filing	12
i. Ordinary business	13
ii. Specialization to meet barriers to proposal filing	13
e. Fiduciary duty and shareholder proposals	14
f. Interpreting voting results	15
6. How shareholder proposals promote corporate accountability	16
a. Child online safety	16
b. Drug pricing	16
c. Subprime lending	17
d. COVID Vaccines	17
e. Artificial Intelligence	18
d. Opioids crisis	18
f. Rail safety	18
h. Workplace health and safety	19
i. Toxic products	19
j. Toxic chemicals in water	19
Appendix: Shareholder proposal regulation	20
i. Origins	20
ii. SEC Rule 14a-8	20
iii. The no action process	22
iv. Significant judicial developments	22
v. Significant legislative developments	23

Foreword

Long-standing safeguards in our capital markets are at risk. The shareholder proposal process is a critical tool for investors to guard investment value from material risks and to protect the American public from corporate misconduct and egregious behavior. In 2025, legislative, regulatory and judicial assaults threaten these rights.

This report is intended to set the record straight and to defend this essential investor right.

Executive Summary

Investors' right to file shareholder proposals has contributed to the success of the US capital markets.

The shareholder's right to place proposals on the proxy, and the freedom to express a collective voice by voting on such proposals, are part of the social and legal compact between investors and companies that maintains the trust needed for capitalism to thrive. This trust has resulted in the US becoming the largest and most envied capital market in the world.

Shareholder proposals are largely non-binding. Non-binding proposals give companies the flexibility to address shareholder concerns without displacing the traditional role of the board of directors to oversee the operations of the company.

Environmental and social shareholder proposals protect the American public by promoting accountability for corporate mismanagement and egregious behavior.

Environmental and social shareholder proposals play a pivotal role in surfacing key issues facing companies that boards—the representatives of shareholders—may not be aware of, or may be trying to ignore or even conceal. Shareholder proposals have enabled investors to take actions benefitting the American public across a range of topics and industries, including on excessive drug pricing by pharmaceutical companies, improvements in online child safety by tech companies, greater board oversight of opioid manufacturers, distributors and pharmacies, enhanced attention to worker health and safety and greater accountability for the potentially toxic effects of corporate products on consumers and drinking water.

The SEC's no action process represents a structured, time-tested process to guide company decisions by allowing the SEC to indicate in advance whether it concurs with company decisions to eliminate proposals from the proxies. Without the no action process, companies would lack SEC guidance regarding decisions to eliminate proposals, and investors would only have recourse to file suit against companies that choose to block proposals in federal court, a lengthy and costly alternative for both parties.

Shareholder proposals are one of the few opportunities that ordinary American investors have to influence policies at the companies that they own.

Shareholder proposals are largely non-binding. Non-binding proposals give companies the flexibility to address shareholder concerns without displacing the traditional role of the board of directors to oversee the operations of the company.

Environmental and social shareholder proposals address financially relevant investment risks.

Under SEC Rule 14a-8, shareholder proposals must address issues that are relevant to a company. Certain issues like climate change and human capital management, which also happen to be currently debated in the social and political arena, are nonetheless highly relevant to the financial future of many companies. A recent study by the National Bureau of Economic Research estimates that climate change costs the world 12% in gross domestic product losses for every 1°C of warming, and that the macroeconomic damages from climate change are six times larger than previously thought due to the impact of extreme weather.¹ Concerning human capital management, a growing body of research shows that the workforce is a critical source of competitive advantage and fundamental resilience for companies.²

Investors are the most knowledgeable parties to determine investment risk in the form of legal, regulatory, operational and ethical risks to a company's value. Informed investors filing shareholder proposals are often the first movers on addressing a range of risks relevant to their investments, long before such risks are addressed by government regulations. One of many examples of this are the shareholder proposals concerning predatory subprime lending long before the banking crisis of 2007-2008.

Issues relating to corporate governance, potential lawsuits, supply chain disruptions from extreme weather, regulation, higher labor costs from human capital mismanagement and ethical scandals that could negatively impact an individual company's profitability or the larger economic system that all shareholder returns depend—issues far from being considered “picaresque”—on have all been topics of shareholder proposals. All shareholders benefit from the increase in disclosures gained from shareholder proposals.

Many corporate governance policies that today are viewed widely as best practice were initially driven by the shareholder proposals of small individual “Main Street” investors—not large institutions—and then expanded to common adoption by markets.

Going back to the 1940's, a small, dedicated group of individual investors have played a leading role in the filing of governance-related shareholder proposals that received high levels of investor support and drove many reforms covering a range of governance topics. These reforms have enhanced capital markets by strengthening the ability of boards to oversee shareholder interests and by addressing power imbalances between investors and company boards and management, proof that many constructive ideas have come from smaller individual investors.

Shareholders with a wide array of investment strategies and perspectives have the freedom and rights embodied in the shareholder proposal process to make recommendations to management, and to have those recommendations considered by fellow shareholders. *In recent years, conservative investors have increased the number of proposals that they have filed, including over 100 such proposals in the 2024 proxy season.*

Environmental and social shareholder proposals address financially relevant risks at companies and protect the American public by promoting accountability for corporate misconduct and egregious behavior.

Raising ownership filing thresholds threatens the demonstrated positive impact of small investors on company governance and management.

Shareholder proposals and the SEC's no action process are the most efficient and cost-effective means for companies to understand specific investor concerns.

The ability to file shareholder proposals has the benefit of efficiently focusing investor attention on a material risk to the company that could impact its reputation, value creation or longer-term competitiveness. Without the right to place proposals concerning specific topics of concern on the proxy statement, investors would only have the option to vote against certain directors or the entire board—a simple yay or nay with no specifics.

The SEC's no action process represents a structured, time-tested process to guide company decisions by allowing the SEC to indicate in advance whether it concurs with company decisions to eliminate proposals from the proxies. Without the no action process, companies would lack SEC guidance regarding decisions to eliminate proposals, and investors would only have recourse to file suit against companies that choose to block proposals in federal court, a lengthy and costly alternative for both parties.

Shareholder proposals address issues relevant to companies that are neither trivial nor "picayune." Risks of potential lawsuits against the company, operational disruptions from droughts, floods and fires, and of ethical scandals that shake consumer or investor confidence—these are typical issues in shareholder proposals and raise material concerns for investors.

Introduction: Shareholder proposals and the freedom to invest

Large, publicly traded companies play a dominant role in the U.S. economy: pharmaceutical companies influence the medicines available in our pharmacies and their cost, health insurers influence which treatments will be affordable to patients, and tech companies influence the degree to which consumers are subject to surveillance or privacy in their use of email and social media.

Shareholder proposals are one of the few opportunities that investors, including individual Americans saving for retirement or other needs, have to allow them to influence major policies at the companies that they own. Critics are working to take even this limited right away through actions such as:

- [Legislation](#) passed by the House of Representatives in the 118th Congress giving companies sole discretion as to whether to exclude investor proposals from the proxy statement
- A [lawsuit](#) brought by Exxon against its own shareholders to stop them from proposing a climate vote at a shareholder meeting
- New [staff interpretations](#) of longstanding SEC regulation Rule 14a-8 making it harder for investors to ask for other investors to vote for proposals addressing material risks to the sustainable value of companies.
- A [letter](#) written by 18 state attorneys general insinuating that major asset managers and banks were violating fiduciary duties and other legal obligations simply by considering climate and other social issues when voting proxies on behalf of clients.
- A [speech](#) from an SEC Commissioner arguing for new rules that will disenfranchise smaller investors from accessing the shareholder proposal process.

The free market, and the relationship between investors and issuers, is grounded in investors' rights as company owners to elect directors as well as file shareholder proposals. The job of boards is to oversee the executives who are day-to-day managing the company. The rights to vote upon directors, as well as to present focused issues through shareholder proposals, are part of the bundle of rights investors possess and value as company owners. The unfettered exercise of these rights reinforces the relationship of trust needed for capitalism to thrive.

Shareholder proposals address issues relevant to companies that are neither trivial nor "picaresque." Risks of potential lawsuits against the company, operational disruptions from droughts, floods and fires, and of ethical scandals that shake consumer or investor confidence—these are typical issues in shareholder proposals and raise material concerns for investors. This private ordering process can allow good ideas to proliferate in the market, advancing best practices and reducing the pressure for government regulation or for more confrontational or costly approaches by shareholders, such as voting against the board, or litigation.

The only cost associated with the shareholder proposal rule is for the company to publish a proposal limited to no more than 500 words in the proxy. All other costs related to the shareholder proposal process are at the discretion of management. Management's prudent attention and engagement to the important issues surfaced by proposals is more likely to be a net benefit to the company than a cost.

Shareholder proposals indicate to a company the material concerns of its investor base. Corporate disclosure and decision-making are driven by the concept of materiality. Information is 'material' "if there is a substantial likelihood that a reasonable investor would consider it important in deciding how to vote, or to buy or sell a stock, or would view it as significantly altering the 'total mix' of information made available."³ The level of investor support demonstrates for the company, board and management what the "reasonable investor" would view as material information for disclosure and action.

Shareholder proposals are part of the social and legal compact between investors and companies that builds the trust needed for capitalism to thrive. They enable dialogue between shareholders and their companies to bring improvements in disclosure and risk management that all investors benefit from.

Without the right to make proposals, corporate management can more easily ignore the voice of small shareholders, pension funds, and other investors. Many corporate governance policies that today are viewed widely as best practice were initially driven by the shareholder proposals of smaller individual "Main Street" investors—not large institutions—and then expanded to common adoption by markets, companies and investors.

In this report, we provide information on the origins of the shareholder proposal process as an investor right, its regulation and functioning, its role in corporate accountability, and the benefits to capital markets, companies and investors.

Without the right to make proposals, corporate management can more easily ignore the voice of small shareholders, pension funds, and other investors.

Shareholders—as owners of a company—have a legal right to offer proposals to appear on the corporate proxy statement to be voted upon at a company's annual shareholders meeting.

What is a shareholder proposal?

Shareholders—as owners of a company—have a legal right to offer proposals to appear on the corporate proxy statement to be voted upon at a company’s annual shareholders meeting. Corporations are required to hold these annual meetings in order for shareholders to vote on matters related to the corporation such as auditor ratification, election of directors, and executive compensation. The Securities and Exchange Commission (SEC) requires public companies to file an announcement ahead of the annual meeting including its items of business called the proxy statement.⁴ SEC Rule 14a-8 allows shareholders to submit statements of up to 500 words (“shareholder proposals”) to be included in the company’s proxy statement.

The proxy statement is therefore the vehicle by which investors are informed of proposals by other investors. Without the ability to file shareholder proposals, investors seeking better disclosure on neglected issues could be forced to vote against directors or the entire board, which would be highly inefficient and costly to all concerned.

SEC Rule 14a-8 defines a shareholder proposal as a specific request from the shareholder - a “recommendation or requirement that the company and/or its board of directors take action, which you intend to present at a meeting of the company’s shareholders.” The SEC states that the proposal “should state as clearly as possible the course of action” that the shareholder believes the company should follow.⁵

Some shareholder proposals seek changes in governance infrastructure, for example, requesting that the CEO and the board chair be separate people to increase the independence of the board and its ability to oversee the company on behalf of shareholders. Or they might request a change in voting standards to allow proposals to be passed by a vote of a simple majority rather than a larger voting threshold of supermajority, thus creating a better balance of power between the company and its investors.

Other proposals may address environmental or social challenges facing the company—issues that may also be the subject of a wider social or political debate, but which nonetheless have a potential financial impact on the company or the larger economy on which returns depend.

For example, a proposal may request the disclosure of the company’s assessment of its operations, policies and practices designed to mitigate environmental, regulatory or liability risks associated with its mining operations. In another instance, a proposal may request that a company report as to its timeline and plan for how it expects to transition to meet its stated objective of net zero greenhouse gas emissions. Or a proposal may request disclosure concerning the risk of supply chain disruption due to unrest in regions facing civil conflict, or the impact of increases in employment turnover costs from failure to pay a living wage. Some of these proposals might be described as “social or political proposals,” but they must nonetheless be relevant to the company’s business according to SEC rules and comply with more than a dozen strict SEC rules for acceptable proposals and filings.⁶

Most shareholder proposals are non-binding. Non-binding proposals give companies the flexibility to address shareholder concerns without displacing the traditional role of the board of directors to oversee the operations of the company.

Shareholder proposals are a crucial tool for investors to engage with their companies. Engagement covers a host of strategies investors use to obtain additional information and influence the policies and practices of their portfolio companies on governance and sustainable value creation.

Some commentators have expressed the view that shareholder proposals place too high a cost on management. However, the process generates the benefit of allowing an efficient referendum on a single topic, thereby improving the company's understanding of all of its investors' views on a specific issue or concern. When viewed in light of this advantage, the shareholder proposal process is cost-effective for companies.

Who files shareholder proposals and why

An essential engagement tool

Shareholder proposals are a crucial tool for investors to engage with their companies. Engagement covers a host of strategies investors use to obtain additional information and influence the policies and practices of their portfolio companies on governance and sustainable value creation.

Multiple studies suggest shareholder engagement increases company returns. Studies have found engagement to deliver substantial benefits for investors by lowering downside risk exposures, with each \$10,000 spent on engagement expected to increase firm value by approximately one-third of one basis point.⁷ One study found that firms targeted for shareholder engagement on ESG issues outperformed their peers by 7.5% in the following year.⁸ Studies have also found that shareholder proposals create long-term value by providing input on management decisions, holding corporate management accountable, and addressing governance considerations in public companies.⁹

Investor engagement typically begins with dialogue in the form of a letter or request to meet with the company concerning a specific topic or topics of material concern to the investors. If the company is unresponsive, a shareholder proposal may be filed by investors as a means of encouraging broader investor support by inviting votes by other shareholders. In many cases, with a proposal filed that would lead to a shareholder vote, the companies and proponents reach an agreement to address the concerns raised by the proposal in some manner to avert the need for the proposal to go to a vote. Companies often consider and implement investors' recommendations because they see the value in the proposals, demonstrating that the shareholder process is effective in facilitating changes that are beneficial both to the company and share value. Over the last 10 years, an average of 40% of the shareholder proposals filed with companies each year have been subsequently withdrawn after the company agreed to address the proponents' concerns.¹⁰

Shareholder proposals have helped investors make their companies more lucrative, resilient, and responsive to key governance, social and environmental challenges.

Engagement is especially important for long-term, diversified investors, whose financial returns rely upon a healthy, resilient economy over the coming decades. Retirement savers and other investors—who are known as “universal owners” because they may own shares in the entire market (typically through broad market indexed investments)—are examples of these types of investors. These investors are exposed to broader economic risks that threaten the entire economy, such as the accelerating crisis in homeowners’ insurance due to climate change,¹¹ or the systemic challenges in the healthcare system.¹² Engagement and shareholder proposals are an effective means of addressing these concerns by alerting directors and other shareholders that the pursuit of short-term gains that come at the expense of large swaths of the population may not be in the best interest of the average shareholder.

Normally, the engagement described in the preceding paragraphs requires minimal investor disclosure. However, on February 13, 2025, the SEC issued a new Compliance and Disclosure Interpretation, Question 103.12, which clarified that an individual or group of shareholders who hold in excess of 5% of a company’s voting shares and who are conditioning favorable voting support for board members on addressing environmental, or social, or governance related shortcomings could trigger a requirement for complex 13D filing requirements rather than the shorter form 13G.¹³ The additional filing requirements of 13D impose substantial additional costs in cases where a large shareholder is undertaking efforts with the purpose or effect of changing or influencing control of the issuer.

To the extent that an investor, asset manager or group of shareholders hold in excess of 5% of a company’s voting shares and have identified environmental, social or governance shortcomings on which they seek to engage a company, the February 2025 13G guidance may have the result of encouraging these investors to use shareholder proposal voting or filing in their engagements. Since most shareholder proposals are framed as advisory requests, they do not attempt to alter control and could potentially communicate concerns to companies without the risk of triggering more onerous disclosure.

Proposals that win significant support elevate shareholder concerns issues facing companies that boards—the representatives of shareholders—may not be aware of, or may be trying to ignore or even conceal.

Since the 1940’s, a small dedicated group of individual investors have played a leading role in driving many corporate governance reforms through shareholder proposals, made possible by regulatory ownership requirements reasonable for the smaller investor.

Governance proposals and the role of individual investors

Governance engagements seek to ensure that a well-functioning board can effectively oversee the interests of shareholders. For example, proposals to increase the independence of the audit or risk committee have the potential to reduce accounting fraud risk. Likewise, engagements to increase the holding period of equity-based pay reduce management incentives to manipulate short-term earnings.

Governance shareholder proposals can also increase investors’ ability to engage with companies. It has been shown that it is more costly for investors to engage with companies with entrenched managers.¹⁴ The entrenchment of management is principally measured and affected by the corporate governance infrastructure including whether the company has characteristics such as:

- Staggered boards
- Limits to shareholder by-law amendments

- Supermajority requirements for mergers
- Supermajority requirements for charter amendments
- Poison pills
- Golden parachutes¹⁵

Shareholder proposals that improve corporate governance structures on these aspects are frequently part of an overall strategy by investors to provide a better balance of power between investors and a company's management and board.¹⁶

Since the 1940s, a small, dedicated group of individual investors including John¹⁷ and Lewis¹⁸ Gilbert, Wilma Soss,¹⁹ Evelyn Davis,²⁰ William²¹ and Kenneth²² Steiner, Emil Rossi,²³ John Chevedden²⁴ and James McRitchie²⁵ have played a leading role in the filing of governance-related shareholder proposals that have received high levels of investor support and driven many reforms covering a range of governance topics, including eliminating staggered director terms, reducing supermajority voting thresholds, requiring an independent board chair, eliminating dual class voting, requiring shareholder approval of bylaw amendments, requiring majority voting in uncontested director elections, and proxy access for shareholder director candidates.²⁶ The governance-related proposals of individual investors attracted, on average, 47.8% shareholder support between 2005 and 2018, and accounted for a large portion of the passed proposals, an indication that these proposals were receiving widespread support from larger investors.²⁷ Many of these issues were also adopted by major investors in their proxy voting guidelines and corporate engagements, by market exchanges, and by companies—compelling evidence that constructive ideas have come from these smaller individual investors.

Some examples of corporate governance policies that today are viewed widely as best practice and that were initially driven by shareholder proposals and then expanded to common adoption by companies and markets, include:

- **Independent Directors and Board Recruitment:** Shareholder proposals have encouraged norms such as independent directors constituting a majority of the board, independent board leadership, transparency of board recruitment and qualifications, and annual elections for all directors. For example, in 2013, shareholders submitted approximately 70 proposals requesting the adoption of a policy requiring that the company's board chair be an independent director.²⁸
- **Electing Directors by Majority Vote:** Shareholder proposals have encouraged electing directors by majority vote, rather than by plurality—a radical idea a decade ago when shareholders pressed for it in proposals, and now the norm at 90% of large-cap U.S. companies.²⁹ In 2011, Apple was one of 58 companies the California Public Employees Retirement System urged to adopt majority rather than plurality voting, which more evenly balances power between the company and its investors.³⁰ The proposal had majority support from shareholders at Apple and many other companies.³¹
- **"Say-on-pay" vote requirements:** now mandated by the Dodd-Frank Act—also resulted from shareholder proposals. The Say-on-Pay vote asks investors to vote on the compensation of the top executives of the company—the CEO, the Chief Financial Officer, and at least three other most highly compensated executives ("named executive officers").³²

In a recent report analyzing shareholder proposal voting trends over the last decade, proxy advisor ISS notes: "Investors show little to no interest in proposals that advocate a political viewpoint without demonstrable economic relevance".

A proposal that just asks a company to take a purely political position would be rejected by the SEC under the ordinary business rule.

Evidence of sustainable value raised in environmental and social proposals

Shareholder proposals frequently address risks due to environmental issues that can be highly costly to companies and their investors when they ultimately materialize in the near- or long-term. Consider that the shareholder value of BP plummeted by 55% after the explosion of the Deepwater Horizon oil rig, from \$59.48 per share on April 19, 2010 to \$27 per share on June 25, 2010.³³ Climate change-induced changes in severe weather such as drought and flooding, as well as regulatory responses and constraints in various markets worldwide, has been documented to threaten substantial financial risks to the banking,³⁴ mining,³⁵ industrials,³⁶ transportation,³⁷ agriculture³⁸ and real estate sectors.³⁹ Bringing greater transparency to the management of such risks has been the subject of shareholder proposals in these sectors.

Corporations also face risk related to social issues such as disruption of the business or supply chains due to human rights abuses⁴⁰ workforce health and safety scandals,⁴¹ or failures to protect the online safety of children.⁴² The growth in environmental and social shareholder proposals over the last several years also reflects concern that certain issues threaten the economy as a whole and large swathes of investment portfolios.

Informed investors are often early movers on addressing risks that ultimately prove to be quite material, and even existential, to their investments. As an example, proposals filed by members of the Interfaith Center on Corporate Responsibility (ICCR) against predatory lending in the early 2000s at AIG and other companies.⁴³ At the time, these proposals might have been characterized as *merely addressing social risks* yet they foreshadowed the banking crisis driven by such predatory practices that proved to be very expensive for AIG and the other companies, and for society in the housing crisis and bank bailouts that followed.⁴⁴

Shareholder proposals also mirror public sentiment. A recent study of companies in the Russell 3000 Index found that negative public sentiment about a firm on both financial and broad sustainable investing aspects are significantly related to the number of shareholder-sponsored proposals, with the impact of news sources being slightly stronger than social media in affecting the number of shareholder proposals. The study also found a strong association between the number of shareholder proposals on the ballot and director turnover and forced turnover of CEOs at the firm, finding one additional shareholder proposal is associated with a 10.9% increase in director turnover and a 24.8% increase in forced CEO turnover, both to the mean. The study not only found association between these factors; it also was able to demonstrate causal evidence that negative sentiment around corporate practices that are not sustainable leads to increased shareholder dissent.⁴⁵

Barriers to proposal filing

Among other requirements, the right to file a shareholder proposal under Rule 14a-8 is conditioned on the investor having a number of shares held continuously for a sufficient amount of time. In 2020, the SEC established the current tiered approach for filers. Shareholders who held \$2,000 worth of shares for at least three years are permitted to file proposals, but larger holdings are required for those with a shorter duration of holding of the shares - \$25,000 for three years and \$15,000 for two years. The theory regarding these duration requirements is that the shareholders who have held the shares for three years are likely to continue to retain the shares and therefore bear the benefits or burdens of the proposal as a fellow long-

Shareholders cannot simply make any proposal they want. They must meet a number of hurdles to ensure that the proposal is relevant to the company and to other shareholders.

Policies regarding the amount of compensation paid to employees are generally ordinary business, but proposals that challenge excessive compensation of the CEO or of directors are appropriate. A pharmaceutical company's prices for its products are ordinary business, but company policies exploiting a pandemic to exploit vulnerable consumers may be seen to transcend ordinary business.

term shareholder.⁴⁶ Nonetheless, these requirements must also be set to ensure that smaller individual investors—not only large institutions—have the ability to file proposals, especially given the role that smaller retail investors have played in initiating important governance changes that large institutional investors overwhelmingly support at annual meetings.

The ownership threshold is only one of several barriers to the filing of shareholder proposals. A number of other requirements make it more costly and time-consuming for a proponent to file a proposal. These include carefully framing the proposal's request so that it does not micromanage the company, is not improper under state law or other federal laws, is not focused on a personal grievance, nor substantially implemented by the company. All told, the requirements for paperwork and proposal drafting present a very significant and time-consuming hurdle. It means that there is a high barrier, especially for new filers.

Ordinary business

A basic principle of SEC Rule 14a-8 is that a proposal should not supplant or attempt to control the day-to-day decision-making of the corporation, referred to as “ordinary business.” The company's officers are hired to manage the company under the oversight of the board of directors. The board is accountable as an elected representative of the shareholders. As such, the management and board have important day to day discretion in running the company—who to hire, how much to pay them, what kind of products or services the corporation should offer and many other ordinary business matters that it takes to run a business.

While a focus on ordinary business is not appropriate for a shareholder proposal, the courts and the SEC have made a notable exception when shareholder proposals address important policy issues for a company on *which it is appropriate for shareholders to weigh in*, often referred to as the “social policy” exception. Such proposals are described as *transcending* ordinary business.

For instance, while the day-to-day lending practices of a bank are ordinary business, when there is evidence that the bank is engaging in predatory policies and practices, shareholders are able to file a proposal asking the company to disclose more about this issue and its current policies. Similarly, policies regarding the amount of compensation paid to employees are generally ordinary business, but proposals coming from shareholders that challenge excessive compensation of the CEO or of directors are appropriate. A pharmaceutical company's prices for its products are ordinary business, but company policies exploiting a pandemic to exploit vulnerable consumers may be seen to transcend ordinary business. Day to day legal compliance on environmental regulations is ordinary business, but significant pollution incidents or catastrophes that a company may be liable for may be an appropriate topic for a shareholder proposal because it transcends ordinary business.

An important related limitation is for proposals not to *micromanage*. Even if the topic transcends ordinary business, proponents must not be so *granular in their request* to the company that they attempt to micromanage the business. The discretion of the board and management is protected in this process. That is why many proposals often ask the board or management to disclose more about their policies and practices, and proposals seeking action are typically advisory rather than a mandatory order.

Specialization to meet barriers to proposal filing

As a result of the substantial technical barriers to entry for proposals and proponents, the proposal rules have led to specialization of some investors and advisors with the expertise and capacity to file proposals successfully. On average, roughly 10 entities lead more than half of the

proposals filed in a proxy season. The top 10 filers during 2024 included individuals, faith-based and socially responsible asset managers, unions, two large public pension funds and a service provider enabling foundations to participate in engagement and the filing of shareholder proposals.⁴² These filers represent far more than 10 investing institutions or individuals—they represent a range of beneficiaries and investors for whom the shareholder proposal process is a significant tool.

Using their experience of filing proposals year after year, these entities and individuals hone an expertise developing proposals that can navigate the challenges associated with compliance with SEC Rule 14a-8. This expertise benefits both companies and investors by limiting the number of excludable proposals that are filed, saving considerable time that would be spent crafting and addressing proposals that ultimately would not be included on the ballot. This streamlining allows shareholders to focus on using their vote to indicate which proposals they believe raise important issues that should be addressed by management.

Whether or not a proposal receives majority support, when a significant number of shareholders signifies through their vote that the company needs to bring additional attention to an issue, the shareholder proposal process can be an important prompt to productive action by the company. For instance, research by Morningstar shows that in 2024, 19.5% of the environmental and social proposals voted on in 2024 (excluding anti-ESG proposals) received 30% or more support from independent shareholders. 31.8% of environmental and social proposals voted on in 2024 (excluding anti-ESG proposals) received 20% or more support, according to data from the Sustainable Investments Institute.

A letter from Attorneys General from 16 states and the District of Columbia noted that State or federal laws that interfere with the ability to assess ESG may, in fact, interfere with financial institutions' ability to make sound investment decisions on behalf of hard-working Americans.

