



July 17, 2017

Mr. Brent J. Fields
Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: Request for rulemaking to amend Rule 14a-8 under the Securities Exchange Act of 1934 regarding resubmission of Shareholder Proposals [File No. 4-675]

Dear Mr. Fields:

The Corporate Governance Coalition for Investor Value (the “Coalition”) was formed to provide a forum for the discussion of issues among its members to advocate for strong corporate governance policies, and federal securities laws that promote long-term value creation for investors. Coalition members represent American businesses of all sizes, from every industry sector, and geographic region. These businesses produce the goods and services that drive the American economy, employing and creating opportunities for millions of Americans, and serving the countless communities nationwide in which they operate.

The Coalition writes in support of a 2014 Securities and Exchange Commission (“SEC” or “Commission”) rulemaking petition (“Petition”) calling on the Commission to increase the percentage of favorable votes required for a shareholder proposal to be resubmitted under Exchange Act Rule 14a-8(i)(12) (the “Resubmission Rule”).¹ Rule 14a-8 increasingly has been used by a minority of activist shareholders to

¹ Request for rulemaking to amend Rule 14a-8 under the Securities Exchange Act of 1934 regarding resubmission of shareholder proposals (Apr. 9, 2014). Submitted by the U.S. Chamber of Commerce, National Association of Corporate Directors, National Black Chamber of Commerce, American Petroleum Institute, American Insurance Association, The Latino Coalition, Financial Services Roundtable, Center on Executive Compensation, and Financial Services Forum.

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promote agendas that are uncorrelated to enhancing long-term value for shareholders. Furthermore, the Resubmission Rule allows activists to submit the same proposals year after year, even if a supermajority of shareholders who prize long-term value continuously vote against them. While many aspects of Rule 14a-8 are ripe for reform, we believe the Commission should prioritize modernization of the Resubmission Rule for the benefit of companies, shareholders, and the capital markets.

Discussion

The Coalition and its members believe that effective communication and engagement between a company and its shareholders are critical to creating long-term value for shareholders. SEC rules governing shareholder proposals were adopted in order to facilitate the consideration of constructive ideas put forth by investors seeking to improve the governance of a particular company. The Coalition supports a regulatory framework that allows shareholders to make recommendations or suggestions that could improve a company's performance and garner a significant level of shareholder support.

Unfortunately, the shareholder proposal rules under Rule 14a-8 have devolved into a vehicle that a micro-minority of special interests uses to advance their own parochial agendas at the expense of investors as a whole. Instead of highlighting urgent matters that could further shareholder interests, many proposals are dominated by subject matters most investors deem immaterial to their decision-making, including issues that are focused on advancing a social or political agenda. For example, from 2006-2015 roughly 39% of proposals at Fortune 250 companies involved social or policy-related issues. During the 2016 proxy season, roughly 50% of proposals fell into these two categories.²

Despite the prevalence of such proposals, shareholder support for them has been remarkably low. For example, between 2006 and 2016, Fortune 250 companies received a total of 884 shareholder proposals dealing with either corporate political spending disclosure or issues related to environmental policy. Only *one* of these proposals during that time period received the majority support of shareholders.³ These results indicate that shareholders by and large have little interest in these issues.

² Proxy Monitor 2016 Report http://www.proxymonitor.org/pdf/pmr_13.pdf

³ *Id.* at 3

Notwithstanding these anemic support levels, proponents are permitted under the current rules to submit such proposals year after year. The Resubmission Rule was intended to address this problem by allowing companies to exclude proposals from their proxy statement if they have failed to garner considerable—and increasing—levels of shareholder support. However, as the Petition points out, the thresholds included in the Resubmission Rule are extremely low, and were put in place a time when the rules were not subject to many of the abuses that exist today. We believe that updating the Resubmission Rule so that meaningful support from shareholders is required before a proposal can be submitted again would be in the best interest of both companies and shareholders.

Protecting the Forgotten Shareholders

Opponents of reform to Rule 14a-8 often purport to speak for all investors, despite the fact that they represent a minority viewpoint and in some cases are not even shareholders themselves. While this vocal minority may receive unwarranted attention in the press and elsewhere, lost in the discussion are the vast majority of public company shareholders who routinely vote against proposals and are forced to bear significant costs for the abuse of Rule 14a-8, and who are harmed by the agendas of well-funded activists.

Moreover, the time and resources companies spend dealing with special interest and politically-motivated proposals distracts them from more meaningful proposals that serious, value-minded shareholders may put forward. A 2015 survey found that 48% of institutional investors believe a typical proxy statement is “difficult to read and understand.”⁴ Retail investors are particularly vulnerable when proxy statements become so voluminous and complex to the point of being impossible to navigate. Allowing an increasing number of shareholder proposals that shareholders already have rejected to be included on corporate proxies only exacerbates these issues and has the real potential to harm investors.

