



Boston Trust & Investment
Management Company



Walden Asset Management
Advancing sustainable business practices since 1975

November 7, 2018

Mr. Brent J. Fields
Secretary
United States Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Via email to rule-comments@sec.gov

Re: Comments for the Securities and Exchange Commission (SEC) November 15, 2018
Roundtable on the Proxy Process – File Number 4-725

Dear Mr. Fields:

Boston Trust & Investment Management Company and our sustainable investment practice, Walden Asset Management (“Boston Trust/Walden”), is an investment management firm working with institutional and private wealth clients who represent nearly \$9 billion in assets.

The hallmark of Boston Trust/Walden's investment approach is our emphasis on identifying higher quality investments with sustainable business models. Boston Trust believes that environmental, social, and governance (ESG) factors are an appropriate and material part of a comprehensive analysis of long-term investment prospects. We therefore believe it is important to consider a company's management of significant ESG risks and opportunities as part of our fiduciary duty to all clients. ESG integration builds on our belief that companies protect and enhance their long-term profitability if they integrate responsible behavior into the fabric of their business practices. As part of our effort to identify and invest in high quality companies, ESG factor integration brings an awareness of important long-term financial considerations and risks that may otherwise be overlooked.

Along with most of the 2,000 global investor signatories to the Principles for Responsible Investment (PRI), who collectively represent more than \$80 trillion in assets under management, we also recognize the importance of company engagement to promote more sustainable business policies and practices. For Boston Trust/Walden, this includes the filing of shareholder resolutions, when appropriate. We filed our first shareholder proposal over 30 years ago in 1986. This year marked the filing of our 500th shareholder proposal, of which 40 percent were withdrawn after having reached constructive agreements with management. We also have developed a detailed set of Proxy Voting Guidelines to assist in our consideration of ESG factors in proxy voting.

Challenges to shareholder resolutions put forth by industry groups have a long history and have been increasing markedly in recent years. Numerous investors are providing comment letters to the SEC, providing background on the philosophy behind shareholder proposals and the significant positive impact they have had on company policies and practices on important and material ESG issues. Of course, we can also point to examples of resolutions that were poorly crafted or misguided in their request to company boards. In such cases, investors could and should have voted against such shareholder proposals.

Boston Trust/Walden's comments that follow focus on recent acrimonious and misguided attacks on this shareholder right, particularly by industry associations, which aim to limit significantly shareholder proponents and the resolution process.

The U.S. Chamber of Commerce, a longtime critic of shareholder resolutions, was joined three years ago by vocal opposition from the Business Roundtable. Most recently, the National Association of Manufacturers (NAM) and the newly formed Main Street Investors Coalition, which is housed at NAM, have added their voices against the current proxy process. These industry groups regularly challenge the credibility and motives of shareholder resolution proponents who engage with companies and vote their proxies conscientiously on ESG matters.

As an example, we copy below and attach comments excerpted from the October 30, 2018 NAM letter to the SEC (Appendix A). NAM asserts that:

- a flawed proxy process can be hijacked by unregulated third parties with little-to-no stake in company's success or investor returns
- These outside actions often pursue agendas divorced from shareholder value creation
- the proxy process has...been hijacked by activists that seek to force companies to act according to their narrow interests
- in many instances, these third parties take the form of activists pursuing political goals unrelated to business growth
- The proxy ballot...has devolved into a shouting match focused on social and political issues

These characterizations by NAM are similar to those of the U.S. Chamber of Commerce and Business Roundtable. They represent a simplistic and inaccurate portrayal of the motives and actions of investors and shareholder proponents who believe in and pursue active ownership strategies. As company executives and boards who engage with their shareowners well know, the motivation of most actively engaged investors is appropriately focused on protecting shareholder value.

Investors consistently and effectively raise concerns about risk mitigation and long-term value creation as they discuss topics such as governance reforms, climate change, board diversity, and business ethics. Our experience suggests that if NAM or the Business Roundtable had discussed the drivers of investor concern with their member companies, they would have received thoughtful feedback of the positive impact from countless conversations between companies and investors. A review of the policies of investor members of CII, PRI, USSIF, Ceres, and ICCR would also demonstrate the reality that enhancing and protecting shareholder value is central to these investors. Likewise, this motivation is evident in the statements and policies of major public pension funds such as CalPERS, CalSTRS, Connecticut, Illinois, New York City, New York State, Rhode Island, and Washington state.