Fiduciary duty and shareholder proposals

The concept of fiduciary duty is pivotal to many investors' and investment institutions' decisions regarding filing or voting upon shareholder proposals. Fiduciary duties include a duty of care, loyalty, good faith, confidentiality, prudence, and disclosure. As an example, registered investment advisors (RIAs) have a fiduciary duty to act in the best interests of their clients when providing financial advice and financial planning.⁴³ In certain instances, following the advice of clients, the RIA may find it necessary to engage with particular companies, to vote proxies consistent with client interests and preferences, and in some instances, to file proposals.

Also relevant to the shareholder proposal process is the monitoring of the fiduciary responsibilities of corporate directors. Directors have a duty to manage corporate assets in the best interest of the corporation and shareholders.⁴⁴ Often, shareholder proposals seek to clarify the extent of board oversight of a consequential issue for the company.

As another example, the 1974 Employee Retirement Income Security Act (ERISA), which covers corporate and union pension plans but also serves as a guidepost for the practices of state and local pension plans, requires, among other things, that fund fiduciaries act solely in the interests of plan participants and beneficiaries (duty of loyalty) and that a fiduciary act with the care, skill, and diligence of a prudent man under similar circumstances (duty of prudence).⁵⁰

Currently, a range of opinions has emerged regarding the incorporation of ESG factors by fiduciaries. The organization PRI (Principles of Responsible Investment) states that "empirical and academic evidence demonstrates that incorporating ESG issues is a source of investment

value” and that consideration of “ESG factors is consistent with legal responsibilities to evaluate potential risk and reward in assessing the merits of an investment.” Further, PRI states that a fiduciary’s duty of loyalty and prudence often necessitate the incorporation of environmental, social and governance issues into investment analysis and decision-making processes, consistent with their investment time horizons.⁵¹ Similarly, a letter from Attorneys General from 16 states and the District of Columbia noted that State or federal laws that interfere with the ability to assess ESG may, in fact, interfere with financial institutions’ ability to make sound investment decisions on behalf of hard-working American pension beneficiaries.⁵²

Some state laws require state entities to consider environmental, social, and governance factors in investing and contracting decisions. They may also lead the state pension funds to demand that portfolio companies disclose climate-related metrics and risks, and/or disclosures that report diversity metrics. Some laws prohibit state entities from making new investments in certain industries that are considered to have high ESG risk factors and require divestment from existing investments in such industries.⁵³

In contrast, other state laws go in the opposite direction and seek to prohibit the consideration of environmental, social and governance factors by public pension funds, state and local authorities, and their investment managers; prohibit public entities from disqualifying applicants from a public contract, based on ESG factors; restrict the ability of public entities to do business with companies that are thought to “boycott” or “discriminate” against certain industries that are considered to have high ESG risk factors (e.g., fossil fuel or firearms); or prohibit public entities from considering ESG scores during business and contracting decisions.⁵⁴

Interpreting voting results

The votes on individual proposals by all shareholders are useful guidance to companies in expressing the perspectives of investors.⁵⁵

The fact that some large institutional investors or asset managers do not support a particular shareholder proposal may significantly affect whether a proposal attains a majority vote, but it should not be interpreted as necessarily implying that the underlying issue is unimportant to investors. For example, the largest asset managers have exceptional access to company engagement,⁵⁶ but these engagements are not transparent. These asset managers may be engaging with companies on the very topics in a proposal and receiving assurances that management plans to address the requests in the proposal, so they decide not to vote in favor. As stated by asset manager T. Rowe Price, “We believe that the reputation of T. Rowe Price affords us excellent access to the leaders of the companies in which we invest. Where appropriate, we use that access to address matters of concern in the oversight of environmental risks or social matters. In many cases, this obviates the need to support shareholder resolutions in these areas.”⁵⁷

Whether or not they receive a majority vote, shareholder proposals are an essential vehicle to allow substantial groups of investors to voice concerns on issues they view as important. Voting outcomes demonstrate a practical assessment of whether a significant number of the company’s own shareholders view an issue as significant and therefore are an important tool for informing the corporation’s materiality decision-making.

Shareholder proposals protect against the risk of corporate mismanagement by promoting accountability for management misconduct and egregious behavior that harms the American public and jeopardizes a company’s reputation or finances.

How shareholder proposals promote corporate accountability

Shareholder proposals are a tool for investors to flag egregious mismanagement or misconduct that harms the American public and jeopardizes the company's reputation or finances. Sometimes these excesses allow companies to benefit in the short-term, but at the expense of long-term returns. A shareholder proposal can communicate investors' interest in preserving investment value both at the individual company and, for certain retirement savers, at the level of the national economy, which is critical to their typically diversified portfolios.

Child online safety

Social media companies have been linked to numerous child safety problems including a mental health crisis for young people, age verification failures, cyberbullying, self-harm and child sexual exploitation, and grooming and trafficking. Since 2016, a group of now more than 60 investors from multiple countries have engaged with tech companies concerning child online safety, collaborating with online safety experts, law enforcement, and policy makers such as the Senate Judiciary committee to prompt tech companies to remove harmful content and implement stronger protections. Shareholder proposals during 2022 and 2023 at Apple, Alphabet and Meta Platforms (Facebook) played a significant role in this investor engagement to improve child safety online.⁵⁸

Drug Pricing

Polling has found that nearly 30% of Americans say they haven't taken their medication as prescribed due to high drug prices and research estimates that more than 1.1 million Medicare patients alone could die over the next decade because they cannot afford to pay for their prescribed medications.⁵⁹

For decades, members of the Interfaith Center on Corporate Responsibility (ICCR) have pressed drug companies for greater disclosures on pricing structures as a way to promote greater access to medicines, including asking companies to disclose the rates of year-to-year price increases of their top-selling branded prescription drugs and to disclose the rationale and criteria used for these price increases.⁶⁰ Excessive drug company executive pay packages are a major contributing factor to prescription drug costs.⁶¹ Since the 1990s, shareholders have used shareholder proposals to urge companies such as Warner-Lambert, Eli Lilly, Bristol-Myers Squibb and Celgene Corporation selling high-priced pharmaceuticals to reduce executive compensation and take other actions to bring prices down to benefit consumers and prevent excessively high prices.⁶² Investors have also expressed concern about pharmaceutical companies' governance structures and their boards' ability to proactively mitigate risk related to high drug prices, such as the risks from unsustainable business models that rely on price increases for growth, or strategies to extend patents without any meaningful new science.⁶³

Patent practices of pharmaceutical companies are also a corporate tool to artificially maintain high drug prices at the expense of consumers.⁶⁴ In 2022, a shareholder proposal filed at Gilead Sciences asked for an evaluation of how the company's patenting policies that extend exclusive

rights and prevent generic competitors impact patient access and cause higher consumer drug prices. The proposal earned 39.6% voting support from investors. Similar proposals were also filed at nine other pharmaceutical companies, including proposals at Bristol Myers Squibb and Amgen that were withdrawn due to productive dialogue, and proposals that were voted on and received significant investor support at Pfizer (30.2% vote FOR) and at AbbVie (29.5% vote FOR).⁶⁵

Subprime lending

Prior to the banking crisis of 2007-2008, shareholders of banks had attempted to elevate attention to the risks of predatory lending through shareholder proposals. Predatory lending in the subprime market was of growing concern to some investors as it became clear that borrowers were unable to repay these loans and were losing their homes.⁶⁶ In 2004, shareholders submitted a proposal at American International Group (AIG) requesting that the Board conduct a review to study ways of linking executive compensation to successfully addressing predatory lending practices.⁶⁷ Although the proposal only received 2.8% voting support,⁶⁸ it is a remarkable example of the prescience of shareholders as to material risks to their companies. In 2007, AIG was the world's largest insurance company with some \$850 billion in assets and 76 million customers worldwide (30 million in the US alone).⁶⁹ By September 2008, it was on the brink of collapse. Over the course of the financial crisis, AIG received a total of \$182 billion in government bailout funds.⁷⁰

COVID Vaccines

During the COVID pandemic, pharmaceutical companies received tens of billions of US and global public funding to accelerate medical breakthroughs to respond to the pandemic. Amid press reports of "pandemic profiteering", shareholders called for financial prudence and a commitment to the public good.

Investor members of ICCR were part of a group of 59 investors representing US\$2.5 trillion in assets under management who sent letters to 17 pharmaceutical companies strongly urging financial prudence and a commitment to strategies to ensure widespread access to treatments and vaccines for COVID-19, including affordable pricing and the sharing of technology to scale-up manufacturing. The letters urged the companies to show restraint in terms of pricing, tax avoidance, stock option awards, etc., and to demonstrate a willingness to share their intellectual property to ensure the necessary scale-up, manufacturing and mass distribution at prices low enough to ensure equitable access.⁷¹

Excessive drug company executive pay packages are a major contributing factor to prescription drug costs.⁷² Since the 1990s, shareholders have used shareholder proposals to urge companies such as Warner-Lambert, Eli Lilly, Bristol-Myers Squibb and Celgene Corporation selling high-priced pharmaceuticals to reduce executive compensation and take other actions to bring prices down to benefit consumers and prevent price gouging.⁷³

Artificial Intelligence

Labor strikes in the entertainment industry in 2023 demonstrated that intellectual property infringement by artificial intelligence (AI) can have a material financial impact on a company's operations. The growing public distrust in the indiscriminate use of AI and increased government regulation were also deemed to pose material financial and reputational risks to tech and media companies. Shareholder proposals during the 2024 proxy season filed at Netflix and Apple requesting greater clarity on the use of AI and its board oversight, and the ethical principles guiding AI use, received 43% and 37.5% of shareowner votes, respectively, thus indicating widespread investor concern on the issue.⁷⁴

Investors have also focused on the financial and legal risks of ineffective content moderation at large social media platforms as serious threats to society. With Meta and Alphabet now deploying Generative Artificial Intelligence (gAI) tools, investors were concerned that critical human rights and democratic processes could be further compromised. Proposals filed on managing gAI-related risks received 16.7% of votes from all shares at Meta (53.6% of non-insider votes) and 17.6% support at Alphabet (82.4% of independent investor votes).⁷⁵

Patent practices of pharmaceutical companies are also a corporate tool to artificially maintain high drug prices at the expense of consumers.⁷⁶ In 2022, a shareholder proposal filed at Gilead Sciences asked for an evaluation of how the company's patenting policies that extend exclusive rights and prevent generic competitors impact patient access and cause higher consumer drug prices.

Opioids crisis

According to the CDC, opioids were involved in nearly 75,000 overdose deaths in 2023,⁷⁷ a crisis that continues to ravage communities across the country. The sale and distribution of opioid medications carries significant legal and reputational risks for companies with long-term and systemic societal and economic impacts.

The Investors for Opioid and Pharmaceutical Accountability (IOPA) was a diverse coalition of global institutional investors with 67 members representing over \$4.2T in AUM that was established from 2017-2023 to engage opioid manufacturers, distributors and retail pharmacies. IOPA members filed more than a hundred shareholder proposals and took on the most important governance reforms within major pharmaceutical companies to better manage societal and enterprise risks. Central to the IOPA's strategy was to involve the board in opioid risk management by asking independent directors to investigate and report on how the board is assessing and managing legal, financial and reputational risks related to its opioid business. Fourteen of these companies agreed to conduct board-level risk assessments of opioid-related business practices including governance, compliance, compensation, and political lobbying, and to report these findings publicly. Two companies created a board-level committee dedicated to opioid oversight.⁷⁸

Rail safety

Shareholder engagement on railroad safety has been an important force in pushing rail transport corporations to prioritize long-term risk management and community well-being. Following the financial and human costs of disasters like the East Palestine derailment to the local community and

surrounding states,⁷⁹ the rail industry was resistant to safety measures, blocking regulations such as two-person crew requirements.⁸⁰ In response, in 2024, investors filed shareholder proposals at major rail companies such as CSX⁸¹ and Union Pacific⁸² aimed at creating safety-focused board oversight of reforms to prevent derailments, protect workers, and safeguard communities. This underscores the importance of shareholder advocacy to hold companies accountable for ethical behavior, address material financial and reputational risks, and preserve shareholder value.

Workplace health and safety

Amazon has been in the news concerning its unsafe working conditions, including rates of safety incidents far above those of its competitors such as Walmart and Costco.⁸³ State labor regulators have alleged working at Amazon exposes employees to increased risk of ergonomic injury and musculoskeletal disorders as they awkwardly bend and twist to move goods through the warehouse.⁸⁴ According to a December 2024 report of the Senate Committee on Health, Education, Labor, and Pensions, at least two internal Amazon studies found a link between how quickly its warehouse workers perform tasks and workplace injuries, but the company rejected many safety recommendations out of concern the proposed changes might reduce productivity.⁸⁵ Shareholder resolutions at Amazon in 2022⁸⁶, 2023⁸⁷ and 2024⁸⁸ focused on this potentially harmful conduct, asking the company to report on worker health and safety and the treatment of its warehouse workers.

Toxic products

Johnson & Johnson knew its baby powder contained asbestos, an undisputed carcinogen, at least as early as the 1970s,⁸⁹ yet allegedly misled consumers into believing its talc products, which it sold for more than a century before stopping, were safe. The misconduct led to a class action lawsuit, tens of thousands of individual lawsuits and an investigation by 42 US states and Washington, D.C. into its marketing of baby powder and other talc-based products.⁹⁰ Some of the lawsuits included accusations that Johnson & Johnson marketed baby powder to Black and overweight women despite knowing about possible asbestos contamination for decades.⁹¹ While the company stopped the sale of baby powder products in the United States and Canada in 2020, the product was still on the market for many consumers worldwide by 2022, when investors filed a shareholder proposal asking the company to report on the public health risks from continued worldwide sales of its talc products.⁹²

Toxic chemicals in water

Poly and perfluoroalkyl substances (PFOA and PFAS) are a class of chemicals that has been under scrutiny and has been linked to hormone disruptions, liver and kidney disease, and cancer in addition to other human health harms.⁹³ In 2023, Mount Sinai researchers concluded that higher blood concentrations of certain PFAS were associated with a significant reduction in the likelihood of pregnancy and live births. Other studies have shown that certain PFAS can disrupt reproductive hormones and delay puberty and have been linked with increased risks for polycystic ovary syndrome and endometriosis.⁹⁴

In 2023, Sisters of St. Francis of Philadelphia filed a proposal at Essential Utilities, requesting that the company report on PFAS levels at all Essential water sources along with the potential public health and/or environmental impacts of toxic materials in the water it provides to the public. The proponents withdrew the proposal after the company agreed to make public test results for its wells and water systems and to report the results to its one million customers.⁹⁵

Appendix: Shareholder proposal regulation

Origins

During the United States' first century, corporations had small numbers of investors and were largely controlled by shareholders through deliberations and voting that took place at in-person shareholder meetings. As the US economy grew, and corporations had to bring in large amounts of capital from thousands of investors, shareholder meetings went from in-person affairs to being conducted by proxy, and management solicited blanket voting authority based on little or no information. Ownership and control were largely divorced, and corporate abuse of the proxy, which frustrated the free exercise of the voting rights of stockholders, was rampant. Section 14 of the Securities Exchange Act of 1934 addressed this concern by authorizing the SEC to regulate proxy solicitation.⁹⁶

The SEC adopted the predecessor to SEC Rule 14a-8 in 1942, recognizing that shareholders need notice of proposals to be made by fellow shareholders.⁹⁷ One court explained that, "the rationale underlying this development was the Commission's belief that the corporate practice of circulating proxy materials which failed to make reference to the fact that a shareholder intended to present a proposal at the annual meeting rendered the solicitation inherently misleading."⁹⁸ SEC Staff reiterated this purpose, explaining that "[t]he Senate Banking and Currency Committee recognized the need to provide not only for disclosure of matters management planned to present, but also for shareholders to be given 'reasonable opportunity to present their own proposals and views to fellow security holders.'"⁹⁹

Thus, SEC Rule 14a-8 advances the overall Securities Exchange Act's goal of shareholder democracy—a central purpose of the 1934 Act in reaction to weakening shareholder control and increasingly concentration of corporate power in professional managers. Shareholder democracy stands for the principle that in return for access to the securities exchanges, the law provides that corporations would incur a corresponding duty to provide shareholders with fair suffrage. Referring to 14a-8, one recent decision noted that "[t]he Commission enshrined this edict in its regulations, believing that 'fair corporate suffrage' required that all shareholders receive notice of such matters when their proxies are solicited."¹⁰⁰

SEC Rule 14a-8

SEC Rule 14a-8 provides a framework for allowing a public company shareholder to request that a proposal be included in the company's proxy statement, to be voted upon by all shareholders at a company's shareholder meeting. Shareholders cannot simply make any proposal they want. They must meet several hurdles to ensure that the proposal is relevant to the company and to other shareholders, and that the proposal is meaningful and is not outside the scope of normal shareholder interest (i.e. "ordinary business"). These limits protect the rule from abuse so that shareholders are able to vote on meaningful proposals.

These rules, developed over more than half a century, allow the company to exclude proposals on one of thirteen different bases: improper under state law, violation of law, violation of proxy rules, personal grievance/special interest, economic relevance, absence of power/authority, ordinary business, director elections, conflict with company's proposal, substantial implementation, duplication, resubmissions, and specific amount of dividends.¹⁰¹

The table on the next page sets for the thirteen bases which companies may rely on in excluding proposals from the proxy statement under Rule 14a-8.

Issue	Language of the Rule and the SEC
Specificity <i>Assessing whether the proposal requests specific action from the company</i>	14a-8(a): The proposal "should state as clearly as possible the course of action you believe the company should follow" 14a-8(i)(3) with 14a-9: Excludes a proposal that is misleading as vague or indefinite
Violation of Law <i>Assessing whether the proposal would cause a violation of law by the company</i>	14a-8(i)(2): Excludes a proposal if it would, if implemented, cause the company to violate any state, federal or foreign law to which it is subject
Violation of Proxy Rules <i>Assessing whether the proposal is contrary to SEC proxy rules</i>	14a-8(i)(3): Excludes a proposal if the proposal or its supporting statement is contrary to any SEC proxy rules, including the rule which prohibits materially false or misleading statements in proxy soliciting materials
Personal Grievance or Special Interest <i>Assessing whether the proposal relates to redress of a personal grievance or to an interest not shared by other shareholders</i>	14a-8(i)(4): Excludes a proposal if it relates to the redress of a personal claim or grievance against the company or any person, or if it is designed to benefit the proponent or further a personal interest not shared by other shareholders
Relevance <i>Assessing the significance of the proposal to the company</i>	14a-8(i)(5): Excludes a proposal if it is not economically relevant (at least 5% of net earnings and gross sales) or not otherwise significantly related to the company's business
Absence of Power/Authority <i>Assessing the company's power or authority to implement the proposal</i>	14a-8(i)(6): Excludes a proposal if the company would lack the power or authority to implement the proposal
Management Functions <i>Assessing the relationship of the proposal to a company's day-to-day activities</i>	14a-8(i)(7): Excludes a proposal dealing with a matter relating to the company's ordinary business operations
Director Elections <i>Assessing the proposal's impact on director elections</i>	14a-8(i)(8): Excludes a proposal if it would interfere with a director's or nominee's ability to stand for or continue board service, questions the competence, business judgment or character of a nominee or director, seeks to include a specific person in the proxy statement for board election, or otherwise impact the outcome of the upcoming director elections.
Conflict <i>Assessing whether the proposal conflicts with a company proposal</i>	14a-8(i)(9): Excludes a proposal if it directly conflicts with a company's proposal at the same meeting
Implementation <i>Assessing existing company activities against the proposal</i>	14a-8(i)(10): Excludes a proposal if it is substantially implemented by existing company actions
Duplication <i>Assessing similarity to proposals already received by the company</i>	14a-8 (i)(11): Excludes a proposal if it duplicates a proposal submitted by the company or another proponent
Resubmission <i>Assessing the objective of the proposal against similar proposals from prior years</i>	14a-8(i)(12): Excludes a proposal addressing substantially the same subject matter as a proposal previously included in the proxy during the last 5 years if during the previous 3 years the proposal failed to receive at least 5% support if voted on once, 15% support if voted on twice, or 25% support if voted on 3 times
Dividends <i>Assessing whether the proposal relates to dividends</i>	14a-8(i)(13): Excludes a proposal if it relates to specific amounts of cash or stock dividends
Holdings <i>Assessing the amount and period of shareholdings against required minimums</i>	14a-8(b): Excludes a proposal if the proponent has not held a market value of votable shares of at least \$25,000 for 1 year, \$15,000 for 2 years or \$2,000 for 3 years

The no action process

In order to help companies decide whether a proposal passes these tests, the SEC has developed a process to allow companies to ask the SEC in advance whether a proposal must be included in the meeting materials. The “no action” process is an informal review process through which the SEC staff advises companies and their investors on whether the SEC staff would likely recommend enforcement action if a company fails to include a submitted shareholder proposal on its annual proxy statement. The staff grants the company’s request if it finds some basis to agree with the company’s arguments that the proposal is excludable under one of the elements of SEC Rule 14a-8. It denies the request if it is unable to concur with the company’s arguments.

SEC Rule 14a8 is intended to exclude trivial, irrelevant and inappropriate shareholder proposals, thus minimizing the burden on companies. The no action process is a structured, time-tested process that adds an additional layer of objective scrutiny to company decisions regarding whether to include or exclude proposals, which serves to protect investors’ interests. If an investor disagrees with the no action decision by the SEC, the investor can submit a letter in opposition, but it does not have legal recourse against the SEC. Without Rule 14a-8 and the no action process, an investor only has the option to sue the company under federal law if it disagrees with a company’s decision to not place a proposal on the proxy, which would add delays, and significant costs for both parties.

The SEC staff periodically recalibrates its interpretation of the rules of the no action process to reflect current issues of concern to investors and companies. For example, in 2021, the SEC staff issued an interpretive bulletin, Staff Legal Bulletin 14L, which clarified ordinary business and micromanagement rules in a manner that allowed some environmental and social proposals to reach the proxy which might not have qualified in a prior interpretation. Following market response and criticisms, the staff once again tightened up its interpretations of micromanagement and excluded many proposals on social and environmental issues that had previously been allowed. From November 1, 2023 to May 1, 2024 the SEC staff supported company requests for exclusion of proposals roughly 68% of the time, similar to the average exclusion rate during the first Trump administration, from 2017-2020, which was 69%.¹⁰² In the 2025 proxy season to date, the staff has again tightened its interpretation of the micromanagement rule, excluding, for example, proposals on lobbying disclosure that had previously been permissible since at least 2011.¹⁰³

On February 12, 2025, the SEC staff also signified that it is taking a more restrictive posture on proposals that request specific forms of disclosure or actions by companies. SLB 14M issued on that day revoked SLB 14L and altered staff interpretations of the micromanagement, ordinary business and relevance exclusions.¹⁰⁴ The new interpretation is anticipated to lead to an increase in the exclusion of environmental and social proposals, and fewer such proposals appearing on proxy statements.

Of particular note in SLB 14M is a shift in interpretation of micromanagement from SLB 14L’s focus on the interest and capacities of shareholders to understand and vote on an advisory proposal on the issue, and toward an evaluation as to whether the proposal seeks a specific method, strategy or outcome that the staff views as more appropriately determined by the board or management. In addition, SLB 14M applies to all proposals currently in the no action process (i.e., retroactively), which some shareholders have objected to.¹⁰⁵

Significant judicial developments

Exxon

In January 2024, Exxon sued two investors who filed a shareholder proposal for the 2024 annual meeting asking the company to go beyond current plans to further accelerate the pace of emission reductions in the medium-term for its greenhouse gas emissions across Scope 1, 2, and 3, and to summarize new plans, targets, and timetables. The suit was ultimately dismissed by the US District Court in Fort Worth Texas as moot after the proponents agreed to withdraw and not re-file the proposal.¹⁰⁶

Exxon asserted in the lawsuit that the proponents' efforts to encourage the company to transform itself into a clean energy company violated the resubmission and ordinary business rules. Until the Exxon lawsuit, the focus of lawyers and clients under Rule 14a-8 has been principally ensuring that a proposal would comply with current SEC interpretations of the 14a-8 exclusions. In the event of a difference of opinion between investors and issuers, the routine course of action is for the company to file a no action request with the SEC staff, with resolution of the disagreement by SEC staff. Filing a lawsuit against its own shareholders and seeking resolution of the issue in a court that is less familiar with the rules was a dramatic and harsh deviation from routine practice, though it was within the company's rights to do so.

Exxon's CEO, Darren Woods, also asserted that the proposals filed by the proponents represented inappropriate use of the shareholder proposal process as out of line with what "real" investors in the company would seek.¹⁰⁷ Yet according to a 2024 survey conducted by FT Longitude of investment firm chief investment officers worldwide, including in the US¹⁰⁸, less than one percent of respondents believe that oil exploration and production will offer the best returns over the next 10 years. Instead, a full 62% of the investors currently believe that the best returns over the next 10 years will come from renewables including wind and solar. The vast majority of the respondents believe that their institution will have stopped investing in oil exploration and production by 2035. Based on this survey, it is reasonable to expect that Exxon's shareholders may believe oil and gas development is at risk due to the economic transition required by climate change and that their investee companies will need to shift their business models to survive.

Kroger

In May 2023, the National Association of Manufacturers (NAM) successfully filed a motion with the US Court of Appeals in the Fifth District to intervene in a case brought by the National Center for Public Policy Research (NCPPR) against the SEC, challenging a shareholder resolution no action determination. The no action determination involved a shareholder proposal filed by NCPPR with The Kroger Co. regarding the omission of consideration of "viewpoint" and "ideology" from its equal employment opportunity policy. Kroger sought to exclude the proposal as "ordinary business" under Rule 14a-8(i)(7). The NAM motion opened a broader challenge to the SEC's authority to provide guidance regarding whether shareholder resolutions could be allowed on a company's proxy for a vote, claiming that this process violates principles of corporate First Amendment rights enshrined in the Citizens United ruling. NAM pursued the case even as Kroger, the target of the NCPPR resolution, mooted the case by allowing the resolution on the proxy. A three-judge panel of the Fifth Circuit dismissed the case for lack of jurisdiction.¹⁰⁹ As of this publication, an appeal is pending.