⁴ 2015 Investor Survey: Deconstructing Proxy Statements – What Matters to Investors
https://www.gsb.stanford.edu/sites/gsb/files/publication-pdf/cgri-survey-2015-deconstructing-proxy-statements_0.pdf

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The vast majority of American households invest in the public markets to help send a child off to college, to have a dignified retirement, or to earn a decent return on their long-term savings. They have no interest in fighting political or social battles through their child's 529 college savings plan or their own 401(k) plan, and are ultimately harmed when SEC rules allow a small minority to corrupt the shareholder proposal process for their own purposes. Moreover, forcing public companies to engage in these battles year after year, despite little shareholder support, discourages companies from going or staying public, thereby limiting investment opportunities available to Main Street investors.

Protecting Shareholder and Company Resources

Processing and responding to shareholder proposals imposes significant costs to companies. In addition to the time required for reviewing the proposal for legal merits and engaging with the proponent, each proposal requires a response and recommendation from the board of directors of the company for inclusion in the proxy. With more and more expected from public company directors these days in terms of risk oversight and compliance matters, requiring directors to devote their precious time to responding to chronically failing shareholder proposals imposes a significant and increasing opportunity cost to directors and therefore to shareholders. Raising the bar for resubmission would allow directors to redirect that time and attention to far more consequential matters on behalf of the company and its owners.

Past Consideration of Modernizing the Resubmission Rule

The current Resubmission Rule allows a company to exclude a proposal from its proxy statement if it failed to receive the support of:

- 3% of shareholders the last time it was voted on (if voted on once in the last five years);
- 6% of shareholders the last time it was voted on (if voted on twice in the last five years); or
- 10% of shareholders the last time it was voted on (if voted on three or more times in the last five years).

Thus, the current rules allow a shareholder to resubmit a proposal even if, in some instances, *over 90% of shareholders* have voted against it. And if a proposal happens to reach 11% support in a given year, there is no limit to how many times the proposal can be resubmitted even if support fails to increase from that level. Allowing a small minority of shareholders to commandeer a company's proxy statement in such a manner serves no useful purpose other than to provide a platform to advance a pet cause that is unpopular with the overwhelming majority of investors.

The SEC has recognized this problem in the past, and in 1997, the SEC proposed raising the thresholds under the Resubmission Rule from the current 3%/6%/10% to a more appropriate 6%/15%/30%. As the SEC stated in the proposing release: "we believe that a proposal that has not achieved these [proposed] levels of support has been fairly tested and stands no significant chance of obtaining the level of voting support required for approval."⁵

The increase in activism under Rule 14a-8 during the intervening years since the SEC's 1997 proposal only emphasizes the urgency for the SEC to modernize this outdated rule. Updating the thresholds under the Resubmission Rule would not in any way "disenfranchise" shareholders. It would still allow shareholders who meet current holding requirements to submit a proposal, but it would not subject others to the costs and distractions that occur when unpopular proposals are repetitively included in a company's proxy statement. Simply put, raising the resubmission thresholds would be good for shareholders as a whole.

Conclusion

The Coalition is very concerned over the increasing unattractiveness of the public company model to growing businesses, and the adverse impact that has on innovation, economic growth, and wealth creation for millions of American households. The United States has roughly half the number of public companies as existed two decades ago, and despite recent reforms, the initial public offering (IPO) market has not returned to historical norms. While there are many reasons for the decline in public companies, the growing attempts by activists to use permissive SEC rules in order to foist their agendas upon public companies is certainly a contributing factor. We urge the SEC to take up the Petition and modernize the Resubmission Rule, and we stand ready to assist in any way we can on this important matter.

⁵ <https://www.sec.gov/rules/proposed/34-39093.htm>

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Thank you in advance for considering our request.

Sincerely,

American Insurance Association
American Petroleum Institute
Biotechnology Innovation Organization
The Center On Executive Compensation
Equity Dealers of America
Independent Community Bankers of America
Financial Services Roundtable
National Association of Corporate Directors
National Association of Manufacturers
National Association of Real Estate Investment Trusts
National Black Chamber of Commerce
National Investor Relations Institute
U.S. Chamber of Commerce

Cc: The Honorable Jay Clayton
Cc: The Honorable Michael Piwowar
Cc: The Honorable Kara Stein
Cc: William Hinman, Director, Division of Corporation Finance