Major investment firms such as BlackRock, State Street Global Advisors, and Vanguard have articulated the foundation and rationale for their engagements with companies (numerous excerpts are documented in Appendix B). The common themes are that engagement and proxy voting on ESG considerations are motivated by investment managers' fiduciary duty, assessment of risk and long-term shareholder value, and commitment to client objectives. There

is no evidence of “a political agenda outside of shareholder value creation” among these major investment institutions, as described in the NAM comment letter to the SEC.

In summary, we believe it is timely and relevant to respond to erroneous campaigns by the Business Roundtable, NAM, and U.S. Chamber of Commerce that we believe mischaracterizes the motives and beliefs of institutional investors who utilize the proxy process, engage companies as shareholders, and vote their proxies.

Sincerely,

A handwritten signature in black ink, appearing to read "Tim Smith". The signature is written in a cursive style with a large, looped "T" and "S".

Tim Smith
Director of ESG Shareowner Engagement

Appendix A: Excerpts from National Association of Manufacturers (NAM) October 30, 2018 comment letter to the SEC for the November 15 Roundtable on the Proxy Process

Source: <https://www.sec.gov/comments/4-725/4725-4581799-176285.pdf>

Author: Chris Netram *Vice President, Tax and Domestic Economic Policy*

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Manufacturers know that the proxy ballot is central to enabling smart business growth and strong investor returns. A well-calibrated proxy process allows company management to engage in a productive dialogue with investors, who are of course the ultimate owners of any publicly-traded corporation, about key aspects of the business. Conversely, a flawed proxy process can be hijacked by unregulated third parties with little-to-no stake in company success or investor returns. These outside actors often pursue agendas divorced from shareholder value creation and divert valuable resources from job creation and R&D.

II. Shareholder Proposals

NAM members value a constructive dialogue with shareholders...[T]he proxy process has in recent years been hijacked by activists that seek to force companies to act according to their own narrow interests rather than the good of the business or long-term investor returns. In many instances, these third parties take the form of activists pursuing political goals unrelated to business growth and the corresponding capital investments, R&D spending, and value creation that come with it. The proxy ballot was designed for the majority of investors to constructively engage with company management, but it has devolved in many ways into a shouting match focused on social and political issues.

However, the NAM does not believe that it is appropriate for activists to abuse the proxy ballot to push goals that are better addressed by Congress or other policymaking institutions. Indeed, a recent academic study co-authored by Professor Joseph Kalt of Harvard University found that ESG proposals detract from shareholder value, contradicting activists' claims that such proposals are beneficial to shareholders. This issue is exacerbated when investment advisers engage in political activity by leveraging the shares they manage – the retirement savings of millions of Americans who are unaware that their fund managers have a political agenda outside of shareholder value creation.

Resubmission Thresholds

Politically-motivated activism divorced from long-term shareholder value creation has only increased since 1997, further underscoring the need for reform... The continued resubmission of “zombie” proposals distracts from legitimate issues on the proxy ballot and ignores the wishes of the 90 percent or more of investors who rejected them in the first place.

Similarly, the SEC should make targeted reforms to the initial submission threshold under Rule 14a-8(b). This threshold allows any investor that has held just \$2,000 worth of company stock for at least one year to place a proposal on the proxy ballot. This incredibly low threshold has given rise to individuals who spam company proxy ballots by taking *de minimis* positions in a wide range of issuers so as to qualify their pet proposals on dozens of company proxy ballots.

Proxy Voting Guidance

To ensure that investment advisers that vote on behalf of Main Street investor clients remain solely focused on their fiduciary duty to enhance long-term shareholder value, SEC staff should issue guidance under the Proxy Voting Rule that clarifies a fund manager's obligations when considering how to vote on a politically-driven proposal.

Specifically, the NAM believes that investment advisers should have policies and procedures in place that require the identification of a clear link to shareholder value creation before voting in favor of any proxy proposal, including those focused on ESG topics – or have procedures that allow more direct input from retail shareholders themselves on these issues.