Significant legislative developments

House

On September 18, 2024, the US House of Representatives passed [H.R. 4790](#), the *Prioritizing Economic Growth Over Woke Policies Act*.¹¹⁰ The legislation is an umbrella bill incorporating a number of other bills that, among other things, significantly increase the ability of companies to exclude shareholder proposals from the proxy statement, including:

- amending the Securities Exchange Act of 1934 to prohibit the SEC from compelling an issuer to include in the proxy statement any shareholder proposal or any discussion related to a shareholder proposal. The bill also expressly states the SEC may not preempt state regulation of proxy materials or shareholder proposals. ([Section 2002](#))
- increasing requirements for resubmission of proposals to require 10% voting support for a first-year proposal, 20% for a second year proposal and 40% for third year proposal, compared to current requirements of 5% voting support the first year, 15% for the second year and 25% for the third year. ([Section 3101](#))

- allowing companies to exclude shareholder proposals where the company already has policies, practices, or procedures that compare favorably with the guidelines of the proposal and address the proposal's underlying concerns. ([Section 3201](#))
- allowing companies to exclude any proposal relating to environmental, social or political issues from proxy or consent solicitation material. ([Section 3301](#))
- allowing companies to exclude a shareholder proposal under Rule 14a-8(i) without regard to whether the proposal relates to a significant social policy issue. ([Section 3401](#))
- requiring the SEC to conduct a “wasteful and unnecessary” study every 5 years on shareholder proposals, proxy advisory firms, and the proxy process, covering a variety of topics, including the purported costs incurred by the shareholder proposal process and the “risk that shareholder proposals may contribute to the balkanization of the US economy over time.” ([Section 3501](#))
- providing that an institutional investor may not outsource voting decisions to any person other than an investment adviser or a broker or dealer that is registered with the Commission and has a fiduciary or best interest duty to the institutional investor. ([Section 3901](#))

Senate

On September 23, 2024, S. 5139, the *Empowering Main Street in America Act of 2024*, was introduced. Among other things, the bill would allow a company to exclude a shareholder proposal from its proxy statement without regard to whether that shareholder proposal relates to a significant policy issue. ([Section 305](#))

Endnotes

- 1 Bilal, Adrien and Kanzig, Diego R. [The Macroeconomic Impact of Climate Change: Global vs. Local Temperature](#). National Bureau of Economic Research Working Paper 32450. May 2024, Revised November 2024.
- 2 Schroders and CalPERS. [Human Capital Management/ Research summary: people are our greatest asset](#). July 2023.
- 3 *TSC Industries, Inc. v. Northway, Inc.*, 426 U.S. 438 (1976).
- 4 The document is referred to as the "proxy" statement because most investors do not attend the meeting in person to vote but instead cast their votes by proxy.
- 5 SEC Rule 14a-8(a).
- 6 For additional detail on requirements under SEC Rule 14a-8 see pages 22-25.
- 7 Hoepner, Andreas G. F. et al. ["ESG shareholder engagement and downside risk"](#). *Review of Finance*, 2024, 28, 483-510.
- 8 Barko, Tamas, Cremers, K. J. Martijn and Renneboog, Luc. ["Shareholder Engagement on Environmental, Social, and Governance Performance"](#). *Journal of Business Ethics*, 2022, 180, pp. 777-812, Center Discussion Paper Series No. 2017-040, European Corporate Governance Institute - Finance Working Paper No. 509/2017, TILEC Discussion Paper No. DP 2017-021.
- 9 Prevost, Andrew, et al. ["Labor Unions as Shareholder Activists: Champions or Detractors?"](#) *Financial Review*. Vol. 47, Issue 2, February 2009, pp. 219-421.; Renneboog, Luc and Szilagyi, Peter. ["The Role of Shareholder Proposals in Corporate Governance"](#). *Journal of Corporate Finance* Vol. 17, Issue 1, February 2011, pp. 167-188; Bebchuk, Lucian. ["The Case for Increasing Shareholder Power"](#). *Harvard Law Review*. Vol. 118, No. 3, pp. 833-914. January 2005. Denes, Matthew et al. ["Thirty Years of Shareholder Activism: A Survey of Empirical Research"](#). *Journal of Corporate Finance*, Vol. 4, June 2017, pp. 405-424.
- 10 Source: Sustainable Development Institute (SI2).
- 11 Arnold Martin and Harris, Lee. ["Top financial watchdog warns climate change set to trigger market panics"](#). *Financial Times*. January 16, 2025.
- 12 Community Catalyst. ["Corporate Greed in Health Care: A Metastasizing Disease"](#). June 5, 2024.
- 13 <https://www.sec.gov/rules-regulations/staff-guidance/compliance-disclosure-interpretations/exchange-act-sections-13d-13g-regulation-13d-g-beneficial-ownership-reporting>
- 14 Heath, Davidson and Macciocchi, Daniele and Ringgenberg, Matthew C. ["The Economics of Investor Engagement"](#). University of Miami Business School Research Paper No 5030999. December 12, 2024.
- 15 Bebchuk, Lucian and Cohen, Alma and Ferrell, Allen. ["What Matters in Corporate Governance?"](#) (September 1, 2004). *Review of Financial Studies*. Vol. 22, No. 2, pp. 783-827. February 2009, Harvard Law School John M. Olin Center Discussion Paper No. 491 (2004).
- 16 Papadopoulos, Kosmos and Frank Juan, and Parikh, Pinak. ["U.S. Shareholder Proposals: A Decade in Motion"](#). ISS Corporate. October 13, 2024.
- 17 McClellan, Denis. ["John Gilbert, 88; Fought for Small Shareholders"](#). *Los Angeles Times*. July 20, 2002.
- 18 Sloane, Lewis. ["Lewis Gilbert, 86, Advocate of Shareholder Rights"](#). *The New York Times*. December 8, 1993.
- 19 Norman, Michael. ["Wilma Porter Soss, 86, A Gadfly at Stock Meetings of Companies"](#). *The New York Times*.
- 20 ["Evelyn Davis, known as corporate gadfly, dies at 89"](#). *Reuters*. November 5, 2018.
- 21 ["William Steiner, Shareholder Activist."](#) CorpGov.net. October 16, 2017.
- 22 ["Kenneth Steiner Continues Father's Work."](#) CorpGov.net. May 5, 2020.
- 23 Sook Kim, Queena. ["Corporate Gadflies Are the Buzz"](#). *The Wall Street Journal*. June 10, 2004.
- 24 Kishan, Saijal. ["Main Street's Most Prolific Corporate Agitator Finds a New Battlefield In ESG"](#). Bloomberg. May 25, 2022.
- 25 See <https://www.corpgov.net>.
- 26 Papadopoulos, Kosmos and Frank, Juan and Parikh, Pinak. ["U.S. Shareholder Proposals: A Decade in Motion"](#). ISS Corporate. October 13, 2024.
- 27 Kastiel, Kobi and Nili, Yaron. ["The Giant Shadow of Corporate Gadflies"](#). *Harvard Law School Forum on Corporate*

- Governance. April 21, 2021.
- 28 Goodman, Amy L. "Shareholder Proposal Developments During the 2013 Proxy Season". *Harvard Law School Forum on Corporate Governance*. July 22, 2013.
- 29 "Majority Voting for Directors". Council of Institutional Investors website. Accessed January 19, 2025.
- 30 "Calpers seeking majority vote for Apple board". Reuters. February 3, 2011.
- 31 Source: Proxy Monitor.
- 32 Office of Investor Education and Advocacy, Securities and Exchange Commission "Investor Bulletin: Say-on-Pay and Golden Parachute Votes". March 2011.
- 33 "A deep dive into BP's Deepwater Horizon Spill: a case study". About Resilience website. August 17, 2022.
- 34 Arnold, Martin and Harris, Lee. "Top financial watchdog warns climate change set to trigger market panics". *Financial Times*. January 16, 2025.
- 35 Sun, Yongping et al. "The impacts of climate change risks on financial performance of mining industry: Evidence from listed companies in China". *Resources Policy*, Volume 69. December 2020.
- 36 Carlin, David and Arshad, Mahee and Baker, Katy. "Climate Risks in the Industrial Sector, Risk Briefings: Insights for Financial Institutions". UN Environment Programme. April 2023.
- 37 Carlin, David and Arshad, Mahee and Baker, Katy. "Climate Risks in the Transportation Sector, Risk Briefings: Insights for Financial Institutions". UN Environment Programme. May 2024.
- 38 Carlin, David and Arshad, Mahee and Baker, Katy. "Climate Risks in the Agriculture Sector, Risk Briefings: Insights for Financial Institutions". UN Environment Programme. March 2023.
- 39 Carlin, David and Arshad, Mahee and Baker, Katy. "Climate Risks in the Real Estate Sector, Risk Briefings: Insights for Financial Institutions". UN Environment Programme. March 2023.
- 40 Flacks, Marti and Zou, Catherine. "To Build Resilient Global Supply Chains, Incorporate Respect for Human Rights". Center for Strategic & International Studies. December 16, 2022.
- 41 Jones, Rupert. "Understanding The True Cost of a Poor Workplace Safety Culture". *OH&S*. April 17, 2023.
- 42 Bozola, Elena et al. "The Use of Social Media in Children and Adolescents: Scoping Review on the Potential Risks". *Int J Environ Res Public Health*, 2022 Aug 12, 19(16):9960.
- 43 Neuhauser, Paul M. Comment letter to SEC. October 2, 2007.
- 44 US Department of the Treasury AIG Program Status. Accessed January 19, 2025.
- 45 Aggarwal, Reena and Briscoe-Tran, Hoa and Erel, Isil and Starks, Laura T. "Public Sentiment Decomposition and Shareholder Actions". Fisher College of Business Working Paper No. 2024-26. December 2, 2024.
- 46 US Securities and Exchange Commission. Release No. 34-89964; File No. S7-23-19 RIN 3235-AM49, Procedural Requirements and Resubmission Thresholds under Exchange Act Rule 14a-8 AGENCY: Securities and Exchange Commission. September 23, 2020 at 26.
- 47 Sullivan & Cromwell LLP. "2024 Proxy Season Review: Part 1". August 13, 2024.
- 48 Clayton, Jay. "Regulation Best Interest and the Investment Adviser Fiduciary Duty: Two Strong Standards that Protect and Provide Choice for Main Street Investors". US Securities and Exchange Commission. July 8, 2019.
- 49 AII Principles of Corporate Governance § 4.01(a) (1994).
- 50 ERISA, 29 U.S.C. § 1104(a).
- 51 UNEP Finance Initiative and Principles for Responsible Investment. "Fiduciary Duty in the 21st Century Final Report".
- 52 Attorneys General from 16 states and the District of Columbia. "Letter to the Chairs and Ranking Members of the Senate Banking, Housing, and Urban Affairs Committee and the House Financial Services Committee". November 18, 2022.
- 53 Office of the State Treasurer of Washington. "Material Factors in Public Finance and Investments, A review of laws in other jurisdictions and their impacts, A Report to the Legislation Senate Bill 5187, Section 123 (2) Chapter 475 (2023)". November 27, 2024.
- 54 Ibid.
- 55 Haan, Sarah C. "Is Democracy Relevant to the Way We Govern Public Companies?" Promarket, Stigler Center for the Study of the Economy and the State, University of Chicago Booth School of Business. July 15, 2024.
- 56 For the 2024 proxy season BlackRock states that its Americas region stewardship group held 1,767 engagements with

- 1,265 companies. In the case of 369 of these companies, there were multiple engagements. BlackRock Investment Stewardship. [“2024 Global Voting Spotlight”](#).
- 57 T. Rowe Price From the Field. [“For or against? The year in shareholder resolutions—2023”](#). April 2024.
- 58 Conversation with Tracey Rembert, Associate Director, Climate and Environmental Justice, Interfaith Center on Corporate Responsibility. December 20, 2024. See also Investor Alliance on Human Rights, [“2024 Tech Proposals”](#). February 1, 2024.
- 59 Krishnamurthy, Bharath. [“Drug Prices and Shortages Jeopardize Patient Access to Quality Hospital Care”](#). American Hospital Association. May 22, 2024. See also Flynn, Laurie. [“What is behind the legal drug crisis in the US?”](#) Stanford Medicine, Scope Beneath the Headlines. October 6, 2023.
- 60 Interfaith Center on Corporate Responsibility. [“Statement for the Record by ICCR before United States Committee on Finance hearing on ‘Drug Pricing in America: A Prescription for Change, Part II’”](#). March 12, 2019.
- 61 Not One Penny. [“Not One Penny Statement on Pfizer’s Annual Shareholders Meeting and Vote Today on Executive Compensation – CEO Will Receive Record 61 Percent Pay Increase in 2017”](#). April 26, 2018.
- 62 Goeman, Carly J. [“The Price Isn’t Right: Shareholder Proposals as Opportunities for Institutional Investors to Restore Firm Value and Reduce Pharmaceutical Prices”](#). *Columbia Business Law Review*. Vol. 2017, No. 2, 2017.
- 63 Interfaith Center on Corporate Responsibility. [“In Race to Develop Covid-19 Medicines, Investors Urge Pharma Cos to Put People Ahead of Profits”](#). August 11, 2020.
- 64 Interfaith Center on Corporate Responsibility. [“Shareholders Ask Nine Pharma Companies to Report on Whether Patent Protections are Reducing People’s Access to Medicines”](#). December 12, 2022.
- 65 Mercy Investment Services. [“Advocating for affordable access to medicines”](#). May 16, 2023.
- 66 As described by attorney Paul M. Neuhauser: *“The first shareholder proposals concerning predatory subprime lending were submitted in 2000 and the first asking securitizers to police the loan pool were submitted in 2003, in each case years before subprime lending became recognized as a major problem. The shareholder proposals constituted an early warning system for those who heeded them. Although these proposals were submitted to a number of companies and survived company challenges at the SEC, they never appeared on any proxy statement because the recipients in each case agreed to a change of policy with regard to predatory lending to subprime borrowers...Notably, the securitizers that received the precatory proposals and changed their practices have not been among those who have suffered during the recent unpleasantness.”* See Neuhauser, Paul M. [“Comment letter to SEC”](#). October 2, 2007.
- 67 <https://www.sec.gov/Archives/edgar/data/5272/000095011704001279/a37136.htm> at p. 25.
- 68 <https://www.sec.gov/Archives/edgar/data/5272/000095012304009398/y97715ae10vq.htm> at p. 52.
- 69 Federal Reserve Bank of New York. [“Actions related to AIG”](#).
- 70 US Department of the Treasury. [“AIG Program Status”](#).
- 71 Interfaith Center on Corporate Responsibility. [“In Race to Develop Covid-19 Medicines, Investors Urge Pharma Cos to Put People Ahead of Profit”](#). August 11, 2020.
- 72 Not One Penny. [“Not One Penny Statement on Pfizer’s Annual Shareholders Meeting and Vote Today on Executive Compensation – CEO Will Receive Record 61 Percent Pay Increase in 2017”](#). April 26, 2018.
- 73 Goeman, Carly J. [“The Price Isn’t Right: Shareholder Proposals as Opportunities for Institutional Investors to Restore Firm Value and Reduce Pharmaceutical Prices”](#). *Columbia Business Law Review*. Vol. 2017, No. 2, 2017.
- 74 Source: Sustainable Investments Institute (SI2).
- 75 Ibid.
- 76 Interfaith Center on Corporate Responsibility. [“Shareholders Ask Nine Pharma Companies to Report on Whether Patent Protections are Reducing People’s Access to Medicines”](#). December 12, 2022.
- 77 CDC, National Center for Health Statistics. [“U.S. Overdose Deaths Decrease in 2023, First Time Since 2018”](#). May 15, 2024.
- 78 Interfaith Center on Corporate Responsibility. [“Health Equity Program: Opioid Accountability”](#).
- 79 Lucas, Justin. [“Impacts of the East Palestine Train Derailment Mapped”](#). Urban Footprint. April 4, 2023.
- 80 Romm, Tony. [“A year after East Palestine derailment, rail industry blocks new safety rules”](#). *The Washington Post*. February 3, 2024.
- 81 https://s2.q4cdn.com/859568992/files/doc_financials/2024/ar/2024-csc-corp-proxy-statement.pdf at p. 110.
- 82 <https://www.up.com/cs/groups/public/@uprr/@investor/documents/investordocuments/pdf> at p. 87.
- 83 Green, Jay and Alcantara, Chris. [“Amazon warehouse workers suffer serious injuries at higher rates than other firms”](#).

- The Washington Post*. June 1, 2021.
- 84 O'Donovan, Caroline. "Regulators struggle to rein in Amazon on safety for warehouse workers". *The Washington Post*. September 18, 2023.
- 85 Kim, Juliana. "Amazon manipulated injury data to make warehouses appear safer, a Senate probe finds". *NPR*. September 16, 2024.
- 86 https://s2.q4cdn.com/299287126/files/doc_financials/2022/ar/Amazon-2022-Proxy-Statement.pdf at p. 66.
- 87 https://s2.q4cdn.com/299287126/files/doc_financials/2023/ar/Amazon-2023-Proxy-Statement.pdf at p. 75.
- 88 https://s2.q4cdn.com/299287126/files/doc_financials/2024/ar/Amazon-com-Inc-2024-Proxy-Statement.pdf at p. 78.
- 89 Rabin, Roni Caryn and Hsu, Tiffany. "Johnson & Johnson Feared Baby Powder's Possible Asbestos Link for Years". *The New York Times*. December 14, 2018.
- 90 Stempel, Jonathan. "Johnson & Johnson reaches \$700 million talc settlement with US states". *Reuters*. June 12, 2024.
- 91 Hsu, Tiffany. "Black women's group sues Johnson & Johnson over talc baby powder". *The New York Times*. July 27, 2021.
- 92 Povtak, Tim. "Johnson & Johnson to Continue Global Sale of Talc-Based Baby Powder". *Asbestos.com*. May 9, 2022.
- 93 Fenton, Suzanne E. et al. "Per- and Polyfluoroalkyl Substance Toxicity and Human Health Review: Current State of Knowledge and Strategies for Informing Future Research". *Environ Toxicol Chem*. 2020 Dec 7;40(3):606–630.
- 94 Chaudhuri, Saabira. "As Fertility Rates Fall, Some Scientists Say Everyday Chemicals Are a Factor". *The Wall Street Journal*. December 14, 2024.
- 95 Source: Sustainable Investments Institute (\$I2).
- 96 H.R. Rep. No. 73-1383, at 13 (1934) ("Fair corporate suffrage is an important right that should attach to every equity security bought on a public exchange. Managements of properties owned by the investing public should not be permitted to perpetuate themselves by the misuse of corporate proxies.").
- 97 7 C.F.R. § 10659 (1942).
- 98 *Medical Committee for Human Rights v. SEC*, 432 F.2d 659, 677 (D.C. Cir. 1970) (vacated as moot).
- 99 SEC Staff Report on Corporate Accountability (1980) (citing S. Rep. No. 700, 85th Cong., 1st Sess., 3 (1957)).
- 100 *National Center for Public Policy Research v. SEC*, No. 23-60230 at 3 (5th Cir. November 14, 2024) (per curiam).
- 101 17 CFR § 240.14a-8(i).
- 102 Lewis, Sanford. "SEC No Action Statistics to May 1, 2024". *Harvard Law School Forum on Corporate Governance*. May 20, 2024.
- 103 <https://www.sec.gov/files/corpfin/no-action/14a-8/cheveddenhp12125-14a8.pdf>
- 104 <https://www.sec.gov/about/shareholder-proposals-staff-legal-bulletin-no-14m-cf?>
- 105 <https://bit.ly/14Mletter>
- 106 *Exxon Mobil Corporation v. Arjuna Capital, LLC*, United States District Court, ND TX, Fort Worth Division, No. 4:24-cv-00069-P, June 17, 2024.
- 107 Remarks of Darren Woods, Council of Institutional Investors Fall Conference, Brooklyn Marriott. September 10, 2024.
- 108 Sustainable Views. "Global investors see uncertain future for fossil fuels". October 17, 2024.
- 109 *Nat'l Ctr. for Pub. Pol'y Rsch. v. Sec. & Exch. Comm'n*, No. 23-060230 (5th Cir. Nov. 14, 2024).
- 110 <https://clerk.house.gov/Votes/2024435>

Shareholder Rights Group

September 19, 2025

The Honorable French Hill
Chairman
House Committee on Financial Services
2129 Rayburn House Office Building
Washington DC, 20515

The Honorable Maxine Waters
Ranking Member
House Committee on Financial Services
2129 Rayburn House Office Building
Washington DC, 20515

Re: September 10th Hearing: "Proxy Power and Proposal Abuse: Reforming Rule 14a-8 to Protect Shareholder Value"

Dear Chairman Hill and Ranking Member Waters,

We are writing to correct the record on a number of misleading remarks and distorted interpretations conveyed during the September 10 hearing regarding the SEC shareholder proposal process, Rule 14a-8.

The Shareholder Rights Group is an association of individual and institutional investors, registered investment advisors, and other organizations that defend shareholders' rights to engage with public companies on governance, long-term value creation and corporate accountability. Our members engage with portfolio companies on an array of governance and risk management issues. For instance, some members are individual or institutional investors who sometimes engage investee companies on their own behalf or that of clients. Others are advisors who provide a range of advice and support services, including on what types of shares or funds to acquire, related to voting of the shares, and in some instances, active stewardship or engagement programs supporting investors' interests in ensuring long-term profitability of their portfolios and investee companies. In some instances, effective engagement necessitates filing of shareholder proposals, often as a last resort when other efforts at dialogue fail. In this respect, shareholder proposals are an integrated part of a set of activities investors demand.

At its core, the shareholder proposal process is simply a mechanism for the owners of public companies to evaluate and aggregate concerns about potentially material risks with the companies they own. Far from being a politicized activity, it reflects the work of fiduciaries and financial professionals who are obligated to protect shareholder value and who are using a well-established tool for market oversight. Shareholder proposals do not dictate corporate decision-making; they facilitate the flow of information and signal emerging risks that the market itself is already assessing. It is unclear why Congress would interfere with this private, market-based system that investors rely on. It is the *only* tool that gives companies insight into the concerns of its entire investor base, without committing the company to action.

The shareholder proposal process accurately aligns with the interests of diverse shareholders in the capital markets

US House Committee on Financial Services
 September 19, 2025
 Page 2 of 12

A frequent critique raised in the hearing was that shareholder proposals often seek to raise environmental and social issues that are only of concern to a niche group of “activists” and irrelevant to shareholder value. This argument is not reflective of market realities.

This generalization is contradicted by thousands of companies which proudly publish sustainability reports highlighting their efforts and progress on issues like the environment and climate, diversity and employee rights and human rights. The companies frequently declare in these reports a link to long term profitability.¹

Considering environmental, social and governance (ESG) issues is a sound and uncontroversial element of company review for investment analysts. In 2020, CFA Institute, which is widely regarded as the leading global certifying body for investment analysts, reported that 85% of its members take environmental, social and/or governance factors into consideration in investment analysis.² Characterizing shareholder proposals that address these issues as merely furthering fringe political agendas disregards that investors and their fiduciaries must consider these risks as they affect a company’s value.

Limiting the right of shareholders to file proposals seeking more information on environmental or social concerns is like telling someone to buy a house but forbidding them to ask whether it sits in a flood zone or in a neighborhood where crime has been rising. Those are real risks that affect the value of the house—just as environmental and social risks affect the value of a company. Ignoring them doesn’t make the risks go away; it just keeps investors in the dark.

Approximately one-third of U.S. assets under management (AUM) integrate ESG or sustainability in investment strategies (\$52.5 trillion out of 144.6 trillion total investment AUM).³ The US SIF Trends Report 2024/2025 provides a comprehensive understanding of the trends driving these strategies.⁴ The total ESG or sustainability AUM includes \$6.5 trillion explicitly marketed as ESG or sustainability-focused investments as well as \$41.5 trillion covered by stewardship policies. These investments are expected to grow, not shrink—73% of survey respondents expect the sustainable investment market to grow significantly in the next 1-2 years, despite political headwinds and regulatory scrutiny. A substantial share of the market is likely to consider some environmental and social shareholder proposals as addressing material enterprise or systemic risks, even if relevance varies by investor.

¹ Timothy Smith, Interfaith Center on Corporate Responsibility. “[Attacks on ESG Investing are also attacks on company support for Sustainability](#)”. October 12, 2023.

² The Chartered Financial Analyst Institute is a global association of investment professionals that administers the CFA Program—an exam and work experience requirement covering ethics, financial analysis, asset valuation, and portfolio management—and awards the CFA charter to participants. Its members include CFA charterholders, candidates in the program, and other finance practitioners. Top employers of CFA charterholders globally include large banks and asset managers such as Royal Bank of Canada, JPMorgan Chase, UBS, Bank of America, Morgan Stanley, BlackRock, Goldman Sachs, Citigroup, and major consulting firms like PwC and EY. CFA Institute, “[Membership](#)”, “[Who we are](#)”, “[Where do CFA Charterholders work?](#)”. Last accessed September 18, 2025.

³ Investment Adviser Association. “[Investment Adviser Industry Snapshot 2025](#)”. Last accessed September 18, 2025. US SIF. “[US Sustainable Investing Trends 2024/2025 - Executive Summary](#)”. December 17, 2024.

⁴ US SIF. “[US Sustainable Investing Trends 2024/2025 - Executive Summary](#)”.

US House Committee on Financial Services
 September 19, 2025
 Page 3 of 12

While governance proposals often win majority support, advisory proposals on environmental and social issues continue to have significant backing. Morningstar reports pro-ESG proposals averaged 20% support this year, a level which represents a significant portion of a company's investor base.⁵ 20–30% support for a shareholder proposal represents an extraordinary level of investor concern because the baseline is overwhelming support for management. The largest asset managers typically vote with management, and proxy advisory firms recommend in favor of management the vast majority of the time.⁶ When dissent rises to this level despite those structural headwinds, it signals serious, material concerns among a diverse range of investors.

Looking specifically at proposals this year on diversity, equity, and inclusion (DEI), there was a sharp contrast between those seeking to eliminate corporate diversity programs—drawing voting support of 2% or less—and those seeking better diversity disclosure, which received far higher backing.⁷ These outcomes appear reflective of how many investors view board and employee diversity as material. Georgeson reports that proposals seeking public disclosure of EEO data already filed with the government averaged 33% support this year, showing investors' discernment in backing low-cost, high-value transparency.⁸ Public EEO reporting improves market information at essentially no cost, while even proposals that may be costly to implement—like racial equity audits—still averaged 18% support this year.

Considering and voting on these types of proposals signals to management whether significant shareholder blocs seek more disclosure on issues like clean energy transition or board diversity. Even if investor views differ on materiality, public policy should allow investors to aggregate and express their needs and priorities through the proposal process. Ultimately, because the vast majority of proposals are advisory, boards and management still make all critical decisions—this process simply gives investors a voice in the companies they own.

The filers of proposals are representative of mainstream investors and public priorities

As for who files proposals, throughout the hearing, we heard the refrain that a small number of activist investors have “hijacked” the process to advance political agendas. This attack is demonstrably false.

⁵ Lindsey Stewart, Morningstar. “[The 2025 Proxy Season in 7 Charts](#)”. July 25, 2025.

⁶ ShareAction. “[Voting Matters 2024](#)”. February 2025. Nell Minow, ValueEdge Advisors. “[Testimony in House Subcommittee Hearing: “The Proxy Advisor Duopoly’s Anticompetitive Conduct”](#)”. July 4, 2025. Matthew Scott, Corporate Board Member. “[Anti-DEI Proposals Are Losing—What Can Boards Learn?](#)”. Last accessed September 18, 2025. During the hearing, criticisms were raised that proxy advisory firms recommend votes against directors who fail to respond when shareholder proposals receive meaningful support, suggesting this gives too much influence to a “small” group of investors. But this criticism overlooks the reality, outlined above, that when 20–30% of shareholders signal concern on an issue, that is not a fringe minority—it is a substantial portion of the investor base that boards have a fiduciary duty to engage with. Recommending against directors who blatantly disregard such a signal without any evidence of responsiveness is entirely reasonable. A board that ignores nearly a third of its shareholders on a material issue at its peril and raises serious red flags about its responsiveness, governance culture, and risk oversight.

⁷ Matteo Tonello, The Conference Board, Inc. “[The Evolving Landscape of DEI Shareholder Proposals](#)”. April 25, 2025.

⁸ Georgeson. “[An early look at the 2025 proxy season](#)”. Last accessed September 18, 2025.

US House Committee on Financial Services
 September 19, 2025
 Page 4 of 12

The SEC has long intended to keep filing thresholds low and the rules written in plain English to empower smaller retail investors to file proposals, though technical and procedural hurdles mean new filers often face a learning curve.

Because of these challenges, most proposals come from a relatively small group of filers which include individuals, faith-based investors, registered investment advisors, public pension funds, unions and service providers supporting investor engagement and proposal filing when necessary. For example, the pension funds of both the State of Oklahoma and the State of New York filed resolutions this year on a range of issues. It is profoundly misleading to portray such investors as radical fringe groups simply because they hone and exercise their rights and capacities as shareholders to raise the issues they find to be of material concern.

Collectively, these filers represent a range of beneficiaries and diverse investment mandates—not a single ideological perspective. Over time investors have learned the process, including those who are skeptical of the long-term value proposition, sometimes referred to as taking an anti-ESG perspective. For instance, while many anti-ESG proposals were historically rejected for technical deficiencies such as failed proof of ownership paperwork, experience has led to more sophisticated filings, demonstrating that the barriers are surmountable.

Some proponent organizations develop deep familiarity on issues like climate risk, digital safety, diversity or proxy access, enabling them to craft stronger proposals that highlight company-specific strengths and weaknesses for the market's benefit. Other investors concerned about these issues can then focus proxy votes to signal which proposals merit management's attention.

The advisors, funds and investors filing most proposals are making proper use of the process and drilling down on material future-fitness, transparency and accountability issues at their companies. Labelling them "activists" casts aspersions on their developed expertise and groundwork in service of better-informed markets and dynamic, responsive companies. Proposals lacking a clear business case or investment rationale are rare.

It is hard to understand why a small number of large corporations are fighting this hard to avoid addressing 500 words on the proxy. Is it because they don't want to be responsive to investors who must think beyond the short term? That they don't want to be challenged by investors who have to care about the economy 10 or 20 years from now that will affect portfolio values, not to mention the world that their children or grandchildren will inherit?

Proposals bring meaningful benefits that clearly outweigh any claimed costs

In the September 10 hearing, many Members of Congress and witnesses claimed shareholder proposals impose excessive costs on companies, relying on exaggerated estimates and ignoring the process's significant benefits.

Silencing shareholder proposals carries a high cost, undermining the social contract of trust between investors and their companies by depriving investors of input on critical corporate decisions. Moreover, losing the ability to flag material, financially significant issues through shareholder proposals can be costly, as the process has repeatedly flagged systemic and company-specific risks well before they exploded into crises costing shareholders billions.

US House Committee on Financial Services
 September 19, 2025
 Page 5 of 12

For instance, as early as 2000, shareholders raised concerns about the risks posed by subprime lending at major financial institutions. Those risks soon materialized: Household International settled with 20 state attorneys general in 2002 over predatory lending practices, and by 2007–2008 the subprime mortgage crisis had wiped out trillions in market value across the banking sector. Some companies receiving early shareholder proposals on subprime lending ultimately adopted reforms through dialogue with investors and, notably, those companies avoided the catastrophic losses suffered by peers that ignored similar warnings.⁹

The same pattern has repeated across decades. At Wells Fargo, investors filed shareholder proposals on predatory lending, incentive structures, and board independence years before the company's fraudulent account scandal triggered over \$17 billion in penalties, a Federal Reserve-imposed asset cap, and permanent reputational damage. One set of these proposals, which was resubmitted eight times after receiving 17-38% support in prior years, ultimately spurred a governance reform, separating the CEO and board chair roles, at the height of the crisis.¹⁰ As another example, a shareholder proposal filed in 2013 by the New York City Comptroller's Office led to Wells Fargo adopting a stricter clawback policy which the board used to recoup \$60 million from company executives after the company's fake accounts scandal.¹¹

The long-term benefits of shareholder proposals—in avoiding bankruptcies, governance failures, and systemic crises—are hard to quantify but in our experience vastly outweigh any costs. Even one proposal that helps to prevent another Wells Fargo or subprime-scale disaster would justify the cost of hundreds of routine proposals across the entire market. Congressional debates must therefore weigh the cost of silence alongside any claims about administrative burdens.

Additionally, there was little consideration of the engagement value of the shareholder proposal process during the hearing. Shareholder proposals are a crucial engagement tool because, as Comptroller Lander noted, a key benefit of the process is the dialogue it sparks with companies, which often leads to effective action on an issue without a shareholder vote.

Investor engagement typically begins with dialogue in the form of a letter or request to meet with the company concerning specific topic(s) of material concern to the investors. If the company is unresponsive or if its response does not sufficiently address concerns, investors may escalate by filing a proposal, thereby inviting other shareholders to vote on the matter. In many cases, with a proposal filed, companies and proponents reach an agreement on addressing the concerns.

Even when proposals do go to a vote, they typically remain advisory, giving investors a voice while leaving final authority over corporate decisions squarely in the hands of boards and management. Companies often respond positively to investors' concerns because they see the value for the company in the proposals, in line with their fiduciary duty to maximize shareholder value, demonstrating that the process is effective in facilitating beneficial changes. Typically,

⁹ Paul Neuhauser. "[Comment letter to SEC](#)". October 2, 2007.

¹⁰ Shareholder Rights Group. "[Comment letter to the SEC](#)". January 6, 2020.

¹¹ New York City Comptroller Brad Lander. "[Comptroller Lander Delivers Testimony Before the U.S. House Committee on Financial Services on Protecting Shareholder Rights](#)". September 10, 2025.

US House Committee on Financial Services
 September 19, 2025
 Page 6 of 12

around 40% of filed shareholder proposals are withdrawn each season often after productive dialogue and engagement.¹²

Multiple studies suggest shareholder engagement increases company returns. One study found that firms targeted for shareholder engagement on ESG issues outperformed their peers by 7.5% in the following year.¹³ Studies have also found that shareholder proposals create long-term value by holding corporate management accountable and helping to reduce agency costs that stem from the separation of ownership and control in public companies.¹⁴

In the hearing, Ronald Mueller of Gibson Dunn noted that companies often act proactively as a result of the shareholder proposal process, and then suggested this was a problem:

...whether or not a company receives a shareholder proposal, companies are acutely aware of what other proposals are being submitted to other companies, and so many companies try to avoid that target by proactively saying, look what we're doing on this issue.

The shareholder proposal process generating better market disclosure is proof that it effectively improves transparency without prescriptive government regulation and helps companies anticipate investor priorities shaping future profitability. This argument also ignores the fiduciary duties corporate boards and management owe to their shareholders and, in exercising that duty, publish these reports, which often declare the linkage between the reports' topics and long-term profitability.¹⁵

This is because the process embodies the principle that materiality is seen through the eyes of investors, *not* corporate management or political actors. Courts and the SEC have long recognized that information is material if a reasonable investor would view it as important in deciding how to vote or invest. Shareholder proposals operationalize this by allowing investors to aggregate and express their collective judgment through voting outcomes about what risks and opportunities are material—ranging from systemic concerns like climate disruption to company-specific governance reforms. This ensures materiality remains defined by those who bear the risks and rewards: the investors themselves.

This tool is especially critical for long-term, heavily diversified investors that cannot diversify

¹² Source: Sustainable Development Institute (Si2).

¹³ Barko, Tamas, Cremers, K. J. Martijn and Renneboog, Luc. "Shareholder Engagement on Environmental, Social, and Governance Performance". *Journal of Business Ethics*, 2022, 180, pp. 777–812, Center Discussion Paper Series No. 2017-040, European Corporate Governance Institute - Finance Working Paper No. 509/2017, TILEC Discussion Paper No. DP 2017-021.

¹⁴ Prevost, Andrew, et al. "Labor Unions as Shareholder Activists: Champions or Detractors"? *Financial Review*. Vol. 47, Issue 2, February 2009, pp. 219–421.; Renneboog, Luc and Szilagyi, Peter. "The Role of Shareholder Proposals in Corporate Governance". *Journal of Corporate Finance* Vol. 17, Issue 1, February 2011, pp. 167–188; Bebchuk, Lucian. "The Case for Increasing Shareholder Power". *Harvard Law Review*, Vol. 118, No. 3, pp. 833–914, January 2005. Denes, Matthew et al. "Thirty Years of Shareholder Activism: A Survey of Empirical Research". *Journal of Corporate Finance*, 10 11 12 Vol. 4, June 2017, pp. 405–424.

¹⁵ Smith. "[Attacks on ESG Investing are also attacks on company support for Sustainability](#)".

US House Committee on Financial Services
 September 19, 2025
 Page 7 of 12

away systemic risks. Shareholder proposals are the only tool for these investors to collectively express which risks they consider material to preserving and growing long-term portfolio value, making this right a cornerstone of fiduciary duty.

Turning to the alleged “costs” of the process, testimony at the recent hearing stated that shareholder proposals impose unacceptably excessive costs on companies. Preliminary, this position ignores that it is board members’ and management’s job to pay attention to risks, especially those raised by the owners of the companies they work for. And alleged costs are immaterial measured against the catastrophic losses shareholder proposals can potentially help companies avoid or mitigate.

In reality, any reported numbers associated with the purported “cost” of the process collapse under basic scrutiny—the figures are inflated and lack empirical grounding. The witnesses themselves acknowledged the absence of reliable cost data. The most frequently cited cost estimates combine disparate “intangibles,” assume maximum rather than typical company responses, and fail to distinguish between required steps under Rule 14a-8 and optional, self-imposed expenditures. For example, companies often choose to hire expensive outside counsel, pursue no-action requests that frequently fail, or publish lengthy opposition statements—even though none of these steps are mandated. In fact, slightly over 70% of shareholder proposals in 2022 proceeded without any no-action request at all,¹⁶ meaning the most frequently cited legal and other costs are incurred in a small minority of cases because companies voluntarily choose the most expensive path.

Additionally, many of the expenses fall under ordinary corporate governance functions that companies should perform regardless of whether a shareholder proposal appeared on the proxy. Companies routinely review shareholder communications, regulatory filings, and compliance matters. Evaluating and responding to a 500-word shareholder proposal is not a significant burden. Likewise, the legal review that the witnesses portray as lengthy and complex is often far more efficient in practice because corporate counsel and outside advisors have developed substantial subject-matter expertise over decades of handling shareholder proposals. Many issues can be resolved quickly based on standard templates, model responses, and well-established SEC guidance, rather than requiring bespoke analysis each time.

Communications with shareholders and proxy advisors likewise fall within ordinary investor relations obligations. Engagement with shareholder proponents also varies dramatically based on company choice. Some companies resolve proposals with a single phone call; others opt for extensive negotiations. Similarly, printing proxy materials is a fixed cost and the marginal expense of adding additional pages to a proxy statement is trivial. Even when companies draft opposition statements, that is a voluntary choice; nothing in Rule 14a-8 requires lengthy rebuttals rather than a simple recommendation to vote against the proposal.

In reality, the core requirements of Rule 14a-8 impose minimal marginal costs. What drives expenses upward is the posture companies choose to take—but they are not inherent to shareholder proposals themselves.

¹⁶ Gibson Dunn. [“Shareholder Proposal Developments During the 2022 Proxy Season”](#). July 11, 2022.

US House Committee on Financial Services
 September 19, 2025
 Page 8 of 12

At the SEC Division of Corporation Finance's July 14, 2025, stakeholder meeting on Rule 14a-8, participants on both sides of the debate agreed that the SEC's role in administering the process is fundamental and far preferable to resolving disputes through litigation. Replacing the SEC's well-established framework with court battles would impose exponentially higher costs on both companies and investors.

In short, congressional testimony describing shareholder proposals as prohibitively expensive relies on inflated figures and discretionary costs. When measured against either company profits or the market-wide benefits of early risk detection, the costs of shareholder proposals are minimal (and often voluntary). The cost of silencing them, by contrast, can be catastrophic.

The strength of an investor's ideas is not defined by their holdings—good proposals matter whether they come from the largest shareholders or the smallest

In the hearing it was argued that investors with a \$2,000 stake should not be able to demand management's time and attention through the shareholder proposal process. Neglected was the requirement to hold such shares for three years and little attention was given to what should be a reasonable stake.

The idea that only large shareholders should be permitted to submit proposals distorts the dynamics of modern capital markets. Today, the largest shareholders—including BlackRock, State Street, and Vanguard—manage trillions of dollars almost entirely through low-fee passive funds. These managers compete based on cost and, therefore, have minimal incentive to invest the resources necessary for filing resolutions. As a result, active shareholders—including religious investors, pension funds, and socially responsible investment firms—play a critical role in surfacing risks that passive funds systematically overlook. Weakening their ability to participate would leave corporate governance dangerously hollow.

In fact, some of the most widely supported corporate governance reforms originated with small, individual shareholders such as John Chevedden and James McRitchie who have, for decades, consistently submitted proposals that receive high levels of approval, often winning majority support from shareholders.¹⁷ For example, Mr. Chevedden's proposals advocating for majority voting standards for directors have frequently passed with overwhelming support, leading to the widespread adoption of majority voting at S&P 500 companies.¹⁸ Mr. McRitchie's proposals on proxy access have garnered significant backing, with many companies negotiating reforms in response to proposals that earned 40%, 50%, or even higher levels of support.¹⁹ These individuals, operating with minimal resources, have driven substantial improvements in corporate accountability and transparency.

¹⁷ Sullivan & Cromwell LLP. "[2024 Proxy Season Review: Part I](#)". August 13, 2024. Noting that individual shareholders like John Chevedden continue to rank among the most prolific and successful proponents.

¹⁸ Lucian Bebchuk, *The Case for Shareholder Access to the Ballot*, 59 *Bus. Law.* 43 (2003); *see also* Harvard Law School Forum on Corporate Governance, *Majority Voting for Directors: Achievements and Future Directions* (2018), crediting widespread adoption of majority voting to early shareholder proponents, including Chevedden.

¹⁹ Gibson Dunn. "[Shareholder Proposal Developments During the 2024 Proxy Season](#)". July 29, 2024. Tracking proxy access and other governance proposals from individual shareholders achieving 30–70% support rates.

US House Committee on Financial Services
 September 19, 2025
 Page 9 of 12

Yet, if ownership thresholds were increased, shareholders like Chevedden and McRitchie would likely be barred from submitting proposals altogether despite their remarkable track records. Excluding these voices would have the perverse effect of silencing investors who have historically protected long-term corporate value—while empowering large passive managers whose business model structurally hinders active oversight. Handing the shareholder proposal process to those least incentivized to act is not reform but an abdication of investor protection.

The existing guardrails in SEC rules and agency’s screening role form a well-functioning system that has effectively served investors and companies for decades

In the hearing, we often heard that shareholder proposals are typically about fringe political issues not related to a company’s bottom line. This argument ignores the existing safeguards in Rule 14a-8, particularly the relevance exclusion which allows a company to exclude a proposal addressing less than 5% of assets, net earnings, or gross sales, unless it is significantly otherwise related to the company’s business.

Staff Legal Bulletin 14 L (SLB 14L) had aligned with a longstanding judicial interpretation that proposals could be “otherwise significantly related” because of the proposal’s ethical or social implications on issues related to the company’s business.²⁰ In contrast, SLB 14M, adopted under the current administration, requires that, regardless of any ethical or social implications, a proposal must be tied to “a *significant effect* on the company’s business” (emphasis added).²¹ Evidence that a proposal may have a significant impact on segments of the business or poses a risk of significant contingent liabilities is sufficient but the “mere possibility of reputational or economic harm alone” is insufficient. SLB 14M therefore is already drafted in such a way where some proposals that are grounded in ethical or social concerns that raise potential material risks to a company may be blocked unless a proponent provides evidence of current financial impact. Regardless of whether SLB 14M or SLB 14L offers the better framework, both interpretations require that proposals only address issues relevant to the receiving companies.

Ms. Keel, and others, also focused on the idea that shareholder proposals have become a “political referendum” asking companies to make controversial political statements unrelated to the business, to “opine on sensitive and polarizing issues” and to “solve the toughest legislative and regulatory questions of our day.” The rule doesn’t allow that. But shareholder proposals can, and sometimes must, grapple with messy issues lawmakers disagree upon—issues that can pose significant legal, reputational, or regulatory risks to a company’s business. Shareholder proposals focus on concrete issues facing the business, otherwise a company can rightfully seek exclusion.

Ferrell Keel offered examples of proposals she considered irrelevant.²² But, from what we can tell, the process seems to be working as intended: the SEC screens out those that are clearly off-base, while others often raise enough investor interest to warrant inclusion.

²⁰ See *Lovenheim v. Iroquois Brands, Ltd.*, 618 F. Supp. 554 (D.D.C. 1985).

²¹ SEC, “[Shareholder Proposals: Staff Legal Bulletin No. 14M \(CF\)](#),” February 12, 2025.

²² Ms. Keel testified about these examples and also wrote about them in her written statement for the hearing. See also Ferrell Keel written witness statement at 4.

US House Committee on Financial Services
 September 19, 2025
 Page 10 of 12

- For example, Ms. Keel mentioned a proposal that “asked a store that sells hammers and nails to make a public statement on reproductive rights.” A shareholder proposal at Lowe’s Companies did ask that the company publish a report assessing *the impact of restrictive state reproductive rights policies on the ability of the company to recruit and retain its female employees*. More than 30% of shareholders voted in favor, signaling that investors viewed this as a potential material risk to company value.
- Ms. Keel also wrote that an ecommerce store was being urged to invest in bitcoin. In 2025, Amazon received a proposal from the National Center for Public Policy Research (NCPFR) requesting that the company assess the idea of including bitcoin in its investment portfolio. The company sought no-action relief on the grounds that the proposal addressed ordinary business matters, how the company invests its own funds, which the SEC granted – keeping the proposal off the proxy.

The point is not that every proposal is perfect, but that the system already has reasonable guardrails and the SEC’s screening role ensures a focus on issues germane to investors interests.

Resubmission rule screens out low support proposals while ensuring ongoing consideration of material issues

The shareholder proposal rule also screens out repetitive proposals deemed “low quality” by voting investors. In its 2020 rulemaking, the SEC raised the resubmission threshold from 3% to 5% for first submissions, barring proposals with less than 5% support from being resubmitted for three years—viewing this increase better ensured only proposals with a realistic chance of broader support could return. Notably, in our estimation, support for pro-ESG proposals below the SEC’s 5% threshold has essentially held steady. A recent rise in low-support proposals stems from a surge in anti-ESG proposals²³ filed by proponents—who have every right to file them, just as shareholders have a right to reject them. That’s the marketplace of ideas working, not failing.

The resubmission rule reflects the reality that a proposal’s value isn’t negated by falling short of majority support. For example, the Wells Fargo proposals seeking separation of the CEO and board chair positions initially received less than majority support yet were resubmitted eight times leading to important governance reforms at the height of the company’s fake accounts scandal. Similarly, shareholders had been resubmitting proposals on predatory lending at Wells Fargo for years before its reputational crisis for anti-consumer practices.²⁴

The resubmission rule allows shareholders, not the SEC, to decide whether a proposal merits ongoing consideration. While governance proposals may win the most votes in the current climate, other precatory proposals enable investors with nuanced strategies to exercise their

²³ One study reports an average of 120 anti-ESG proposals filed in 2024 and 2025. In 2025, companies submitted approximately 55 no action requests for these proposals and the SEC agreed with exclusion of 30 of that number. Anti-ESG proposals that reached the proxy in 2025 had a median support level of 1.4%. Liz Walsh, Ali Perry, and Jennifer Zepralka, Mayer Brown. “[Anti-ESG Shareholder Proposals in 2025](#)”. June 18, 2025. Heidi Welsh, Sustainable Investments Institute. “[Anti-ESG Proposals Surged in 2024 But Earned Less Support](#)”. July 31, 2024.

²⁴ Shareholder Rights Group. “[Comment letter to the SEC](#)”.

US House Committee on Financial Services
 September 19, 2025
 Page 11 of 12

voting rights and encourage better disclosure of emerging material risks, fostering ongoing engagement between and among investors and their companies.

Failure to recognize SEC rule changes under prior Trump administration

The Majority witness remarks significantly downplayed the fact that the SEC addressed concerns about the shareholder proposal process in its “modernization” of ownership and resubmission thresholds in a 2020 rulemaking. The amendments to Rule 14a-8, finalized during the tenure of Trump-appointed SEC Chair Jay Clayton, imposed a steeper burden on shareholders to submit proposals by revising certain eligibility requirements and permissible exclusions, including:²⁵

- increasing the minimum stock a shareholder must hold before being eligible to submit a proposal from \$2,000 of shares held for a year, to a tiered system requiring higher investment levels for shorter holding periods (\$2,000 shares would need to be held for three years, \$15,000 for two years, or \$25,000 for one year).
- prohibiting shareholders from aggregating holdings to meet the holding requirements;
- limiting the number of proposals a representative can submit for a particular meeting to one; and
- increasing the minimum threshold of support that a proposal must garner to be eligible for resubmission at a future shareholder meeting (5% for first submission, 15% for second, and 25% for third), compared with the prior resubmission thresholds of 3%, 5% and 10% respectively.

The SEC said that new filing thresholds would still ensure that smaller Main Street investors continued to have access to the process while having enough “skin in the game” with the three year shareholding requirement—a significant commitment. The higher thresholds for shorter holdings significantly increased the amount of shares needed to file a proposal.

Shareholder proposals are a critical accountability tool that protects long-term value, promotes transparency and strengthens capital markets

As we step back from the details of the hearing, one theme stands out: a troubling insistence that, in most circumstances, boards and management alone can be trusted to identify and address all material risks without meaningful shareholder input.

We heard the remarkable and misleading claim that, if environmental or social issues were truly important for the company’s bottom line, the board and management would already be addressing them, so shareholder proposals on such issues are unnecessary and burdensome. This position effectively says corporate insiders can hold themselves accountable. It ignores the reality that boards sometimes deprioritize or overlook issues that later prove financially and reputationally material, and it assumes perfect foresight and alignment between corporate leadership and shareholder interests.

History shows this assumption is not only wrong but dangerous. There are countless examples of

²⁵ SEC. “[Press Release: SEC Adopts Amendments to Modernize Shareholder Proposal Rule](#)”. (September 23, 2020). Better Markets. “[Comment letter to the SEC](#)”. February 3, 2020.

US House Committee on Financial Services
September 19, 2025
Page 12 of 12

boards failing to anticipate and address issues on their own. The collapse of Enron stands as a stark reminder: the board overlooked glaring red flags in accounting practices, only for investors and the public to pay the price. As Congressman Sean Casten highlighted in questioning, even Mr. Mueller himself agreed that Enron's collapse stemmed in part from board oversight failures and conflicts of interest. Similarly, the 2008 mortgage crisis revealed that boards at major financial institutions ignored or downplayed systemic risks in subprime lending until the entire housing market—and global economy—was in freefall.

The lesson is clear: when corporate insiders are not held accountable to anyone but themselves, investors and the public bear the costs of their blind spots. The shareholder proposal process is the only tool that gives all investors a voice on long-term risks and opportunities that boards might otherwise dismiss.

To argue otherwise is to shield corporate leadership from precisely the investor oversight that securities laws were designed to protect. Preserving the shareholder proposal process strengthens capital markets, helps companies address material risks before they escalate, and ultimately enhances both shareholder and corporate value. Congress should not weaken a safeguard that improves transparency, accountability, and the long-term health of our economy.

Respectfully Submitted,



Sanford Lewis
Director and General Counsel
Shareholder Rights Group



Khadija Foda
Associate Counsel
Shareholder Rights Group



**Comment Letter to the U.S. House Committee on Financial Services
Hearing on Proxy Power and Proposal Abuse: Reforming Rule 14a-8 to Protect Shareholder Value
September 10, 2025**

The Honorable French Hill
Chairman, Committee on Financial Services
U.S. House of Representatives

The Honorable Maxine Waters
Ranking Member, Committee on Financial Services
U.S. House of Representatives

Dear Chairman Hill, Ranking Member Waters, and Members of the Committee:

United Church Funds (UCF) appreciates the opportunity to comment on the shareholder proposal process. Since 1909, UCF has stewarded the assets of churches, ministries, and mission-driven nonprofits. We are a longstanding financial ministry of the United Church of Christ. Our fiduciary mandate is twofold: 1) deliver competitive, risk-adjusted returns for our clients; and 2) invest in ways that promote a just and sustainable world where those clients—and their communities—can thrive. Our faith commitments—care for creation and love of neighbor—shape how we manage risk, vote proxies, and engage companies. These faith commitments, when paired with our mandate to generate competitive returns, offer a powerful double bottom line for our clients.

Why the shareholder proposal process matters to our clients

At UCF, every action we take in the capital markets is on behalf of the churches, ministries, and nonprofits that entrust us with their assets. When we engage with companies, we do so with the responsibility of protecting these funds and ensuring that they continue to support vibrant ministry and service for decades to come.

The shareholder proposal process is one of the most effective ways we can fulfill that responsibility. For us, it is a means of ensuring that the institutions we serve have a voice in the marketplace. These proposals carry the concerns of congregations that depend on their investments to keep sanctuaries open, fund local missions, and support communities. These ministries do not have the capacity to sit across from Fortune 500 executives—but through UCF's shareholder work, their concerns are heard in boardrooms and reflected in corporate decision-making.

1



In this way, the proposal process is not simply a shareholder mechanism; it is a lifeline connecting faith-based institutions to the companies whose policies and practices directly impact their communities, their ministries, and the long-term health of their investments.

This commitment to carrying our clients' voice has also shaped how we collaborate—with other faith and values-based investors and with companies themselves—so that progress is both practical and durable.

UCF's Record and the Broader Case for Engagement

UCF has a long history of using our shareholder voice to advance both financial prudence and the common good. Our practice is always to engage first, because genuine dialogue is the most effective path to progress. We begin by seeking a meeting with company leadership to discuss issues that directly affect profitability, performance, and long-term value. When dialogue produces results, we often withdraw a proposal or opt to not file at all. When dialogue stalls, we may proceed with a shareholder proposal to signal concern and invite fellow owners into the conversation.

Last year, UCF filed or co-filed a total of eight shareholder resolutions. Five of these were withdrawn after companies agreed to take meaningful steps forward—without ever going to a vote. This record underscores that shareholder resolutions are not an end in themselves but a tool for dialogue, often leading to constructive agreements without the need for confrontation.

Examples of the results of our engagements include:

- JP Morgan committing to enhanced protection of Indigenous Rights¹
- Workday committing to enhanced reporting on lobbying payments and oversights²

UCF's work is also part of a broader faith-based investor effort. As a founding member of the Interfaith Center on Corporate Responsibility (ICCR), we stand with a coalition of roughly 300 institutions representing \$4 trillion in invested assets—including Protestant, Catholic, Jewish, and Muslim organizations, as well as foundations, pension funds, investment managers, and labor unions. While each institution has its own set of priority issues, all participating investors are independent fiduciaries, responsible for their own investment and voting decisions. Each makes its own choices about strategies, policies, and engagement practices, and ICCR members do not vote as a bloc.

2

¹ For more information go to <https://ucfunds.org/investor-jpmc-secures-agreement/>

² For more information go to <https://ucfunds.org/notable-wins-for-2025-shareholder-proxy-season>



Yet there are many areas where our interests converge, and in those areas, we share a conviction—stated publicly³—that investors have both the right and the responsibility to communicate with and engage the companies in which they invest.

Importantly, many in the business community recognize these same priorities. Thousands of global companies publicly demonstrate leadership on governance, climate, human rights in supply chains, and fair employment practices. Their sustainability reports make clear that these are not fringe concerns but central to long-term value creation. Attacks on investors who raise environmental, social and governance concerns are, in effect, attacks on widely held views within business that acting responsibly and sustainably is simply good business.

Taken together, this alignment—among faith investors, values-aligned asset owners, and corporate leaders—underscores why the shareholder proposal process must remain available as a practical, well-understood channel for constructive engagement.

Keep the channel open: preserve 14a-8

We write at a moment when some have urged Congress to curtail or even dismantle the shareholder proposal process. From UCF's vantage point as a faith-based fiduciary, that would be a mistake. The current framework provides a balanced, well-understood pathway for long-term owners to exercise their shareholder rights and to be heard while preserving managerial discretion. It encourages constructive dialogue, greater transparency, and a focus on continuous improvement rather than ultimatums.

If long-term investors like UCF are curtailed in their ability to file a shareholder resolution, we risk being routinely or summarily ignored by corporate management. The ability to escalate concerns through 14a-8 is often the reason companies take dialogue with us seriously. Some corporations claim the process is burdensome, but our own experience proves otherwise. UCF carries out this entire program with only 1.5 full-time equivalents. Even with this lean staffing, we recently prepared a competitive response to a company's no-action request. The filing required just 15 hours of staff time and was enough to bring the company back to the dialogue table—where progress was achieved without the need for a vote.

3

³ See public statement: <https://www.iccr.org/religious-organizations-underscore-their-fundamental-right-to-manage-their-investments-in-alignment-with-their-beliefs-teachings-and-values/>



Therefore, we respectfully urge the Committee to:

1. Preserve access for long-term investors to file shareholder resolutions. Keep the process open to committed owners—including faith-based institutions and nonprofits—whose missions and fiduciary duties require them to manage material risks, not ignore them.
2. Avoid changes that chill responsible stewardship. Proposals are already limited and typically advisory. Further restrictions would silence useful signals from owners and deprive boards of decision-relevant feedback. Importantly, thresholds for filing were already tightened in 2020, requiring investors to hold significantly more shares if their holding period is less than three years (for example, increasing the one-year threshold from \$2,500 to \$25,000).

Our commitment going forward

UCF intends to keep doing what has worked: engage early, elevate issues that matter to long-term shareholder value and community well-being, and use shareholder proposals within the existing 14a-8 framework when necessary. We ask Congress to preserve—not weaken—this channel, so institutions like ours can continue fulfilling our fiduciary duties in a manner consistent with our values and with the long-term interests of beneficiaries.

Thank you for your leadership and for considering our perspective.

Respectfully submitted,

Charles Buck
President and CEO
United Church Funds



Questions for the Record

Full Committee on Financial Services

Hearing: Proxy Power and Proposal Abuse: Reforming Rule 14a-8 to Protect Shareholder Value
September 10, 2025

James R. Copland

Senior Fellow & Director, Legal Policy, Manhattan Institute for Policy Research

Note: The Manhattan Institute for Policy Research does not take institutional positions on legislation, rules, or regulations. Although my comments draw upon my long-running research on shareholder regulation and corporate governance as an Institute scholar, my statement before the subcommittee is solely my own, not my employer's.

From Rep. Stutzman:

1. *As you know, ISS is majority owned by Deutsch Börse, a German company, and Glass Lewis is owned by Peloton Capital Management, a Canadian private equity firm. In your view, are their policy recommendations influenced by their foreign worldview?*

Although it is impossible to say for sure, in my view it simply *has* to be the case that these firms' foreign ownership influences their policy recommendations.

That said, even before ISS was owned by Deutsch Börse it took left-leaning policy positions on shareholder proposals and governance matters, out of step with most other shareholders' votes. (Glass Lewis has long been owned by Canadian interests.)

Indeed, as I reported back in 2012, "ISS [at that time] supported over 63% of all shareholder proposals, while a majority of shareholders . . . supported less than 8%."¹ "[F]rom 2006 to 2012, ISS supported 35% of shareholder proposals related to environmental issues such as global warming or natural-gas hydraulic fracturing, and 70% of proposals seeking to increase disclosure of or to limit corporate political

¹ James R. Copland with Yevgeniy Feynman & Margaret O'Keefe, *Proxy Monitor 2012: A Report on Corporate Governance and Shareholder Activism* (Manhattan Institute 2012), p. 23, available at https://www.proxymonitor.org/Forms/pmr_04.aspx (last visited Oct. 15, 2025).



spending. Only one such proposal . . . received the support of a majority of shareholders.”²

Still, the foreign ownership of both major proxy advisory firms heightens these concerns. Institutions under the auspices of Canadian, German, and EU law and regulation will necessarily come into tension with American corporate governance norms. Legal rules in these foreign countries conflict with “America’s state-centered corporate law, which vests governance authority in boards of directors, whose fiduciary interests lie exclusively with equity shareholders, rather than with labor unions, other interested parties, or environmental or other social or policy goals.”³

It is a longstanding principle of American corporate law that corporate boards’ fiduciary duties are oriented around shareholder wealth maximization.⁴ That the two big foreign-owned proxy advisors’ own views are in tension with this principle is not merely speculative:

- Deutsch Börse expressly “takes social, ethical and ecological aspects into account, in addition to ESG product initiatives.”⁵ And when Deutsch Börse announced its acquisition of ISS, it highlighted the move as “an excellent foundation to fully realise opportunities for future growth in ESG-based investing globally.”⁶
- Canadian-owned Peloton Capital Management “is a member of the UN Principles of Responsible Investment (PRI), the world’s leading proponent of responsible investing.”⁷ The private equity firm touts “[t]his designation [a]s a public demonstration of PCM’s commitment to include ESG factors in our investment decision making, risk mitigation and as part of our strategy for generating superior long-term returns.”⁸

² James R. Copland, “Politicized Proxy Advisers vs. Individual Investors,” *Wall St. J.*, Oct. 7, 2012, available at <https://www.manhattan-institute.org/html/politicized-proxy-advisers-vs-individual-investors-3863.html> (last visited Oct. 15, 2025).

³ James R. Copland & Charles Yockey, “EU Regulatory Overreach Threatens American Sovereignty,” *City J.*, Apr. 30, 2025, at <https://www.city-journal.org/article/eu-green-deal-parliament-environmental-labor-mandates> (last visited Oct. 15, 2025).

⁴ See *Dodge v. Ford Motor Co.*, 204 Mich 459 (1919).

⁵ Deutsche Börse Group: Our ESG Profile, <https://www.deutsche-boerse.com/dbg-en/investor-relations/at-a-glance/esg-profile> (last visited Oct. 15, 2025).

⁶ ISS, Press Release: Deutsche Börse acquires leading governance, ESG data and analytics provider ISS, Nov. 17, 2020, available at <https://www.issgovernance.com/deutsche-borse-acquires-leading-governance-esg-data-and-analytics-provider-iss/> (last visited Oct. 15, 2025).

⁷ Peloton Capital Management, Environmental, Social and Governance Policy, <https://www.pelotoncapitalmanagement.com/responsible-investing> (last visited Oct. 15, 2025).

⁸ *Id.*



2. *We often hear that the proxy advisors have a proverbial seat in every corporate boardroom in the country. In your experience, is that true?*

Yes. As I noted in my written testimony before the committee, “the proxy advisory firm duopoly acts *de facto* as the largest single shareholder in the publicly traded stock markets, notwithstanding thin capitalization, foreign ownership, and a general lack of transparency.”⁹

As summarized in a 2018 report I co-authored with Stanford’s David Larcker and Brian Tayan, a substantial body of empirical evidence shows that proxy advisory firms’ recommendations influence institutional investor voting and that publicly traded companies are influenced by proxy advisor guidelines. A 2012 analysis I co-authored showed that an ISS recommendation “for” a given shareholder proposal, controlling for other factors, was associated with a 15-percentage-point increase in the shareholder vote for any given proposal. This observation is consistent with a more recent Manhattan Institute study, authored by Professor Paul Rose, which found significant “robo-voting” of shares consistent with proxy advisor guidelines among many smaller institutional investors. Little wonder that Leo Strine, a former chancellor on the Delaware Court of Chancery, observed: “Powerful CEOs come on bended knee to Rockville, Maryland, where ISS resides, to persuade the managers of ISS of the merits of their views about issues.”¹⁰

⁹ Copland Written Testimony, p. 17.

¹⁰ *Id.* at 13–14.



Questions for the Record

Full Committee on Financial Services

Hearing: Proxy Power and Proposal Abuse: Reforming Rule 14a-8 to Protect Shareholder Value
September 10, 2025

James R. Copland

Senior Fellow & Director, Legal Policy, Manhattan Institute for Policy Research

Note: The Manhattan Institute for Policy Research does not take institutional positions on legislation, rules, or regulations. Although my comments draw upon my long-running research on shareholder regulation and corporate governance as an Institute scholar, my statement before the subcommittee is solely my own, not my employer's.

From Rep. De La Cruz:

1. Which reforms (please pick 1 or 2) to the shareholder proposal process do you believe would receive the broadest bipartisan support, and why?

Although I would strongly support broader legislation with more sweeping impact—such as returning the shareholder process to the states, where it rightly belongs absent express Congressional authorization;¹ or requiring passive-index fund “mirror voting” designed to make their voting consistent with their hands-off investment strategy²—these ideas

¹ See H.R. 4655, 118th Cong. (2023–2024) (to amend the Securities Exchange Act of 1934 to prohibit the SEC from compelling the inclusion or discussion of shareholder proposals or proxy or consent solicitation materials).

As I have argued before the Committee on multiple occasions, “the SEC’s shareholder-proposal rule exceeds Congress’s statutory mandate to the agency, tramples on state corporate law without Congressional authorization, and impedes the efficiency and capital formation that Congress has insisted the agency prioritize.” Statement of James R. Copland, “The Rise of ESG Investing and the Appropriate Regulatory Responses,” Hearing before the House Committee on Financial Services: Protecting Investor Interests: Examining Environmental and Social Policy in Financial Regulation, July 12, 2023, p. 10, available at <https://media4.manhattan-institute.org/wp-content/uploads/Copland-Testimony-House-Financial-Services-7-12-2023-fin-rev.pdf> (last visited Oct. 15, 2025).

SEC Chairman Paul Atkins has recently voiced similar concerns. See Paul S. Atkins, Keynote Address at the John L. Weinberg Center for Corporate Governance’s 25th Anniversary Gala, Oct. 9, 2025, available at <https://www.sec.gov/newsroom/speeches-statements/atkins-10092025-keynote-address-john-l-weinberg-center-corporate-governance-25th-anniversary-gala> (entertaining proposition that “precatory proposals are not a ‘proper subject’ for shareholder action under Delaware law”) (last visited Oct. 15, 2025). Cf. Kyle Pinder, “The Non-Binding Bind: Reframing Precatory Stockholder Proposals under Delaware Law,” 15 *Mich. Bus. & Entrepreneurial L. Rev.* __ (forthcoming) (arguing same), available at <https://papers.ssrn.com/sol3/Delivery.cfm/5418534.pdf> (last visited Oct. 15, 2025).

² See generally James R. Copland, *Index Funds Have Too Much Voting Power: A Proposal for Reform* (Manhattan Institute 2024) (arguing for passive index funds to functionally abstain—or “mirror vote”—on shareholder ballot items), available at <https://manhattan.institute/article/index-funds-have-too-much-voting-power-a-proposal-for->



may struggle to get bipartisan support necessary to make it through the Senate. However, **Congress clarifying, by statute, that the SEC has the authority to oversee proxy advisory firms and requiring such firms to register with the Commission**,³ should be the sort of marginal reform that could have a significant impact and might win bipartisan majorities in both Houses.

Today, the need for such Congressional action is obvious. On July 1, 2025, the U.S. Court of Appeals for the D.C. Circuit invalidated the SEC's 2020 rule⁴ defining a "solicitation" under Section 14(a) of the Securities Exchange Act of 1934 to include proxy voting advice issued by advisory firms.⁵ The SEC may or may not have an alternative basis in existing law for overseeing proxy advisory firms and their voting advice business. But the current lack of clarity is itself a compelling reason for Congress to act.

And the case for SEC oversight is also itself compelling. As I noted in my written testimony before the committee, "the proxy advisory firm duopoly acts *de facto* as the largest single shareholder in the publicly traded stock markets, notwithstanding thin capitalization, foreign ownership, and a general lack of transparency."⁶ The proxy advisory firm duopoly's policy recommendations heavily influence institutional investor voting, and publicly traded companies are in turn heavily influenced by proxy advisor guidelines, as explained in a 2018 report I co-authored with Stanford's David Larcker and Brian Tayan.⁷

Just how significant is this influence? Studies vary, as Larcker, Tayan, and I described in our 2018 report; but a 2012 econometric analysis I co-authored showed that an ISS recommendation "for" a given shareholder proposal, controlling for other factors, was

reform. *Cf.* S. 1670, 119th Cong. (2025) (Investor Democracy Is Expected Act or "INDEX Act") (providing for passive index fund "mirror voting" for certain shareholder votes).

³ See, e.g., H.R. 4589, 118th Cong. (2023) (to amend the Securities Exchange Act of 1934 to provide for the registration of proxy advisory firms).

⁴ Exemptions from the Proxy Rules for Proxy Voting Advice, 85 Fed. Reg. 55,818 (Sept. 3, 2020) (codified at 17 C.F.R. §§ 240.14a-1, 14a-2, 14a-9); see Commission Interpretation and Guidance Regarding the Applicability of the Proxy Rules to Proxy Voting Advice, 84 Fed. Reg. 47,416, 47,417 (Sept. 10, 2019). See also Proxy Voting Advice, 87 Fed. Reg. 43,168, 43,174 (July 19, 2022).

⁵ See *Institutional Shareholder Svcs. v. SEC*, No. 24-5105 (D.C. Cir. July 1, 2025), available at <https://media.cadc.uscourts.gov/opinions/docs/2025/07/24-5105-2123183.pdf> (last visited Oct. 15, 2025). *Cf. also* Nat'l Ass'n of Manufacturers v. SEC, No. 22-51069 (5th Cir. June 26, 2024) (vacating in part the SEC's rescission of the 2020 proxy advice requirements as arbitrary and capricious); *Chamber of Commerce of the U.S. v. SEC*, No. 23-5409 (6th Cir. Sept. 10, 2024) (upholding the SEC's partial rescission of enhanced disclosure requirements for proxy voting advice businesses, rejecting the challenge under the Administrative Procedure Act).

⁶ Copland Written Testimony, p. 17.

⁷ See James R. Copland et al., *Proxy Advisory Firms: Empirical Evidence and the Case for Reform* (Manhattan Institute 2018), available at <https://media4.manhattan-institute.org/sites/default/files/R-JC-0518-v2.pdf> (last visited Oct. 15, 2025).



associated with a 15-percentage-point increase in the shareholder vote for that proposal.⁸ This observation is consistent with a more recent Manhattan Institute study, authored by Professor Paul Rose, which found significant “robo-voting” of shares consistent with proxy advisor guidelines among many smaller institutional investors.⁹

Little wonder that Leo Strine, a former chancellor on the Delaware Court of Chancery, observed: “Powerful CEOs come on bended knee to Rockville, Maryland, where ISS resides, to persuade the managers of ISS of the merits of their views about issues.”¹⁰ It is bizarre indeed that two relatively small, opaque, foreign-owned advisory companies that do not themselves exercise investment judgment act as by far the largest *de facto* owners of the American stock market.

Currently, ISS is registered with the SEC as a Registered Investment Adviser under the Investment Advisers Act of 1940. Glass Lewis is not. While there may be reasons to exempt small competitors from SEC registration—we certainly should not want to create barriers to entry in this market—there is little reason that these two entities with wildly disproportionate influence on our publicly held companies’ securities votes should not be under SEC supervision. While Republicans and Democrats might differ on the merits of this or that issue regarding proxy advisors and their influence, they should be able to come together on this point.

⁸ See James R. Copland et al., *Proxy Monitor 2012: A Report on Corporate Governance and Shareholder Activism* 22–23 (Manhattan Inst. for Pol’y Res., Fall 2012), available at http://www.proxymonitor.org/Forms/pmr_04.aspx (last visited Oct. 15, 2025).

⁹ See Paul Rose, *Proxy Advisors and Market Power: A Review of Institutional Investor Robovoting* (Manhattan Institute 2021), available at <https://manhattan.institute/article/proxy-advisors-and-market-power-a-review-of-institutional-investor-robovoting>.

¹⁰ Leo E. Strine, Jr., “The Delaware Way: How We Do Corporate Law and Some of the New Challenges We (and Europe) Face,” 30 *Del. J. Corp. L.* 688 (2005).



Questions for the Record

Full Committee on Financial Services

Hearing: Proxy Power and Proposal Abuse: Reforming Rule 14a-8 to Protect Shareholder Value
September 10, 2025

James R. Copland

Senior Fellow & Director, Legal Policy, Manhattan Institute for Policy Research

Note: The Manhattan Institute for Policy Research does not take institutional positions on legislation, rules, or regulations. Although my comments draw upon my long-running research on shareholder regulation and corporate governance as an Institute scholar, my statement before the subcommittee is solely my own, not my employer's.

From Ranking Member Waters:

1. Which of the following options best describes your self-identified race? (you may choose more than one)

- a) White or Caucasian
- b) Black or African American
- c) Hispanic/Latinx
- d) Asian
- e) Middle Eastern/North African
- f) Choose not to answer**
- g) Prefer to self-describe (please specify)

(f)

2. Which of the following options best describes your gender identity?

- a) Woman
- b) Man**
- c) Non-binary
- d) Transgender man
- e) Transgender Woman
- f) Choose not to answer
- g) Prefer to self-describe (please specify)

(b)

Hearing on “Proxy Power and Proposal Abuse: Reforming Rule 14a-8 to Protect Shareholder Value” (September 10, 2025)

Before the U.S. House Committee on Financial Services

**Post-Hearing Responses of Ronald Mueller¹
to Questions from Representative Stutzman**

1. As you know, ISS is majority owned by Deutsch Börse, a German company, and Glass Lewis is owned by Peloton Capital Management, a Canadian private equity firm. In your view, are their policy recommendations influenced by their foreign worldview?

A primary issue with proxy advisory firm recommendations is lack of transparency, so it is difficult to ascertain the degree to which their policy recommendations are influenced by their foreign ownership. Regulatory oversight could reinforce the importance of diligence and quality control. It would be helpful for shareholders and issuers to alike to receive disclosure regarding (i) the organizational structure of the proxy advisory firms, including any safeguards that prevent their shareholders from influencing their voting recommendations; (ii) how the firm plans to manage potential/actual conflicts of interest; (iii) professional and academic qualifications of staff; and (iv) economic and other factors influencing their recommendations.

2. We often hear that the proxy advisors have a proverbial seat in every corporate boardroom in the country. In your experience, is that true?

Yes. In my experience, corporate boards seek to exercise independent judgment and fulfill their fiduciary duties when taking various actions, but in many cases part of assessing the pros and cons of taking a certain action involves understanding whether and how the action is likely to be viewed by the proxy advisory firms. This is particularly the case when the action is directly subject to a shareholder vote, such as executive compensation decisions, the selection of nominees to stand for election as directors, or the decision on whether to oppose a shareholder proposal. However, even on topics that are not directly subject to a stockholder vote, directors are mindful of proxy advisory firm corporate governance ratings and voting policies.

¹ Partner and Founding Member, Securities Regulation and Corporate Governance Practice Group, Gibson, Dunn & Crutcher LLP. These responses are mine personally and the views that I express are my own and not those of Gibson, Dunn & Crutcher LLP or attributable to any client or any association of which I am a member.

Hearing on “Proxy Power and Proposal Abuse: Reforming Rule 14a-8 to Protect Shareholder Value” (September 10, 2025)

Before the U.S. House Committee on Financial Services

**Post-Hearing Responses of Ronald Mueller¹
to Questions from Representative De La Cruz**

1. Which reforms (please pick 1 or 2) to the shareholder proposal process do you believe would receive the broadest bipartisan support, and why?

Two reforms that I would highlight are:

- Eliminate the “significant policy” exception under Rule 14a-8(i)(7) and focus on significance to the company’s business. This aligns with Congressman Rose’s proposed legislation (<https://www.congress.gov/119/meeting/house/118577/documents/BILLS-119pih-providesmoreflexibilitytoexcludeshareholderproposals.pdf>) that clarifies that an issuer may exclude a shareholder proposal pursuant to Rule 14a-8(i) without regard to whether such proposal relates to a significant policy issue.
- Revive the former relevance standard to allow for exclusion of any proposal that primarily advances a general economic, political, environmental, social, or similar interest. This generally aligns with Congressman Donalds proposed legislation (<https://www.congress.gov/119/meeting/house/118577/documents/BILLS-119pih-providesmoreflexibilitytoexcludeshareholderproposals.pdf>) which would amend Rule 14a-8 to allow companies to exclude proposals if the subject matter is environmental, social or political (or a similar subject matter).

These two actions would allow stockholders to weigh in on broad corporate governance or business topics, while preserving for management decisions on complex and detailed policy choices. These reforms also would deter special interest groups from seeking to use the shareholder proposal process to advance their narrow policy or fundraising goals.

¹ Partner and Founding Member, Securities Regulation and Corporate Governance Practice Group, Gibson, Dunn & Crutcher LLP. These responses are mine personally and the views that I express are my own and not those of Gibson, Dunn & Crutcher LLP or attributable to any client or any association of which I am a member.

Hearing on “Proxy Power and Proposal Abuse: Reforming Rule 14a-8 to Protect Shareholder Value” (September 10, 2025)

Before the U.S. House Committee on Financial Services

**Post-Hearing Responses of Ronald Mueller¹
to Questions from Representative Waters**

1. Which of the following options best describes your self-identified race? (you may choose more than one)

- a. White or Caucasian
- b. Black or African American
- c. Hispanic/Latinx
- d. Asian
- e. Middle Eastern/North African
- f. Choose not to answer
- g. Prefer to self-describe (please specify):

My view is that many of the types of issues raised in shareholder proposals submitted under SEC Rule 14a-8 are not appropriate policy topics for shareholders to address but instead, to the extent they raise social policy issues, should be addressed by elected government officials, and to the extent they raise business policy issues, should be addressed by board of directors and executives.

2. Which of the following options best describes your gender identity?

- a. Woman
- b. Man
- c. Non-binary
- d. Transgender man
- e. Transgender Woman

¹ Partner and Founding Member, Securities Regulation and Corporate Governance Practice Group, Gibson, Dunn & Crutcher LLP. These responses are mine personally and the views that I express are my own and not those of Gibson, Dunn & Crutcher LLP or attributable to any client or any association of which I am a member.

f. Choose not to answer

g. Prefer to self-describe (please specify)

My view is that many of the types of issues raised in shareholder proposals submitted under SEC Rule 14a-8 are not appropriate policy topics for shareholders to address but instead, to the extent they raise social policy issues, should be addressed by elected government officials, and to the extent they raise business policy issues, should be addressed by board of directors and executives.

**Hearing on “Proxy Power and Proposal Abuse: Reforming Rule 14a-8 to Protect
Shareholder Value” (September 10, 2025)**

Before the U.S. House Committee on Financial Services

**Post-Hearing Responses of Ronald Mueller¹
to Questions from Representative Steil**

1. When your clients design their corporate policies and compensation programs, do the views, policies and/or likely recommendations of the proxy advisory firms play a role? If so, how?

Yes, the policies, past voting analyses, and likely recommendations of the proxy advisory firms impact companies’ corporate governance policies and executive compensation programs. A recent study of 2024 voting results among the S&P 500 found that the average support for “say-on-pay” votes was 28% less where ISS recommended against the proposals.² Furthermore, ISS and Glass Lewis each have “board accountability” voting standards under which they expect companies to achieve supermajority approval on their say-on-pay proposals (70% for ISS and 80% for Glass Lewis), which is significantly more likely to occur if the proxy advisors recommend against the proposals. For example, until this year, ISS’s executive compensation policies help the view that performance-vesting stock awards should comprise a majority of senior executive’s “long-term” incentive compensation, which in turn constitutes a majority of executive’s total compensation. As a result, whereas in 2008 only approximately 30% of S&P 1500 companies granted performance-vesting stock awards, by 2022 approximately 75% of those companies granted performance-vesting stock awards. Now that studies have shown that performance-vesting stock awards do not necessarily lead to superior corporate performance, ISS has revised that policy, and we can expect the use of performance-vesting stock awards to decline.

Similarly, ISS and Glass Lewis policies establishing one-size-fits-all policies on standards for assessing when a director is “independent,” which differ from stock exchange and other regulatory standards; policies on “over-boarding” (restricting the number of public company boards a director may serve on); and policies on board “responsiveness” (whether a board is deemed to have adequately responded

¹ Partner and Founding Member, Securities Regulation and Corporate Governance Practice Group, Gibson, Dunn & Crutcher LLP. These responses are mine personally and the views that I express are my own and not those of Gibson, Dunn & Crutcher LLP or attributable to any client or any association of which I am a member.

² See Todd Sirras et al., *2024 Say on Pay + Proxy Vote Results*, Harv. L. Sch. F. on Corp. Governance (July 16, 2024), <https://corpgov.law.harvard.edu/2024/07/16/2024-say-on-pay-proxy-vote-results/>.

to a prior year's shareholder proposal) all affect disclosures that companies provide in their proxy statements, corporate governance policies adopted by boards, and even who companies select to serve on their boards.

2. When your clients determine how to structure their disclosures and what to include therein, do the views, policies and/or likely recommendations of the proxy advisory firms play a role? If so, how?

Yes, ISS and Glass Lewis' views play a significant role when clients are determining how to structure their disclosures. Proxy advisory firms often will base their voting recommendations solely on information disclosed in a company's proxy statement, without regard to what additional information a company has on its website or otherwise publicly discloses, when determining their voting recommendations. And, as discussed in response to your prior comment, companies prepare not only their policies, but also their proxy statement disclosures, with an eye to satisfying the corporate governance ratings standards and proxy voting policies of ISS and Glass Lewis.

3. When your clients are considering how to address a shareholder proposal received for an upcoming shareholder meeting, how do they consider the impact of the proxy advisors' recommendation?

Our clients will consider how likely the proxy advisors are to recommend for or against a shareholder proposal when assessing how to respond. Due to "robo-voting" and other default voting policies that rely on proxy advisory firm recommendations, as well as the need for diversified institutional investors to be able to assess and vote on the hundreds of shareholder proposals that are presented during peak proxy and annual meeting season, both companies and shareholder proponents typically cater to the proxy advisory firms' voting policies. Companies will often take actions designed to align with the advisory firms' voting policies, even when those actions do not fully implement the shareholder proposal, and shareholder proponents seek to position their proposals in terms that they hope the advisory firms will support.

4. When your clients are considering how to respond to a shareholder proposal that received majority or significant support at a previous shareholder meeting, how do they consider the views, policies and/or likely recommendations of the proxy advisors?

Yes, companies strongly consider the policies of proxy advisors when considering how to respond to a shareholder proposal that received majority or significant support at a previous shareholder meeting. ISS and Glass Lewis each have "board accountability" voting policies under which the proxy advisory firms expect boards of directors to take action in response to a shareholder proposal that

receives a specified level of voting support, and the firms may recommend votes against some or all of a company's directors at the next annual meeting if the proxy advisory firm views the board's response as insufficient. The "board accountability" policies apply regardless of whether a shareholder proposal was phrased as a non-binding precatory request and, in Glass Lewis's case, the policy may apply even if a majority of the shares present at a company's annual meeting voted against the shareholder proposal. ISS's policy is triggered if a shareholder proposal receives a majority vote, while Glass Lewis expects to see board "responsiveness" to a shareholder proposal before the next annual meeting if at least 30% of the shares voted supported the shareholder proposal.

To avoid triggering these "board accountability" policies, companies will evaluate whether the proxy advisory firms are likely to recommend votes for or against a shareholder proposal. Our clients typically request that we research whether proxy advisory firms have voting policies on the topic covered by a shareholder proposal, how the firms have recommended that shareholders vote on similar proposals at other companies, and whether there are policies that the company can adopt, disclosures the company can provide, or other actions that the company can take, to avoid having ISS or Glass Lewis support a shareholder proposal.

Hearing on “Proxy Power and Proposal Abuse: Reforming Rule 14a-8 to Protect Shareholder Value” (September 10, 2025)

Before the U.S. House Committee on Financial Services

**Post-Hearing Responses of Ronald Mueller¹
to Questions from Representative Rose**

1. Mr. Mueller, you mentioned from your extensive experience that drafting a winning no-action request to exclude a shareholder proposal is both challenging and costly. Could you please elaborate on the typical expenses and time commitments companies face in pursuing a successful no-action request, and why these factors make the process particularly vexing for companies?

The Rule 14a-8 shareholder proposal process imposes significant costs on companies, not just in terms of out-of-pocket expenses but more significantly in terms of the time and attention of key personnel who are diverted from their regular job functions in order to respond to the issues raised by a shareholder proposal.

Preparation of any Rule 14a-8 no-action letter requires researching precedents, which are only effectively searched through paid databases, determining which precedents are favorable and which are unfavorable, as well as researching whether precedents have been overturned or essentially mooted through subsequent SEC Staff interpretations, and then drafting a document that is comparable to a court-filed brief, arguing why the favorable precedent support exclusion of the proposal and why any unfavorable precedent is not applicable to the particular proposal.

While the cost of this basic work is not cheap, the cost of the Rule 14a-8 process has increased dramatically as a result of a handful of advocacy organizations that use shareholder proposals to promote narrow, special-interest campaigns on topics ranging from climate change and diversity, equity, and inclusion initiatives to workforce management and animal rights issues. These organizations’ proposals often make various claims about a company’s operations and cite similarly oriented “experts” or advocates when making various assertions regarding a company’s operations or practices. As a result, companies have to call on their internal subject matter experts to investigate and provide the ground truth

¹ Partner and Founding Member, Securities Regulation and Corporate Governance Practice Group, Gibson, Dunn & Crutcher LLP. These responses are mine personally and the views that I express are my own and not those of Gibson, Dunn & Crutcher LLP or attributable to any client or any association of which I am a member.

regarding assertions in the proposal, as well as to provide additional information and context necessary for the company to accurately evaluate and respond to the shareholder proposal.

In addition, because these advocacy organizations submit proposals on similar topics year-over-year, the proposals they author each year will reflect the challenges made to similar proposals in prior years, incorporating revisions to try to distinguish them from past proposals that were excluded. As a result, even when proposals are submitted to the same company in successive years, those proposals will reflect revisions that require additional research and response.

Researching and drafting no-action responses comprise only a small fraction of the costs and burdens that shareholder proposals impose on companies. Companies often are seeking to engage with the proponent or the advocacy group that is working with the shareholder with the hope of negotiating a withdrawal of the proposal. To do this, the company must again summon its subject matter experts, discuss and evaluate the company's policy position on the topic covered by the proposal, evaluate how other companies address that topic, and discuss with management and the board of directors what actions the company might be willing and able to take as part of a negotiated resolution that would lead the proponent to agree to withdraw its proposal.

And, since there is rarely certainty that a proposal will be withdrawn or excluded from a company's proxy statement pursuant to the Rule 14a-8 process, the company also must devote resources preparing its position statement that would appear in the company's proxy statement if the proposal is to be voted on. Again, this process of drafting the company's position statement on the proposal (commonly called the "statement in opposition") requires work from outside legal counsel and well as the company's own or outside subject matter experts, as well as input and oversight from management and the board of directors.

All of these processes: researching and drafting a no-action request, preparing for and conducting engagement with the shareholder proponent and the advocacy organization, and drafting the company's statement in opposition, typically occur concurrently, further increasing the costs and burdens of the process on the company, given the compressed timeframes and the uncertainty as to which outcome will be successful. Each course of action involves differing considerations.

**Hearing on “Proxy Power and Proposal Abuse: Reforming Rule 14a-8 to Protect
Shareholder Value” (September 10, 2025)**

Before the U.S. House Committee on Financial Services

**Post-Hearing Responses of Ronald Mueller¹
to Questions from Representative Bynum**

1. Today, proxy advisory firms operate with a tremendous amount of influence over corporate elections. Their recommendations can sway the outcome of votes on mergers, executive pay, board elections, and long-term business strategies. In many cases, companies feel compelled to act not based on shareholder engagement but based on proxy firm ratings and scorecards. What impact have you seen that proxy advisor firms have on corporate governance and business decisions?

In my experience, corporate boards seek to exercise independent judgment and fulfill their fiduciary duties when taking various actions. Nevertheless, in many cases part of assessing the pros and cons of taking a certain action involves understanding whether and how the action is likely to be viewed by the proxy advisory firms. This is particularly the case when the action is directly subject to a shareholder vote, such as executive compensation decisions, the selection of nominees to stand for election as directors, or the decision on whether to oppose a shareholder proposal.

In particular, the policies, past voting analyses, and voting recommendations of the proxy advisory firms impact companies' corporate governance policies and executive compensation programs. A recent study of 2024 voting results among the S&P 500 found that the average support for “say-on-pay” votes was 28% less where ISS recommended against the proposals.² Furthermore, ISS and Glass Lewis each have “board accountability” voting standards under which they expect companies to achieve supermajority approval on their say-on-pay proposals (70% for ISS and 80% for Glass Lewis), which is significantly more likely to occur if the proxy advisors recommend against the proposals. For example, until this year, ISS's executive compensation policies help the view that performance-vesting stock awards should comprise a majority of senior executive's “long-term” incentive compensation, which in turn constitutes a majority of executive's total

¹ Partner and Founding Member, Securities Regulation and Corporate Governance Practice Group, Gibson, Dunn & Crutcher LLP. These responses are mine personally and the views that I express are my own and not those of Gibson, Dunn & Crutcher LLP or attributable to any client or any association of which I am a member.

² See Todd Sirras et al., *2024 Say on Pay + Proxy Vote Results*, Harv. L. Sch. F. on Corp. Governance (July 16, 2024), <https://corpgov.law.harvard.edu/2024/07/16/2024-say-on-pay-proxy-vote-results/>.

compensation. As a result, whereas in 2008 only approximately 30% of S&P 1500 companies granted performance-vesting stock awards, by 2022 approximately 75% of those companies granted performance-vesting stock awards. Now that studies have shown that performance-vesting stock awards do not necessarily lead to superior corporate performance, ISS has revised that policy, and we can expect the use of performance-vesting stock awards to decline.

Similarly, ISS and Glass Lewis policies establishing one-size-fits-all policies on standards for assessing when a director is “independent,” which differ from stock exchange and other regulatory standards; policies on “over-boarding” (restricting the number of public company boards a director may serve on); and policies on board “responsiveness” (whether a board is deemed to have adequately responded to a prior year’s shareholder proposal) all affect disclosures that companies provide in their proxy statements, corporate governance policies adopted by boards, and even who companies select to serve on their boards.

2. Given the significant market-moving power proxy advisory firms have, what regulatory oversight currently exists to ensure that proxy advisors are acting transparently, accurately, and free of conflicts of interest?

Currently the firms are not subject to any required regulatory oversight. For example, it violates the securities law for a solicitation to contain a materially false or misleading statement. But if a proxy advisory firm’s advice is not a solicitation, they are not subject to this important guardrail. If there is a false and misleading statement in their voting recommendation, it is the company and all of its shareholders, not the advisory firm’s customer, that can be harmed. I am not suggesting that proxy advisory firms intentionally or frequently include false or misleading statements in their reports, but regulatory oversight could reinforce the importance of diligence and quality control.

Even though ISS has registered with the SEC as an investment advisor, and Glass Lewis has stated that it intends to do so, the investment advisor regulatory regime is not designed to address the role that proxy advisory firms play.

3. How can Congress bring clear, enforceable standards into the proxy advisory practice to protect both companies and investors?

At a minimum, Congress should authorize the SEC to regulate the proxy advisory firms. While there are many forms that legislation could take, one approach would be a regulatory regime that is similar to the regulation of rating agencies that was adopted by Congress following the financial crisis.

FRENCH HILL, AR
CHAIRMANMAXINE WATERS, CA
RANKING MEMBER

United States House of Representatives
One Hundred Nineteenth Congress
Committee on Financial Services
2129 Rayburn House Office Building
Washington, DC 20515

September 26, 2025

Mr. Brad Lander
Comptroller
City of New York
One Centre Street
New York, NY 10007

Dear Comptroller Lander:

Thank you for testifying before the House Committee on Financial Services on September 10, 2025, at the hearing titled "Proxy Power and Proposal Abuse: Reforming Rule 14a-8 to Protect Shareholder Value." Per the instructions announced by the Chairman at the conclusion of the hearing, Members submitted additional questions for your response. Please respond to the questions below and submit your response by October 15, 2025.

Should you or your staff have questions or need additional information, please contact Kyle Smithwick or Svent Bossart at (202) 225-7502.

Sincerely,

French Hill
Chairman

FRENCH HILL, AR
CHAIRMAN



MAXINE WATERS, CA
RANKING MEMBER

United States House of Representatives
One Hundred Nineteenth Congress
Committee on Financial Services
2129 Rayburn House Office Building
Washington, DC 20515

Questions for the Record

Full Committee on Financial Services
Hearing, titled: Proxy Power and Proposal Abuse: Reforming Rule 14a-8 to Protect
Shareholder Value
September 10, 2025

From Rep. De La Cruz:

1. Which reforms (please pick 1 or 2) to the shareholder proposal process do you believe would receive the broadest bipartisan support, and why?

From Ranking Member Waters:

1. Which of the following options best describes your self-identified race? (you may choose more than one)
 - a) White or Caucasian
 - b) Black or African American
 - c) Hispanic/Latinx
 - d) Asian
 - e) Middle Eastern/North African
 - f) Choose not to answer
 - g) Prefer to self-describe (please specify)
2. Which of the following options best describes your gender identity?
 - a) Woman
 - b) Man
 - c) Non-binary
 - d) Transgender man
 - e) Transgender Woman
 - f) Choose not to answer
 - g) Prefer to self-describe (please specify)



THE CITY OF NEW YORK
OFFICE OF THE COMPTROLLER
 BRAD LANDER

October 15, 2025

The Honorable French Hill
 Chairman
 Committee on Financial Services
 U.S. House of Representatives
 Washington, DC 20515

The Honorable Maxine Waters
 Ranking Member
 Committee on Financial Services
 U.S. House of Representatives
 Washington, DC 20515

Dear Chairman Hill and Ranking Member Waters:

Thank you for your question following the September 10, 2025 hearing, *Proxy Power and Proposal Abuse: Reforming Rule 14a-8 to Protect Shareholder Value*.

At this moment of partisan polarization, I genuinely welcome the question from Representative De La Cruz regarding which reforms to the shareholder proposal process might receive the broadest bipartisan support. One reform likely to garner bipartisan support would be a requirement that companies disclose shareholder proponents' names in their proxy statements. This simple measure, consistent with existing law and common practice, would enhance transparency for investors and issuers alike without exposing sensitive information such as shareholdings or home addresses.

Under current rules, companies must either disclose the proponent's name and address—or indicate that the information is available to shareholders upon request. In practice, most companies already include this information in their proxy statements. When they do not, my office routinely requests it, but this additional step imposes unnecessary burdens on both investors and companies. Standardizing name disclosure would streamline the process while facilitating transparency and maintaining accountability and privacy.

Regarding the question from Ranking Member Waters, I identify as a white male.

I appreciate the opportunity to share these views and thank you for your attention to strengthening the proxy process in ways that protect long-term shareholder value.

Sincerely,

Brad Lander
 New York City Comptroller

CC: The Honorable Monica De La Cruz

119TH CONGRESS
1ST SESSION

H. R. 4098

To amend the Securities Exchange Act of 1934 to prohibit certain acts
by proxy advisory firms, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JUNE 24, 2025

Mr. FITZGERALD introduced the following bill; which was referred to the
Committee on Financial Services

A BILL

To amend the Securities Exchange Act of 1934 to prohibit
certain acts by proxy advisory firms, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Stopping Proxy Advi-
5 sor Racketeering Act”.

6 **SEC. 2. CONDUCT OF PROXY ADVISORY FIRMS.**

7 The Securities Exchange Act of 1934 (15 U.S.C. 78a
8 et seq.) is amended by inserting after section 14B the fol-
9 lowing:

1 **“SEC. 14C. CONDUCT OF PROXY ADVISORY FIRMS.**

2 “(a) PROHIBITED CONDUCT.—It shall be unlawful
3 for a proxy advisory firm to provide proxy voting advice
4 if the proxy advisory firm possesses a conflict of interest,
5 direct or indirect, including by—

6 “(1) providing consulting services offered di-
7 rectly or indirectly through an affiliate to a reg-
8 istrant;

9 “(2) modifying a voting recommendation or oth-
10 erwise departing from the adopted systematic proce-
11 dures and methodologies of the proxy advisory firm
12 or affiliate for the provision of proxy voting advice
13 based on whether a registrant, or affiliate of the reg-
14 istrant, subscribes or will subscribe to the services or
15 products of the proxy advisory firm or any affiliate
16 of the proxy advisory firm;

17 “(3) providing proxy voting advice during any
18 period of time when the proxy advisory firm or any
19 affiliate of the proxy advisory firm is providing stew-
20 ardship or engagement services to a shareholder pro-
21 ponent, a non-issuer, a soliciting person, or affiliate
22 of any of the foregoing related to the matter covered
23 by the proxy voting advice; or

24 “(4) being a member of any organization that
25 supports a shareholder-sponsored proposal that is, or

1 is substantially the same subject matters as, the
2 proxy voting advice.

3 “(b) ADMINISTRATIVE CIVIL PENALTIES AVAIL-
4 ABLE.—If the Commission finds, after notice and oppor-
5 tunity for hearing in a proceeding instituted pursuant to
6 section 21C, that a proxy advisory firm violated subsection
7 (a), the Commission may, in addition to entering an order
8 under section 21C, impose a civil penalty against the
9 proxy advisory firm and any other person that the Com-
10 mission finds was a cause of such violation. The deter-
11 mination to impose such a civil penalty and the amount
12 of the penalty shall be governed by the standards set forth
13 in section 21B.

14 “(c) DEFINITIONS.—In this section:

15 “(1) CONSULTING SERVICES.—With respect to
16 a proxy advisory firm or an affiliate of a proxy advi-
17 sory firm, the term ‘consulting services’ means—

18 “(A) providing any non-public information
19 with respect to a proxy advisory firm’s policies
20 or ratings methodologies;

21 “(B) any services designed to provide guid-
22 ance or advice regarding any corporate govern-
23 ance, compensation, corporate social responsi-
24 bility, environmental, social, political, or other

1 policies, disclosures, or actions adopted by a
2 registrant with respect to—

3 “(i) any matter—

4 “(I) for which security holder
5 vote or consent is or will be solicited;
6 and

7 “(II) as to which the proxy advisory
8 firm makes or will make a recommendation as to a security holder’s
9 vote or consent; or
10

11 “(ii) matters included in or covered by
12 any written report or rating furnished by
13 the proxy advisory firm; and

14 “(C) such other services as the Commission may determine.

15
16 “(2) PROXY ADVISORY FIRM.—The term ‘proxy
17 advisory firm’ means a person that markets the person’s expertise as a provider of proxy voting advice,
18 separately from other forms of investment advice,
19 and sells such proxy voting advice for a fee.

20
21 “(3) PROXY VOTING ADVICE.—The term ‘proxy
22 voting advice’ means any advice that makes a recommendation to a security holder as to the vote,
23 consent, or authorization of the security holder on a
24

1 specific matter for which the approval of the security
2 holder is solicited.

3 “(4) REGISTRANT.—The term ‘registrant’
4 means the issuer of the securities in respect of which
5 proxies are to be solicited.”.

○

119TH CONGRESS
1ST SESSION

H. R. 3402

To amend the Securities Exchange Act of 1934 to require certain disclosures by institutional investment managers in connection with proxy advisory firms, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MAY 14, 2025

Mr. LOUDERMILK introduced the following bill; which was referred to the Committee on Financial Services

A BILL

To amend the Securities Exchange Act of 1934 to require certain disclosures by institutional investment managers in connection with proxy advisory firms, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. DUTIES OF INVESTMENT ADVISORS, ASSET**
4 **MANAGERS, AND PENSION FUNDS.**

5 Section 13(f) of the Securities Exchange Act of 1934
6 (15 U.S.C. 78m(f)) is amended by adding at the end the
7 following:

1 “(7) DISCLOSURES BY INSTITUTIONAL INVESTMENT
2 MANAGERS IN CONNECTION WITH PROXY ADVISORY
3 FIRMS.—

4 “(A) IN GENERAL.—Every institutional invest-
5 ment manager which uses the mails, or any means
6 or instrumentality of interstate commerce in the
7 course of its business as an institutional investment
8 manager, which engages a proxy advisory firm, and
9 which exercises voting power with respect to ac-
10 counts holding equity securities of a class described
11 in subsection (d)(1) or otherwise becomes or is
12 deemed to become a beneficial owner of any security
13 of a class described in subsection (d)(1) upon the
14 purchase or sale of a security-based swap that the
15 Commission may define by rule, shall file an annual
16 report with the Commission containing—

17 “(i) an explanation of how the institutional
18 investment manager voted with respect to each
19 shareholder proposal;

20 “(ii) the percentage of votes cast on share-
21 holder proposals that were consistent with
22 proxy advisory firm recommendations, for each
23 proxy advisory firm retained by the institutional
24 investment manager;

25 “(iii) an explanation of—

1 “(I) how the institutional investment
2 manager took into consideration proxy ad-
3 visory firm recommendations in making
4 voting decisions, including the degree to
5 which the institutional investment manager
6 used those recommendations in making
7 voting decisions;

8 “(II) how often the institutional in-
9 vestment manager voted consistent with a
10 recommendation made by a proxy advisory
11 firm, expressed as a percentage;

12 “(III) how such votes are reconciled
13 with the fiduciary duty of the institutional
14 investment manager to vote in the best
15 economic interests of shareholders;

16 “(IV) how frequently votes were
17 changed when an error occurred or due to
18 new information from issuers; and

19 “(V) the degree to which investment
20 professionals of the institutional invest-
21 ment manager were involved in proxy vot-
22 ing decisions; and

23 “(iv) a certification that the voting deci-
24 sions of the institutional investment manager
25 were based solely on the best economic interest

1 of the shareholders on behalf of whom the insti-
2 tutional investment manager holds shares.

3 “(B) REQUIREMENTS FOR LARGER INSTITU-
4 TIONAL INVESTMENT MANAGERS.—Every institu-
5 tional investment manager described in subpara-
6 graph (A) that has assets under management with
7 an aggregate fair market value on the last trading
8 day in any of the preceding twelve months of at least
9 \$100,000,000,000 shall—

10 “(i) in any materials provided to customers
11 and related to customers voting their shares,
12 clarify that shareholders are not required to
13 vote on every proposal;

14 “(ii) with respect to each shareholder pro-
15 posal for which the institutional investment
16 manager votes (other than votes consistent with
17 the recommendation of a board of directors
18 composed of a majority of independent direc-
19 tors) perform an economic analysis before mak-
20 ing such vote, to determine that the vote is in
21 the best economic interest of the shareholders
22 on behalf of whom the institutional investment
23 manager holds shares; and

1 “(iii) include each economic analysis re-
2 quired under clause (ii) in the annual report re-
3 quired under subparagraph (A).

4 “(C) DEFINITIONS.—In this paragraph:

5 “(i) BEST ECONOMIC INTEREST.—The
6 term ‘best economic interest’ means decisions
7 that seek to maximize investment returns over
8 a time horizon consistent with the investment
9 objectives and risk management profile of the
10 fund in which shareholders are invested.

11 “(ii) PROXY ADVISORY FIRM.—The term
12 ‘proxy advisory firm’—

13 “(I) means any person who is pri-
14 marily engaged in the business of pro-
15 viding proxy voting advice, research, anal-
16 ysis, ratings, or recommendations to cli-
17 ents, which conduct constitutes a solici-
18 tation within the meaning of section 14; and

19 “(II) does not include any person that
20 is exempt under law or regulation from the
21 requirements otherwise applicable to per-
22 sons engaged in such a solicitation.”.

○

[DISCUSSION DRAFT]119TH CONGRESS
1ST SESSION**H. R.** _____

To amend the Securities Exchange Act of 1934 to provide for the registration
of proxy advisory firms, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

Mr. STEIL introduced the following bill; which was referred to the Committee
on _____

A BILL

To amend the Securities Exchange Act of 1934 to provide
for the registration of proxy advisory firms, and for
other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. REGISTRATION OF PROXY ADVISORY FIRMS.**

4 (a) AMENDMENT.—The Securities Exchange Act of
5 1934 (15 U.S.C. 78a et seq.) is amended by inserting after
6 section 15G the following new section:

1 **“SEC. 15H. REGISTRATION OF PROXY ADVISORY FIRMS.**

2 “(a) CONDUCT PROHIBITED.—It shall be unlawful
3 for a proxy advisory firm to make use of the mails or any
4 means or instrumentality of interstate commerce to pro-
5 vide proxy voting advice, research, analysis, ratings or rec-
6 ommendations to any client, unless such proxy advisory
7 firm is registered under this section.

8 “(b) REGISTRATION PROCEDURES.—

9 “(1) APPLICATION FOR REGISTRATION.—

10 “(A) IN GENERAL.—A proxy advisory firm
11 shall file with the Commission an application
12 for registration, in such form as the Commis-
13 sion shall require, by rule, and containing the
14 information described in subparagraph (B).

15 “(B) REQUIRED INFORMATION.—An appli-
16 cation for registration under this section shall
17 contain—

18 “(i) a certification that the applicant
19 is able to consistently provide proxy advice
20 based on accurate information;

21 “(ii) with respect to clients of the ap-
22 plicant that vote shares held on behalf of
23 shareholders, a certification that the appli-
24 cant—

3

1 “(I) will provide proxy voting ad-
2 vice only in the best economic interest
3 of those shareholders; and

4 “(II) has the requisite expertise
5 to ensure that voting recommenda-
6 tions are in the best economic interest
7 of those shareholders;

8 “(iii) information on the procedures
9 and methodologies that the applicant uses
10 to ensure that proxy voting recommenda-
11 tions are in the best economic interest of
12 the ultimate shareholders;

13 “(iv) information on the organiza-
14 tional structure of the applicant;

15 “(v) an explanation of whether or not
16 the applicant has in effect a code of ethics,
17 and if not, the reasons therefor;

18 “(vi) a description of any potential or
19 actual conflict of interest relating to the
20 provision of proxy advisory services, includ-
21 ing those arising out of or resulting from
22 the ownership structure of the applicant or
23 the provision of other services by the appli-
24 cant or any person associated with the ap-
25 plicant;

1 “(vii) the policies and procedures in
2 place to publicly disclose and manage con-
3 flicts of interest under subsection (f);

4 “(viii) information related to the pro-
5 fessional and academic qualifications of
6 staff tasked with providing proxy advisory
7 services; and

8 “(ix) any other information and docu-
9 ments concerning the applicant and any
10 person associated with such applicant as
11 the Commission, by rule, may prescribe as
12 necessary or appropriate in the public in-
13 terest or for the protection of investors.

14 “(2) REVIEW OF APPLICATION.—

15 “(A) INITIAL DETERMINATION.—Not later
16 than 90 days after the date on which the appli-
17 cation for registration is filed with the Commis-
18 sion under paragraph (1) (or within such longer
19 period as to which the applicant consents) the
20 Commission shall—

21 “(i) by order, grant registration; or

22 “(ii) institute proceedings to deter-
23 mine whether registration should be de-
24 nied.

25 “(B) CONDUCT OF PROCEEDINGS.—

5

1 “(i) CONTENT.—Proceedings referred
2 to in subparagraph (A)(ii) shall—

3 “(I) include notice of the grounds
4 for denial under consideration and an
5 opportunity for hearing; and

6 “(II) be concluded not later than
7 120 days after the date on which the
8 application for registration is filed
9 with the Commission under paragraph
10 (1).

11 “(ii) DETERMINATION.—At the con-
12 clusion of such proceedings, the Commis-
13 sion, by order, shall grant or deny such ap-
14 plication for registration.

15 “(iii) EXTENSION AUTHORIZED.—The
16 Commission may extend the time for con-
17 clusion of such proceedings for not longer
18 than 90 days, if the Commission finds
19 good cause for such extension and pub-
20 lishes its reasons for so finding, or for such
21 longer period as to which the applicant
22 consents.

23 “(C) GROUNDS FOR DECISION.—The Com-
24 mission shall grant registration under this sub-
25 section—

6

1 “(i) if the Commission finds that the
2 requirements of this section are satisfied;
3 and

4 “(ii) unless the Commission finds (in
5 which case the Commission shall deny such
6 registration) that—

7 “(I) the applicant has failed to
8 certify to the Commission’s satisfac-
9 tion that it is able to consistently pro-
10 vide proxy advice based on accurate
11 information and to materially comply
12 with the procedures and methodolo-
13 gies disclosed under paragraph (1)(B)
14 and with subsections (f) and (g); or

15 “(II) if the applicant were so reg-
16 istered, its registration would be sub-
17 ject to suspension or revocation under
18 subsection (d).

19 “(3) PUBLIC AVAILABILITY OF INFORMATION.—
20 Subject to section 24, the Commission shall make
21 the information and documents submitted to the
22 Commission by a proxy advisory firm in its com-
23 pleted application for registration, or in any amend-
24 ment submitted under paragraph (1) or (2) of sub-
25 section (c), publicly available on the Commission’s

1 website, or through another comparable, readily ac-
2 cessible means.

3 “(c) UPDATE OF REGISTRATION.—

4 “(1) UPDATE.—Each registered proxy advisory
5 firm shall promptly amend and update its applica-
6 tion for registration under this section if any infor-
7 mation or document provided therein becomes mate-
8 rially inaccurate, except that a registered proxy advi-
9 sory firm is not required to amend the information
10 required to be filed under subsection (b)(1)(B)(i) by
11 filing information under this paragraph, but shall
12 amend such information in the annual submission of
13 the organization under paragraph (2) of this sub-
14 section.

15 “(2) CERTIFICATION.—Not later than 90 cal-
16 endar days after the end of each calendar year, each
17 registered proxy advisory firm shall file with the
18 Commission an amendment to its registration, in
19 such form as the Commission, by rule, may prescribe
20 as necessary or appropriate in the public interest or
21 for the protection of investors—

22 “(A) certifying that the information and
23 documents in the application for registration of
24 such registered proxy advisory firm continue to
25 be accurate in all material respects; and

1 “(B) listing any material change that oc-
2 curred to such information or documents during
3 the previous calendar year.

4 “(d) CENSURE, DENIAL, OR SUSPENSION OF REG-
5 ISTRATION; NOTICE AND HEARING.—The Commission, by
6 order, shall censure, place limitations on the activities,
7 functions, or operations of, suspend for a period not ex-
8 ceeding 12 months, or revoke the registration of any reg-
9 istered proxy advisory firm if the Commission finds, on
10 the record after notice and opportunity for hearing, that
11 such censure, placing of limitations, suspension, or revoca-
12 tion is necessary for the protection of investors and in the
13 public interest and that such registered proxy advisory
14 firm, or any person associated with such an organization,
15 whether prior to or subsequent to becoming so associ-
16 ated—

17 “(1) has committed or omitted any act, or is
18 subject to an order or finding, enumerated in sub-
19 paragraph (A), (D), (E), (H), or (G) of section
20 15(b)(4), has been convicted of any offense specified
21 in section 15(b)(4)(B), or is enjoined from any ac-
22 tion, conduct, or practice specified in subparagraph
23 (C) of section 15(b)(4), during the 10-year period
24 preceding the date of commencement of the pro-

1 ceedings under this subsection, or at any time there-
2 after;

3 “(2) has been convicted during the 10-year pe-
4 riod preceding the date on which an application for
5 registration is filed with the Commission under this
6 section, or at any time thereafter, of—

7 “(A) any crime that is punishable by im-
8 prisonment for 1 or more years, and that is not
9 described in section 15(b)(4)(B); or

10 “(B) a substantially equivalent crime by a
11 foreign court of competent jurisdiction;

12 “(3) is subject to any order of the Commission
13 barring or suspending the right of the person to be
14 associated with a registered proxy advisory firm;

15 “(4) fails to furnish the certifications required
16 under subsections (b)(2)(C)(ii)(I) and (c)(2);

17 “(5) has engaged in one or more prohibited acts
18 enumerated in paragraph (1);

19 “(6) fails to maintain adequate financial and
20 managerial resources to consistently offer advisory
21 services to clients that vote shares held on behalf of
22 shareholders consistent with the best economic inter-
23 est of those shareholders, including by failing to
24 comply with subsection (f) or (g);

1 “(7) fails to maintain adequate expertise to en-
2 sure that proxy advisory services for clients that vote
3 shares held on behalf of shareholders are tied to the
4 best economic interest of those shareholders; or

5 “(8) engages in a prohibited act enumerated in
6 subsection (j).

7 “(e) TERMINATION OF REGISTRATION.—

8 “(1) VOLUNTARY WITHDRAWAL.—A registered
9 proxy advisory firm may, upon such terms and con-
10 ditions as the Commission may establish as nec-
11 essary in the public interest or for the protection of
12 investors, which terms and conditions shall include
13 at a minimum that the registered proxy advisory
14 firm will no longer conduct such activities as to
15 bring it within the definition of proxy advisory firm
16 in section 3(a)(81), withdraw from registration by
17 filing a written notice of withdrawal to the Commis-
18 sion.

19 “(2) COMMISSION AUTHORITY.—In addition to
20 any other authority of the Commission under this
21 title, if the Commission finds that a registered proxy
22 advisory firm is no longer in existence or has ceased
23 to do business as a proxy advisory firm, the Com-
24 mission, by order, shall cancel the registration under
25 this section of such registered proxy advisory firm.

1 “(f) MANAGEMENT OF CONFLICTS OF INTEREST.—

2 “(1) ORGANIZATION POLICIES AND PROCE-
3 DURES.—Each registered proxy advisory firm shall
4 establish, maintain, and enforce written policies and
5 procedures reasonably designed, taking into consid-
6 eration the nature of the business of such registered
7 proxy advisory firm and associated persons, to pub-
8 licly disclose and manage any conflicts of interest
9 that arise or would reasonably be expected to arise
10 from such business.

11 “(2) COMMISSION AUTHORITY.—The Commis-
12 sion shall, within one year of enactment, issue final
13 rules to prohibit, or require the management and
14 public disclosure of, any conflicts of interest relating
15 to the offering of proxy advisory services by a reg-
16 istered proxy advisory firm, including, without limi-
17 tation, conflicts of interest relating to—

18 “(A) the manner in which a registered
19 proxy advisory firm is compensated by the cli-
20 ent, any affiliate of the client, or any other per-
21 son for providing proxy advisory services;

22 “(B) business relationships, ownership in-
23 terests, or any other financial or personal inter-
24 ests between a registered proxy advisory firm,
25 or any person associated with such registered

1 proxy advisory firm, and any client, or any af-
2 filiate of such client;

3 “(C) the formulation of proxy voting poli-
4 cies;

5 “(D) the execution, or assistance with the
6 execution, of proxy votes if such votes are based
7 upon recommendations made by the proxy advi-
8 sory firm in which a person other than the
9 issuer is a proponent; and

10 “(E) any other potential conflict of inter-
11 est, as the Commission deems necessary or ap-
12 propriate in the public interest or for the pro-
13 tection of investors.

14 “(3) DISCLOSURE ON FACTORS INFLUENCING
15 RECOMMENDATIONS.—Each registered proxy advi-
16 sory firm shall annually disclose to the Commission
17 and make publicly available the economic and other
18 factors that a reasonable investor would expect to in-
19 fluence the recommendations of such proxy advisory
20 firm, including the ownership composition of such
21 proxy advisory firm and any meetings with, or feed-
22 back received from, outside entities.

23 “(g) RELIABILITY OF PROXY ADVISORY FIRM SERV-
24 ICES.—

1 “(1) IN GENERAL.—Each registered proxy advi-
2 sory firm shall—

3 “(A) have staff and other resources suffi-
4 cient to produce proxy voting recommendations
5 that are based on accurate and current infor-
6 mation and designed for clients that vote shares
7 held on behalf of shareholders to advance the
8 best economic interest of those shareholders;

9 “(B) implement procedures that permit
10 issuers that are the subject of proxy voting rec-
11 ommendations—

12 “(i) access in a reasonable time to
13 data and information used to make rec-
14 ommendations; and

15 “(ii) a reasonable opportunity to pro-
16 vide meaningful comment and corrections
17 to such data and information, including
18 the opportunity to present (in person or
19 telephonically) details to the person re-
20 sponsible for developing such data and in-
21 formation prior to the publication of proxy
22 voting recommendations to clients;

23 “(C) employ an ombudsman to receive
24 complaints about the accuracy of information
25 used in making recommendations from the com-

1 panies that are the subject of the proxy advi-
2 sory firm’s voting recommendations and seek to
3 resolve those complaints in a timely fashion and
4 prior to the publication of proxy voting rec-
5 ommendations to clients; and

6 “(D) if the ombudsman is unable to re-
7 solve a complaint to a company’s satisfaction
8 prior to the publication of proxy voting rec-
9 ommendations to clients, include in the final re-
10 port of the firm to clients—

11 “(i) a statement detailing the com-
12 pany’s complaints, if requested in writing
13 by the company; and

14 “(ii) a statement explaining why the
15 proxy voting recommendation is in the best
16 economic interest of shareholders.

17 “(2) DEFINITIONS.—In this subsection:

18 “(A) DATA AND INFORMATION USED TO
19 MAKE RECOMMENDATIONS.—The term ‘data
20 and information used to make voting rec-
21 ommendations’—

22 “(i) means the financial, operational,
23 or descriptive data and information on an
24 issuer used by proxy advisory firms and

1 any contextual or substantive analysis im-
 2 pacting the recommendation; and

3 “(ii) does not include the entirety of
 4 the proxy advisory firm’s final report to its
 5 clients.

6 “(B) REASONABLE TIME.—The term ‘rea-
 7 sonable time’—

8 “(i) means not less than 1 week be-
 9 fore the publication of proxy voting rec-
 10 ommendations for clients; and

11 “(ii) shall not otherwise interfere with
 12 a proxy advisory firm’s ability to provide
 13 its clients with timely access to accurate
 14 proxy voting research, analysis, or rec-
 15 ommendations.

16 “(h) PRIVATE RIGHT OF ACTION WITH RESPECT TO
 17 ILLEGAL RECOMMENDATIONS.—Any proxy advisory firm
 18 that endorses a proposal that is not supported by the
 19 issuer but is approved and subsequently found by a court
 20 of competent jurisdiction to violate State or Federal law
 21 shall be liable to the applicable issuer for the costs associ-
 22 ated with the approval of such proposal, including imple-
 23 mentation costs and any penalties incurred by the issuer.

24 “(i) DESIGNATION OF COMPLIANCE OFFICER.—Each
 25 registered proxy advisory firm shall designate an indi-

1 vidual who reports directly to senior management as re-
2 sponsible for administering the policies and procedures
3 that are required to be established pursuant to subsections
4 (f) and (g), and for ensuring compliance with the securi-
5 ties laws and the rules and regulations thereunder, includ-
6 ing those promulgated by the Commission pursuant to this
7 section.

8 “(j) PROHIBITED CONDUCT.—

9 “(1) PROHIBITED ACTS AND PRACTICES.—Not
10 later than one year after the date of enactment of
11 this section, the Commission shall issue final rules
12 to prohibit any act or practice relating to the offer-
13 ing of proxy advisory services by a registered proxy
14 advisory firm that the Commission determines to be
15 unfair, coercive, or abusive, including any act or
16 practice relating to—

17 “(A) advisory or consulting services (of-
18 fered directly or indirectly, including through
19 an affiliate) related to corporate governance
20 issues; or

21 “(B) modifying a voting recommendation
22 or otherwise departing from its adopted system-
23 atic procedures and methodologies in the provi-
24 sion of proxy advisory services, based on wheth-
25 er an issuer, or affiliate thereof, subscribes or

1 will subscribe to other services or product of the
2 registered proxy advisory firm or any person as-
3 sociated with such organization.

4 “(2) RULE OF CONSTRUCTION.—Nothing in
5 paragraph (1), or in any rules or regulations adopt-
6 ed thereunder, may be construed to modify, impair,
7 or supersede the operation of any of the antitrust
8 laws (as defined in the first section of the Clayton
9 Act, except that such term includes section 5 of the
10 Federal Trade Commission Act, to the extent that
11 such section 5 applies to unfair methods of competi-
12 tion).

13 “(k) STATEMENTS OF FINANCIAL CONDITION.—
14 Each registered proxy advisory firm shall, on a confiden-
15 tial basis, file with the Commission, at intervals deter-
16 mined by the Commission, such financial statements, cer-
17 tified (if required by the rules or regulations of the Com-
18 mission) by an independent public auditor, and informa-
19 tion concerning its financial condition, as the Commission,
20 by rule, may prescribe as necessary or appropriate in the
21 public interest or for the protection of investors.

22 “(l) ANNUAL REPORT.—

23 “(1) IN GENERAL.—Each registered proxy advi-
24 sory firm shall, not later than 90 calendar days after
25 the end of each fiscal year, file with the Commission

1 and make publicly available an annual report in such
2 form as the Commission, by rule, may prescribe as
3 necessary or appropriate in the public interest or for
4 the protection of investors.

5 “(2) CONTENTS.—Each annual report required
6 under paragraph (1) shall include, at a minimum,
7 disclosure by the registered proxy advisory firm of
8 the following:

9 “(A) A list of shareholder proposals the
10 staff of the registered proxy advisory firm re-
11 viewed in the prior fiscal year.

12 “(B) A list of the recommendations made
13 in the prior fiscal year.

14 “(C) The economic analysis conducted to
15 determine that final recommendations provided
16 in the prior fiscal year (other than rec-
17 ommendations relating to an issuer-sponsored
18 proposal or recommendations consistent with
19 that of a board of directors composed of a ma-
20 jority of independent directors) delivered to cli-
21 ents that vote shares held on behalf of share-
22 holders were in the best economic interest of
23 those shareholders.

1 “(D) The staff who reviewed and made
2 recommendations on such proposals in the prior
3 fiscal year.

4 “(E) The qualifications of such staff to en-
5 sure that each of the recommendations for cli-
6 ents that vote shares held on behalf of share-
7 holders were tied to the best economic interest
8 of those shareholders.

9 “(F) The recommendations made in the
10 prior fiscal year where the proponent of such
11 recommendation was a client of or received
12 services from the proxy advisory firm.

13 “(G) A certification by the chief executive
14 officer, chief financial officer, and the primary
15 executive responsible for overseeing the compila-
16 tion and dissemination of proxy voting advice
17 that the final recommendations (other than rec-
18 ommendations relating to an issuer-sponsored
19 proposal or recommendations consistent with
20 that of a board of directors composed of a ma-
21 jority of independent directors) delivered to cli-
22 ents that vote shares held on behalf of share-
23 holders in the last fiscal year—

24 “(i) were based on internal controls
25 and procedures that are designed to ensure

1 accurate information and that such inter-
2 nal controls and procedures are effective;
3 “(ii) do not violate applicable State or
4 Federal law; and
5 “(iii) were based on the best economic
6 interest of those shareholders.

7 “(H) The economic and other factors that
8 a reasonable investor would expect to influence
9 the recommendations of such proxy advisory
10 firm, including the ownership composition of
11 such proxy advisory firm.

12 “(m) TRANSPARENT POLICIES.—Each registered
13 proxy advisory firm shall file with the Commission and
14 make publicly available its methodology for the formula-
15 tion of proxy voting policies and voting recommendations
16 to clients that vote shares held on behalf of shareholders
17 and how that methodology ensures that the firm’s voting
18 recommendations are in the best economic interest of
19 those shareholders.

20 “(n) RULES OF CONSTRUCTION.—Registration under
21 and compliance with this section does not constitute a
22 waiver of, or otherwise diminish, any right, privilege, or
23 defense that a registered proxy advisory firm may other-
24 wise have under any provision of State or Federal law,
25 including any rule, regulation, or order thereunder.

1 “(o) REGULATIONS.—

2 “(1) NEW PROVISIONS.—Such rules and regula-
3 tions as are required by this section or are otherwise
4 necessary to carry out this section, including the ap-
5 plication form required under subsection (a)—

6 “(A) shall be issued by the Commission,
7 not later than 180 days after the date of enact-
8 ment of this section; and

9 “(B) shall become effective not later than
10 1 year after the date of enactment of this sec-
11 tion.

12 “(2) REVIEW OF EXISTING REGULATIONS.—Not
13 later than 270 days after the date of enactment of
14 this section, the Commission shall—

15 “(A) review its existing rules and regula-
16 tions which affect the operations of proxy advi-
17 sory firms; and

18 “(B) amend or revise such rules and regu-
19 lations in accordance with the purposes of this
20 section, and issue such guidance as the Com-
21 mission may prescribe as necessary or appro-
22 priate in the public interest or for the protec-
23 tion of investors.

1 “(p) APPLICABILITY.—This section, other than sub-
2 section (n), which shall apply on the date of enactment
3 of this section, shall apply on the earlier of—

4 “(1) the date on which regulations are issued in
5 final form under subsection (o)(1); or

6 “(2) 270 days after the date of enactment of
7 this section.

8 “(q) BEST ECONOMIC INTEREST DEFINED.—In this
9 section, the term ‘best economic interest’ means decisions
10 that seek to maximize investment returns over a time hori-
11 zon consistent with the investment objectives and risk
12 management profile of the fund in which the shareholders
13 are invested.”.

14 (b) CONFORMING AMENDMENT.—Section 17(a)(1) of
15 the Securities Exchange Act of 1934 (15 U.S.C.
16 78q(a)(1)) is amended by inserting “proxy advisory firm,”
17 after “nationally recognized statistical rating organiza-
18 tion,”.

19 (c) PROXY ADVISORY FIRM DEFINITIONS.—Section
20 3(a) of the Securities Exchange Act of 1934 (15 U.S.C.
21 78c(a)) is amended by adding at the end the following:

22 “(82) PROXY ADVISORY FIRM.—The term
23 ‘proxy advisory firm’—

24 “(A) means any person who is primarily
25 engaged in the business of providing proxy vot-

1 ing advice, research, analysis, ratings, or rec-
2 ommendations to clients, which conduct con-
3 stitutes a solicitation within the meaning of sec-
4 tion 14; and

5 “(B) does not include any person that is
6 exempt under law or regulation from the re-
7 quirements otherwise applicable to persons en-
8 gaged in such a solicitation.

9 “(83) PERSON ASSOCIATED WITH A PROXY AD-
10 VISORY FIRM.—With respect to a proxy advisory
11 firm—

12 “(A) a person is ‘associated’ with the
13 proxy advisory firm if the person is—

14 “(i) a partner, officer, or director of
15 the proxy advisory firm (or any person oc-
16 cupying a similar status or performing
17 similar functions);

18 “(ii) a person directly or indirectly
19 controlling, controlled by, or under com-
20 mon control with the proxy advisory firm;

21 “(iii) an employee of the proxy advi-
22 sory firm; or

23 “(iv) a person the Commission deter-
24 mines by rule is controlled by the proxy
25 advisory firm; and

1 “(B) a person is not ‘associated’ with the
2 proxy advisory firm if the person only performs
3 clerical or ministerial functions with respect to
4 a proxy advisory firm.”.

[DISCUSSION DRAFT]119TH CONGRESS
1ST SESSION**H. R.** _____

To amend the Securities Act of 1933 to require that information required to be disclosed to the Securities and Exchange Commission by issuers be material to voting or investment decisions regarding those issuers, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

Mr. HUIZENGA introduced the following bill; which was referred to the Committee on _____

A BILL

To amend the Securities Act of 1933 to require that information required to be disclosed to the Securities and Exchange Commission by issuers be material to voting or investment decisions regarding those issuers, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Mandatory Materiality
5 Requirement Act of 2025”.

1 **SEC. 2. LIMITATION ON DISCLOSURE REQUIREMENTS.**

2 (a) SECURITIES ACT OF 1933.—Section 2(b) of the
3 Securities Act of 1933 (15 U.S.C. 77b(b)) is amended—

4 (1) in the subsection heading, by inserting “;
5 LIMITATION ON DISCLOSURE REQUIREMENTS” after
6 “FORMATION”;

7 (2) by striking “Whenever” and inserting the
8 following:

9 “(1) IN GENERAL.—Whenever”; and

10 (3) by adding at the end the following:

11 “(2) LIMITATION.—

12 “(A) IN GENERAL.—Whenever pursuant to
13 this title the Commission is engaged in rule-
14 making regarding disclosure obligations of
15 issuers, the Commission shall expressly provide
16 that an issuer is only required to disclose infor-
17 mation in response to such an obligation adopt-
18 ed by the Commission if the issuer has deter-
19 mined that such information is important with
20 respect to a voting or investment decision re-
21 garding the issuer.

22 “(B) APPLICABILITY.—Subparagraph (A)
23 shall not apply with respect to the removal of
24 any disclosure requirement with respect to an
25 issuer or the modification of any disclosure re-
26 quirement with respect to an issuer, if the Com-

1 mission expressly determines that the removal
2 or modification does not require disclosures that
3 are, in the aggregate, more burdensome to the
4 issuer than the existing disclosure requirement.

5 “(C) RULE OF CONSTRUCTION.—For the
6 purposes of this paragraph, information is con-
7 sidered to be important with respect to a voting
8 or investment decision regarding an issuer if
9 there is a substantial likelihood that a reason-
10 able investor would view the failure to disclose
11 that information as having significantly altered
12 the total mix of information made available to
13 the investor.”.

14 (b) SECURITIES EXCHANGE ACT OF 1934.—Section
15 3(f) of the Securities Exchange Act of 1934 (15 U.S.C.
16 78c(f)) is amended—

17 (1) in the subsection heading, by inserting “;
18 LIMITATION ON DISCLOSURE REQUIREMENTS” after
19 “FORMATION”;

20 (2) by striking “Whenever” and inserting the
21 following:

22 “(1) IN GENERAL.—Whenever”; and

23 (3) by adding at the end the following:

24 “(2) LIMITATION.—

1 “(A) IN GENERAL.—Whenever pursuant to
2 this title the Commission is engaged in rule-
3 making regarding disclosure obligations of
4 issuers, the Commission shall expressly provide
5 that an issuer is only required to disclose infor-
6 mation in response to such an obligation adopt-
7 ed by the Commission if the issuer has deter-
8 mined that such information is important with
9 respect to a voting or investment decision re-
10 garding the issuer.

11 “(B) APPLICABILITY.—Subparagraph (A)
12 shall not apply with respect to the removal of
13 any disclosure requirement with respect to an
14 issuer or the modification of any disclosure re-
15 quirement with respect to an issuer, if the Com-
16 mission expressly determines that the removal
17 or modification does not require disclosures that
18 are, in the aggregate, more burdensome to the
19 issuer than the existing disclosure requirement.

20 “(C) RULE OF CONSTRUCTION.—For the
21 purposes of this paragraph, information is con-
22 sidered to be important with respect to a voting
23 or investment decision regarding an issuer if
24 there is a substantial likelihood that a reason-
25 able investor would view the failure to disclose

1 that information as having significantly altered
2 the total mix of information made available to
3 the investor.”.

[DISCUSSION DRAFT]119TH CONGRESS
1ST SESSION**H. R.** _____

To amend the Investment Advisers Act of 1940 with respect to proxy voting
of passively managed funds, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

Mr. HUIZENGA introduced the following bill; which was referred to the
Committee on _____

A BILL

To amend the Investment Advisers Act of 1940 with respect
to proxy voting of passively managed funds, and for
other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Empowering Share-
5 holders Act of 2025”.

1 **SEC. 2. PROXY VOTING OF PASSIVELY MANAGED FUNDS.**

2 (a) IN GENERAL.—The Investment Advisers Act of
3 1940 (15 U.S.C. 80b–1 et seq.) is amended by inserting
4 after section 208 (15 U.S.C. 80b–8) the following:

5 **“SEC. 208A. PROXY VOTING OF PASSIVELY MANAGED**
6 **FUNDS.**

7 “(a) INVESTMENT ADVISER PROXY VOTING.—

8 “(1) IN GENERAL.—An investment adviser that
9 holds authority to vote a proxy solicited by an issuer
10 pursuant to section 14 of the Securities Exchange
11 Act of 1934 (15 U.S.C. 78n) in connection with any
12 vote of covered securities held by a passively man-
13 aged fund shall—

14 “(A) vote in accordance with the instruc-
15 tions of the beneficial owner of such covered se-
16 curities;

17 “(B) vote in accordance with the voting in-
18 structions of such issuer; or

19 “(C) abstain from voting.

20 “(2) EXCEPTION.—Paragraph (1) shall not
21 apply with respect to a vote on a routine matter.

22 “(b) SAFE HARBOR.—With respect to a matter that
23 is not a routine matter, in the case of a vote described
24 in subsection (a)(1), an investment adviser shall not be
25 liable to any person under any law or regulation of the
26 United States, any constitution, law, or regulation of any

1 State or political subdivision thereof, or under any con-
2 tract or other legally enforceable agreement (including any
3 arbitration agreement), for any of the following:

4 “(1) Not soliciting voting instructing from any
5 person under subsection (a)(1) with respect to such
6 vote.

7 “(2) Voting in accordance with the voting in-
8 structions of an issuer pursuant to subparagraph
9 (B) of such subsection.

10 “(3) Abstaining from voting in accordance with
11 subparagraph (C) of such subsection.

12 “(c) DEFINITIONS.—In this section:

13 “(1) COVERED SECURITY.—The term ‘covered
14 security’—

15 “(A) means a voting security, as that term
16 is defined in section 2(a) of the Investment
17 Company Act of 1940 (15 U.S.C. 80a–2(a)), in
18 which a qualified fund is invested; and

19 “(B) does not include any voting security
20 (as defined in subparagraph (A)) of an issuer
21 registered with the Commission as an invest-
22 ment company under section 8 of the Invest-
23 ment Company Act of 1940 (15 U.S.C. 80a–8).

1 “(2) PASSIVELY MANAGED FUND.—The term
2 ‘passively managed fund’ means a qualified fund
3 that—

4 “(A) is designed to track, or is derived
5 from, an index of securities or a portion of such
6 an index;

7 “(B) discloses that the qualified fund is a
8 passive index fund; or

9 “(C) allocates not less than 40 percent of
10 the total assets of the qualified fund to an in-
11 vestment strategy that is designed to track, or
12 is derived from, an index of securities or a por-
13 tion of such an index fund.

14 “(3) QUALIFIED FUND.—The term ‘qualified
15 fund’ means—

16 “(A) an investment company, as that term
17 is defined in section 3 of the Investment Com-
18 pany Act of 1940 (15 U.S.C. 80a–3);

19 “(B) a private fund;

20 “(C) an eligible deferred compensation
21 plan, as that term is defined in section 457(b)
22 of the Internal Revenue Code of 1986;

23 “(D) a trust, plan, account, or other entity
24 described in section 3(c)(11) of the Investment

1 Company Act of 1940 (15 U.S.C. 80a–
2 3(c)(11));

3 “(E) a plan maintained by an employer de-
4 scribed in clause (i), (ii), or (iii) of section
5 403(b)(1)(A) of the Internal Revenue Code of
6 1986 to provide annuity contracts described in
7 section 403(b) of such Code;

8 “(F) a common trust fund, or similar
9 fund, maintained by a bank;

10 “(G) any fund established under section
11 8438(b)(1) of title 5, United States Code; or

12 “(H) any separate managed account of a
13 client of an investment adviser.

14 “(4) REGISTRANT.—The term ‘registrant’
15 means an issuer of covered securities.

16 “(5) ROUTINE MATTER.—The term ‘routine
17 matter’—

18 “(A) includes a proposal that relates to—

19 “(i) an election with respect to the
20 board of directors of the registrant;

21 “(ii) the compensation of management
22 or the board of directors of the registrant;

23 “(iii) the selection of auditors;

24 “(iv) material conflicts;

25 “(v) declassification; or

6

1 “(vi) transactions that would trans-
2 form the structure of the registrant, in-
3 cluding—

4 “(I) a merger or consolidation;
5 and

6 “(II) the sale, lease, or exchange
7 of all, or substantially all, of the prop-
8 erty and assets of a registrant; and

9 “(B) does not include—

10 “(i) a proposal that is not submitted
11 to a holder of covered securities by means
12 of a proxy statement comparable to that
13 described in section 240.14a-101 of title
14 17, Code of Federal Regulations, or any
15 successor regulation;

16 “(ii) a proposal that is—

17 “(I) the subject of a counter-so-
18 licitation; or

19 “(II) part of a proposal made by
20 a person other than the applicable
21 registrant; or

22 “(iii) any other matter determined by
23 the Commission or an exchange registered
24 under section 6 of the Securities Exchange

1 Act of 1934 (15 U.S.C. 78f) to be not rou-
2 tine.”.

3 (b) EFFECTIVE DATE.—The amendment made by
4 this section shall take effect on the first August 1 that
5 occurs after the date that is 2 years after the date of en-
6 actment of this Act.

[DISCUSSION DRAFT]119TH CONGRESS
1ST SESSION**H. R.** _____

To amend the Securities Exchange Act of 1934 to establish within the Securities and Exchange Commission the Public Company Advisory Committee, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

Mr. LUCAS introduced the following bill; which was referred to the Committee on _____

A BILL

To amend the Securities Exchange Act of 1934 to establish within the Securities and Exchange Commission the Public Company Advisory Committee, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Public Company Advi-
5 sory Committee Act of 2025”.

1 **SEC. 2. PUBLIC COMPANY ADVISORY COMMITTEE.**

2 The Securities Exchange Act of 1934 is amended by
3 inserting after section 40 (15 U.S.C. 78qq) the following:

4 **“SEC. 40A. PUBLIC COMPANY ADVISORY COMMITTEE.**

5 “(a) ESTABLISHMENT AND PURPOSE.—

6 “(1) ESTABLISHMENT.—There is established
7 within the Commission the Public Company Advi-
8 sory Committee (referred to in this section as the
9 ‘Committee’).

10 “(2) PURPOSE.—The Committee shall—

11 “(A) provide the Commission with advice
12 on its rules, regulations, and policies with re-
13 gard to its mission of protecting investors,
14 maintaining fair, orderly, and efficient markets,
15 and facilitating capital formation, as they relate
16 to the following:

17 “(i) “existing and emerging regulatory
18 priorities of the Commission;

19 “(ii) issues relating to the public re-
20 porting and corporate governance of public
21 companies;

22 “(iii) issues relating to the proxy proc-
23 ess for shareholder meetings held by public
24 companies;

25 “(iv) issues relating to trading in the
26 securities of public companies; and

3

1 “(v) issues relating to capital forma-
2 tion; and

3 “(B) submit to the Commission such find-
4 ings and recommendations as the Committee
5 determines are appropriate, including rec-
6 ommendations for proposed regulatory and leg-
7 islative changes.

8 “(b) MEMBERSHIP.—

9 “(1) IN GENERAL.—The membership of the
10 Committee shall be not fewer than 10, and not more
11 than 20, members appointed by the Commission
12 from among individuals who—

13 “(A) are officers, directors, or senior offi-
14 cials of public companies registered with the
15 Commission under the Securities Act of 1933
16 and this Act, except for those public companies
17 that own asset management, fixed income, in-
18 vestment advisory, broker-dealer, or proxy serv-
19 ices businesses;

20 “(B) are executives or other individuals
21 with senior managerial responsibility in busi-
22 ness, professional, trade, and industry associa-
23 tions that represent the interests of such public
24 companies; and

1 “(C) are professional advisers and service
2 providers to such public companies (including
3 attorneys, accountants, investment bankers, and
4 financial advisers).

5 “(2) QUALIFICATIONS.—At least 50 percent of
6 the Committee membership shall be drawn from in-
7 dividuals who would qualify for membership under
8 paragraph (1)(A).

9 “(3) TERM.—Each member of the Committee
10 appointed under paragraph (1) shall serve for a
11 term of four years. Vacancies among the members,
12 whether caused by the resignation, death, removal,
13 expiration of a term, or otherwise, will be filled con-
14 sistent with the Commission’s procedures then in ef-
15 fect.

16 “(4) STAGGERED TERMS.—The members of the
17 Committee shall serve staggered terms, with one-
18 third of the initial members of the Committee each
19 serving for 1, 2, or 3 years.

20 “(5) MEMBERS NOT ON OTHER ADVISORY COM-
21 MITTEES.—Public companies and other organiza-
22 tions that are currently represented on any other
23 Commission Advisory Committee are not eligible to
24 have representatives also serve on the Public Com-
25 pany Advisory Committee.

1 “(6) MEMBERS NOT COMMISSION EMPLOY-
2 EES.—Members appointed under paragraph (1) shall
3 not be considered to be employees or agents of the
4 Commission solely because of membership on the
5 Committee.

6 “(c) CHAIR; VICE CHAIR; SECRETARY; ASSISTANT
7 SECRETARY.—

8 “(1) IN GENERAL.—The members of the Com-
9 mittee shall elect, from among the members of the
10 Committee—

11 “(A) a Chair;

12 “(B) a Vice Chair;

13 “(C) a Secretary; and

14 “(D) an Assistant Secretary.

15 “(2) TERM.—Each member elected under para-
16 graph (1) shall serve for a term of two years in the
17 capacity the member was elected under paragraph
18 (1).

19 “(3) SUBCOMMITTEES.—The Chair may create
20 subcommittees that hold public or non-public meet-
21 ings and provide recommendations to the full Com-
22 mittee.

23 “(d) MEETINGS.—

24 “(1) FREQUENCY OF MEETINGS.—The Com-
25 mittee shall meet—

1 “(A) not less frequently than twice annu-
2 ally, at the call of the chair of the Committee;
3 and

4 “(B) from time to time, at the call of the
5 Commission.

6 “(2) NOTICE.—The Chair of the Committee
7 shall give the members of the Committee written no-
8 tice of each meeting, not later than two weeks before
9 the date of the meeting.

10 “(e) COMPENSATION AND TRAVEL EXPENSES.—
11 Each member of the Committee who is not a full-time em-
12 ployee of the United States shall—

13 “(1) be entitled to receive compensation at a
14 rate not to exceed the daily equivalent of the annual
15 rate of basic pay in effect for a position at level V
16 of the Executive Schedule under section 5316 of title
17 5, United States Code, for each day during which
18 the members is engaged in the actual performance
19 of the duties of the Committee; and

20 “(2) while away from the home or regular place
21 of business of the member in the performance of
22 services for the Committee, be allowed travel ex-
23 penses, including per diem in lieu of subsistence, in
24 the same manner as persons employed intermittently

1 in the Government service are allowed expenses
2 under section 5703(b) of title 5, United States Code.

3 “(f) STAFF.—The Commission shall make available
4 to the Committee such staff as the chairman of the Com-
5 mittee determines are necessary to carry out this section.

6 “(g) REVIEW BY COMMISSION.—The Commission
7 shall—

8 “(1) review the findings and recommendations
9 of the Committee; and

10 “(2) each time the Committee submits a finding
11 or recommendation to the Commission, promptly
12 issue a public statement—

13 “(A) assessing the finding or recommenda-
14 tion of the Committee; and

15 “(B) disclosing the action, if any, the Com-
16 mission intends to take with respect to the find-
17 ing or recommendation.

18 “(h) COMMITTEE FINDINGS.—Nothing in this section
19 shall require the Commission to agree to or act upon any
20 finding or recommendation of the Committee.

21 “(i) NONAPPLICABILITY OF FACCA.—Chapter 10 of
22 part I of title 5, United States Code, shall not apply to
23 the Committee and its activities.”.

[DISCUSSION DRAFT]119TH CONGRESS
1ST SESSION**H. R.** _____

To authorize the exclusion of shareholder proposals from proxy or consent solicitation material if such proposals are substantially similar to previously included proposals.

IN THE HOUSE OF REPRESENTATIVES

Mr. FITZGERALD introduced the following bill; which was referred to the Committee on _____

A BILL

To authorize the exclusion of shareholder proposals from proxy or consent solicitation material if such proposals are substantially similar to previously included proposals.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Performance over Poli-
5 ties Act”.

1 **SEC. 2. EXCLUSION OF CERTAIN SUBSTANTIALLY SIMILAR**
2 **SHAREHOLDER PROPOSALS.**

3 The Securities and Exchange Commission shall revise
4 the resubmission requirements in section 240.14a–8(i)(12)
5 of title 17, Code of Federal Regulations, to provide that
6 a shareholder proposal may be excluded by an issuer from
7 its proxy or consent solicitation material for a meeting of
8 the shareholders of such issuer if the shareholder proposal
9 addresses substantially the same subject matter as a pro-
10 posal, or proposals, previously included in the proxy or
11 consent solicitation material for a meeting of the share-
12 holders of such issuer—

13 (1) for a meeting of the shareholders conducted
14 in the preceding 5 calendar years; and

15 (2) if the most recent vote—

16 (A) occurred in the preceding 3 calendar
17 years; and

18 (B)(i) if voted on once during such 5-year
19 period, received less than 10 percent of the
20 votes cast;

21 (ii) if voted on twice during such 5-year
22 period, received less than 20 percent of the
23 votes cast; or

24 (iii) if voted on three or more times during
25 such 5-year period, received less 40 percent of
26 the votes cast.

[DISCUSSION DRAFT]119TH CONGRESS
1ST SESSION**H. R.** _____

To amend the Securities Exchange Act of 1934 to prohibit the Securities and Exchange Commission from compelling the inclusion or discussion of shareholder proposals or proxy or consent solicitation materials, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

Mr. NORMAN introduced the following bill; which was referred to the Committee on _____

A BILL

To amend the Securities Exchange Act of 1934 to prohibit the Securities and Exchange Commission from compelling the inclusion or discussion of shareholder proposals or proxy or consent solicitation materials, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
 2 *tives of the United States of America in Congress assembled,*
 3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Businesses Over Activ-
 5 ists Act”.

1 **SEC. 2. LIMITATION WITH RESPECT TO COMPELLING THE**
2 **INCLUSION OR DISCUSSION OF SHARE-**
3 **HOLDER PROPOSALS.**

4 Section 14(a) of the Securities Exchange Act of 1934
5 (15 U.S.C. 78n(a)) is amended by adding at the end the
6 following:

7 “(3) LIMITATION WITH RESPECT TO COMPEL-
8 LING INCLUSION OR DISCUSSION OF SHAREHOLDER
9 PROPOSALS.—Except as provided in paragraph (2),
10 the Commission may not compel an issuer to include
11 in a proxy statement of the issuer—

12 “(A) any shareholder proposal; or

13 “(B) any discussion (either from the issuer
14 or otherwise) related to a shareholder proposal
15 contained in the proxy statement.

16 “(4) RULE OF CONSTRUCTION RELATING TO
17 STATE AUTHORITY.—Nothing in this Act or any
18 other securities law shall be construed to provide the
19 Commission the authority to preempt the State reg-
20 ulation of shareholder proposals or proxy or consent
21 solicitation materials.”.

[DISCUSSION DRAFT]119TH CONGRESS
1ST SESSION**H. R.** _____

To amend the Securities Exchange Act of 1934 to prohibit robovoting with respect to votes related to proxy or consent solicitation materials, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

Mr. NUNN of Iowa introduced the following bill; which was referred to the Committee on _____

A BILL

To amend the Securities Exchange Act of 1934 to prohibit robovoting with respect to votes related to proxy or consent solicitation materials, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Protecting American’s
5 Savings Act”.

1 **SEC. 2. REQUIREMENTS RELATED TO PROXY VOTING.**

2 (a) IN GENERAL.—Section 14 of the Securities Ex-
3 change Act of 1934 (15 U.S.C. 78n) is amended by adding
4 at the end the following:

5 “(l) PROHIBITION ON ROBOVOTING.—

6 “(1) IN GENERAL.—The Commission shall issue
7 final rules prohibiting the use of robovoting with re-
8 spect to votes related to proxy or consent solicitation
9 materials.

10 “(2) ROBOVOTING DEFINED.—In this sub-
11 section, the term ‘robovoting’ means the practice of
12 automatically voting in a manner consistent with the
13 recommendations of a proxy advisory firm or pre-
14 populating votes on a proxy advisory firm’s elec-
15 tronic voting platform with the proxy advisory firm’s
16 recommendations, in either case, without inde-
17 pendent review and analysis.

18 “(m) PROHIBITION ON OUTSOURCING VOTING DECI-
19 SIONS BY INSTITUTIONAL INVESTORS.—An institutional
20 investor may not outsource voting decisions with respect
21 to votes related to proxy or consent solicitation materials.

22 “(n) NO REQUIREMENT TO VOTE.—No person may
23 be required to cast votes related to proxy or consent solici-
24 tation materials.

25 “(o) PROXY ADVISORY FIRM CALCULATION OF
26 VOTES.—With respect to votes related to proxy or consent

1 solicitation materials with respect to an issuer, a proxy
2 advisor firm shall calculate the vote result consistent with
3 the law of the State in which the issuer is incorporated.”.

4 (b) PROXY ADVISORY FIRM DEFINED.—Section 3(a)
5 of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a))
6 is amended by adding at the end the following:

7 “(82) PROXY ADVISORY FIRM.—The term
8 ‘proxy advisory firm’—

9 “(A) means any person who is primarily
10 engaged in the business of providing proxy vot-
11 ing advice, research, analysis, ratings, or rec-
12 ommendations to clients, which conduct con-
13 stitutes a solicitation within the meaning of sec-
14 tion 14; and

15 “(B) does not include any person that is
16 exempt under law or regulation from the re-
17 quirements otherwise applicable to persons en-
18 gaged in such a solicitation.”.

[DISCUSSION DRAFT]119TH CONGRESS
1ST SESSION**H. R.** _____

To clarify that an issuer may exclude a shareholder proposal pursuant to section 240.14a–8(i) of title 17, Code of Federal Regulations, without regard to whether such proposal relates to a significant social policy issue.

IN THE HOUSE OF REPRESENTATIVES

Mr. ROSE introduced the following bill; which was referred to the Committee on _____

A BILL

To clarify that an issuer may exclude a shareholder proposal pursuant to section 240.14a–8(i) of title 17, Code of Federal Regulations, without regard to whether such proposal relates to a significant social policy issue.

1 *Be it enacted by the Senate and House of Representa-*
 2 *tives of the United States of America in Congress assembled,*
 3 **SECTION 1. EXCLUSIONS AVAILABLE REGARDLESS OF SIG-**
 4 **NIFICANT SOCIAL POLICY ISSUE.**

5 An issuer may exclude a shareholder proposal pursu-
 6 ant to section 240.14a–8(i) of title 17, Code of Federal

- 1 Regulations, without regard to whether such shareholder
- 2 proposal relates to a significant social policy issue.

[DISCUSSION DRAFT]119TH CONGRESS
1ST SESSION**H. R.** _____

To authorize the exclusion of shareholder proposals from proxy or consent solicitation material if the subject matter of the shareholder proposal is environmental, social, or political.

IN THE HOUSE OF REPRESENTATIVES

Mr. DONALDS introduced the following bill; which was referred to the Committee on _____

A BILL

To authorize the exclusion of shareholder proposals from proxy or consent solicitation material if the subject matter of the shareholder proposal is environmental, social, or political.

1 *Be it enacted by the Senate and House of Representa-*
 2 *tives of the United States of America in Congress assembled,*
 3 **SECTION 1. EXCLUSION OF CERTAIN ESG SHAREHOLDER**
 4 **PROPOSALS.**

5 A shareholder proposal submitted to an issuer pursu-
 6 ant to section 240.14a–8 of title 17, Code of Federal Reg-
 7 ulations, may be excluded by an issuer from its proxy or

1 consent solicitation material for a meeting of the share-
2 holders of such issuer if the subject matter of the share-
3 holder proposal is environmental, social, or political (or a
4 similar subject matter).

[DISCUSSION DRAFT]119TH CONGRESS
1ST SESSION**H. R.** _____

To require the Securities and Exchange Commission to conduct a study of certain issues with respect to shareholder proposals, proxy advisory firms, and the proxy process, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

Mrs. WAGNER introduced the following bill; which was referred to the Committee on _____

A BILL

To require the Securities and Exchange Commission to conduct a study of certain issues with respect to shareholder proposals, proxy advisory firms, and the proxy process, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Corporate Governance
5 Examination Act”.

1 **SEC. 2. STUDY OF CERTAIN ISSUES WITH RESPECT TO**
2 **SHAREHOLDER PROPOSALS, PROXY ADVI-**
3 **SORY FIRMS, AND THE PROXY PROCESS.**

4 Section 4(j) of the Securities Exchange Act of 1934
5 (15 U.S.C. 78d(j)) is amended by adding at the end the
6 following:

7 “(10) STUDY OF CERTAIN ISSUES WITH RE-
8 SPECT TO SHAREHOLDER PROPOSALS, PROXY ADVI-
9 SORY FIRMS, AND THE PROXY PROCESS.—

10 “(A) IN GENERAL.—Not later than 180
11 days after the date of the enactment of this
12 paragraph, and every 5 years thereafter, the
13 Commission shall conduct a comprehensive
14 study on shareholder proposals, proxy advisory
15 firms, and the proxy process.

16 “(B) SCOPE OF STUDY.—The studies re-
17 quired under subparagraph (A) shall cover—

18 “(i) the previous 10 years, with re-
19 spect to the initial study; and

20 “(ii) the previous 5 years, with respect
21 to each other study.

22 “(C) CONTENTS.—Each study required
23 under subparagraph (A) shall address the fol-
24 lowing issues:

3

1 “(i) The financial and other incentives
2 and obligations of all groups involved in
3 the proxy process.

4 “(ii) A consideration of whether finan-
5 cial and other incentives have created a
6 process that no longer serves the economic
7 interests of long-term retail investors.

8 “(iii) An analysis of whether regula-
9 tions and financial incentives have created
10 and protected the outsized influence of
11 proxy advisors or a duopoly in proxy ad-
12 vice, and if so, what are the benefits and
13 costs of that outsized influence or duopoly.

14 “(iv) The costs incurred by issuers in
15 responding to politically-, environmentally-,
16 , or socially-motivated shareholder pro-
17 posals.

18 “(v) An assessment, including a cost-
19 benefit analysis, of the adequacy of the
20 current submission thresholds in Rule
21 14a–8 (17 C.F.R. 240.14a–8) to ensure
22 that shareholder proponents have dem-
23 onstrated a meaningful economic stake in
24 a company, which is appropriate to effec-

1 tively serve markets and shareholders at
2 large.

3 “(vi) An examination of the extent to
4 which the politicization of the shareholder
5 proposal process is increasing the oper-
6 ating costs of public companies.

7 “(vii) An analysis of the impact that
8 shareholder proposals have on discouraging
9 private companies from going public.

10 “(viii) An evaluation of the risk that
11 shareholder proposals may contribute to
12 the balkanization of the U.S. economy over
13 time.

14 “(ix) A thorough assessment of the
15 economic analysis, if any, conducted by
16 proxy advisory firms and institutional
17 shareholders when recommending or voting
18 in favor of shareholder proposals.

19 “(x) A review of the extent to which
20 institutional investors, who owe fiduciary
21 duties, rely on proxy advisory firm rec-
22 ommendations.

23 “(xi) An assessment of whether, in
24 light of their significant influence on cor-
25 porate actions and vote outcomes, proxy

1 advisors are subject to sufficient and effec-
2 tive regulation to ensure that their policies
3 and recommendations are accurate, free of
4 conflicts, and benefit the economic best in-
5 terest of shareholders at large.

6 “(D) REPORT.—At the completion of each
7 study required under subparagraph (A) the
8 Commission shall issue a report to the Com-
9 mittee on Banking, Housing, and Urban Affairs
10 of the Senate and the Committee on Financial
11 Services of the House of Representatives that
12 includes the results of the study.

13 “(E) PROXY ADVISORY FIRM DEFINED.—
14 In this paragraph, the term ‘proxy advisory
15 firm’—

16 “(i) means any person who is pri-
17 marily engaged in the business of pro-
18 viding proxy voting advice, research, anal-
19 ysis, ratings, or recommendations to cli-
20 ents, which conduct constitutes a solici-
21 tation within the meaning of section 14 of
22 the Securities Exchange Act of 1934; and

23 “(ii) does not include any person that
24 is exempt under law or regulation from the

- 1 requirements otherwise applicable to per-
- 2 sons engaged in such a solicitation.”.

[DISCUSSION DRAFT]119TH CONGRESS
1ST SESSION**H. R.** _____

To amend the Securities Exchange Act of 1934 to require the Securities and Exchange Commission to disclose and report on non-material disclosure mandates, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

M. _____ introduced the following bill; which was referred to the Committee on _____

A BILL

To amend the Securities Exchange Act of 1934 to require the Securities and Exchange Commission to disclose and report on non-material disclosure mandates, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
 2 *tives of the United States of America in Congress assembled,*
 3 **SECTION 1. SEC JUSTIFICATION OF NON-MATERIAL DIS-**
 4 **CLOSURE MANDATES.**

5 Section 23 of the Securities Exchange Act of 1934
 6 (15 U.S.C. 78w) is amended by adding at the end the fol-
 7 lowing:

[Discussion Draft]

2

1 “(e) NON-MATERIAL DISCLOSURE MANDATES.—

2 “(1) DISCLOSURE.—The Commission shall
3 maintain a list on the website of the Commission
4 that contains—

5 “(A) each mandate under the Federal se-
6 curities laws and regulations that requires the
7 disclosure of non-material information; and

8 “(B) for each such disclosure mandate, an
9 explanation of why the mandate is required.

10 “(2) STUDY AND REPORT.—The Commission
11 shall, every 5 years, issue a report to the Congress
12 justifying each disclosure contained on the list re-
13 quired under paragraph (1).

14 “(3) NO PRIVATE LIABILITY FOR FAILING TO
15 MAKE A NON-MATERIAL DISCLOSURE.—A person
16 who fails to disclose non-material information re-
17 quired to be disclosed under the Federal securities
18 laws or regulations shall not be liable for such fail-
19 ure in any private action.”.

[DISCUSSION DRAFT]119TH CONGRESS
1ST SESSION**H. R.** _____

To amend the Securities Exchange Act of 1934 with respect to prohibitions
relating to the solicitation and influence of proxies.

IN THE HOUSE OF REPRESENTATIVES

M. _____ introduced the following bill; which was referred to the
Committee on _____

A BILL

To amend the Securities Exchange Act of 1934 with respect
to prohibitions relating to the solicitation and influence
of proxies.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the **["**_____ Act of
5 2025**"]**.

1 **SEC. 2. PROHIBITIONS RELATING TO THE SOLICITATION**
2 **AND INFLUENCE OF PROXIES.**

3 (a) IN GENERAL.—Section 14(a) of the Securities
4 Exchange Act of 1934 (15 U.S.C. 78n(a)) is amended—

5 (1) by redesignating paragraph (2) as para-
6 graph (3);

7 (2) by inserting after paragraph (1) the fol-
8 lowing:

9 “(2) PROHIBITIONS RELATING TO THE SOLICITA-
10 TION AND INFLUENCE OF PROXIES.—

11 “(A) IN GENERAL.—It shall be unlawful for
12 any covered person, by the use of the mails or by
13 any means or instrumentality of interstate commerce
14 or of any facility of a national securities exchange or
15 otherwise, in contravention of such rules and regula-
16 tions as the Commission may prescribe as necessary
17 or appropriate in the public interest or for the pro-
18 tection of investors, to furnish or offer to furnish to
19 the holder of a security (other than an exempted se-
20 curity) registered pursuant to section 12 of this title
21 any recommendation, advice, analysis, or rating re-
22 lating to the vote of such holder in respect of such
23 security.

24 “(B) COVERED PERSON DEFINED.—In this
25 paragraph, the term ‘covered person’—

26 “(i) means a person that—

1 “(I) markets itself as having expertise
2 as a provider of recommendations, advice,
3 analysis, or ratings relating to the vote of
4 a holder of a security described in subpara-
5 graph (A); or

6 “(II) sells any such recommendation,
7 advice, analysis, or rating for a fee; and

8 “(ii) does not include an investment ad-
9 viser—

10 “(I) for which the performance of any
11 such recommendation, advice, analysis, or
12 rating is solely incidental to the conduct of
13 the business of such investment adviser as
14 an investment adviser; and

15 “(II) that does not receive special
16 compensation for such performance.”; and

17 (3) in paragraph (3), as so redesignated, by
18 striking “paragraph (1)” and inserting “paragraphs
19 (1) and (2)”.

20 (b) RULEMAKING.—Not later than 18 months after
21 the date of the enactment of this Act, the Securities and
22 Exchange Commission shall issue final rules implementing
23 subsection (a) of section 14 of the Securities Exchange
24 Act of 1934 (15 U.S.C. 78n), as amended by this section.

[Discussion Draft]

[118H4590]

[DISCUSSION DRAFT]

119TH CONGRESS
1ST SESSION

H. R. _____

To amend the Securities Exchange Act of 1934 to provide for liability for certain failures to disclose material information in connection with proxy voting advice, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

Mr. STEEL introduced the following bill; which was referred to the Committee
on _____

A BILL

To amend the Securities Exchange Act of 1934 to provide for liability for certain failures to disclose material information in connection with proxy voting advice, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. LIABILITY FOR CERTAIN FAILURES TO DIS-**
2 **CLOSE MATERIAL INFORMATION OR MAKING**
3 **OF MATERIAL MISSTATEMENTS.**

4 Section 14 of the Securities Exchange Act of 1934
5 (15 U.S.C. 78n) is amended by adding at the end the fol-
6 lowing:

7 “(l) FALSE OR MISLEADING STATEMENTS.—For
8 purposes of section 18, the failure to disclose material in-
9 formation (such as a proxy voting advice business’s meth-
10 odology, sources of information, or conflicts of interest)
11 or the making of a material misstatement regarding proxy
12 voting advice that makes a recommendation to a security
13 holder as to the security holder’s vote, consent, or author-
14 ization on a specific matter for which security holder ap-
15 proval is solicited, and that is furnished by a person that
16 markets the person’s expertise as a provider of such proxy
17 voting advice separately from other forms of investment
18 advice, and sells such proxy voting advice for a fee, shall
19 be considered to be false or misleading with respect to a
20 material fact.”.