Appendix B: Excerpts from Leading Investment Managers on their Rationale for Company Engagement and Proxy Voting Practices

1. State Street Global Advisors (SSGA)

Source: <https://www.ssga.com/investment-topics/environmental-social-governance/2017/perspectives-on-effective-climate-change-disclosure.pdf>

- State Street Global Advisors (SSGA) believes that boards should regard climate change as they would any other significant risk to the business and ensure that a company's assets and its long-term business strategy are resilient to the impacts of climate change
- Over the course of four years, SSGA has held over 240 climate-related engagements with 168 companies. Through these engagements we found that few companies can effectively demonstrate to investors how they integrate climate risk into long-term strategy. This is particularly important for companies in the oil and gas, utilities and mining sectors where long investment horizons could render assets stranded

2. Vanguard

Source: <https://about.vanguard.com/investment-stewardship/perspectives-and-commentary/2018-investment-stewardship-annual-report.pdf>

- This report outlines the activities of Vanguard's Investment Stewardship team for the 12 months ended June 30, 2018.

Our team had a productive year on behalf of Vanguard's more than 20 million clients worldwide. We voted your funds' proxies at nearly 20,000 meetings and engaged directly with more than 700 portfolio companies. We also shared our perspectives through our advocacy efforts with corporate director audiences, other investors, regulators and policymakers, and other stakeholders.

Glenn Booraem, Investment Stewardship Officer

- Engagement: We meet with portfolio company executives and directors to share our long-term orientation and principled approach and to learn about companies' corporate governance practices. We characterize our approach as deliberate, constructive, and results-oriented.
- Discussed board composition in more than **50%** of our engagements, consistent with the 2017 proxy year.
- Engaged with over **200** companies in carbon-intensive industries. Supported **11** out of **76** environmental disclosure proposals, compared with **2** out of **92** in 2017.
- Engagement is the foundation of our Investment Stewardship program. Because our index funds are practically permanent owners of portfolio companies, we aim in our engagements to build a strong understanding of how companies govern their long-term strategy.

Engagement has improved substantially over the last decade. It started as discussions with company leaders regarding matters on the ballot at an upcoming shareholder meeting. Over time, it has evolved into a broader and deeper discussion with both directors and management on principle-based matters that go well beyond the year's ballot. This has made engagement a year-round process – not just a proxy season phenomenon – and has expanded its reach globally.

W. Robert Main III, CFA, Head of Portfolio Company Engagement, Analysis and Voting

- Our philosophy on sustainability is grounded in long-term value creation. We aren't alone in this thinking. A consensus is growing in the investment community that certain environmental, social and governance (ESG) matters can significantly affect a public company's long-term financial value.

Given this potential impact, Vanguard believes it is essential that company boards and senior management teams appropriately oversee these sustainability risks – and opportunities – as they would other material issues. It is equally important that companies be transparent about sustainability matters and disclose them to investors. As a practically permanent owner on our fund investors' behalf, Vanguard needs the market to efficiently value stocks based on all material risks.

Insights from Senior Strategist Marc Lindsay, J.D.

Source: <https://about.vanguard.com/investment-stewardship/governance-letter-to-companies.pdf>, F. William McNabb III, Chairman and CEO

- Our investors depend on Vanguard to be a responsible steward of their assets, and we promote principles of corporate governance that we believe will enhance the long-term value of their investments.
- **Directors are shareholders' eyes and ears on risk.**

Climate risk is an example of a slowly developing and highly uncertain risk—the kind that tests the strength of a board's oversight and risk governance. Our evolving position on climate risk (much like our stance on gender diversity) is based on the economic bottom line for Vanguard investors. As significant long-term owners of many companies in industries vulnerable to climate risk, Vanguard investors have substantial value at stake.

Although there is no one-size-fits-all approach, market solutions to climate risk and other evolving disclosure practices can be valuable when they reflect the shared priorities of issuers and investors. Our participation in the Investor Advisory Group to the Sustainability Accounting Standards Board (SASB) reflects our belief that materiality-driven, sector-specific disclosures will better illuminate risks in a way that aids market efficiency and price discovery. We believe it is incumbent on all market participants—investors, boards, and management

alike—to embrace the disclosure of sustainability risks that bear on a company's long-term value creation prospects.

- **Engagement builds mutual understanding and a basis for progress.**

Timely and substantive dialogue with companies is core to our investment stewardship approach. We see engagement as mutually beneficial: We convey Vanguard's views and we hear companies' perspectives, which adds context to our analysis.

- Our four pillars and our increased focus on climate risk and gender diversity are not fleeting priorities for Vanguard. As essentially permanent owners of the companies you lead, we have a special obligation to be engaged stewards actively focused on the long term.

Source: <https://www.reuters.com/article/us-vanguard-climate/vanguard-seeks-corporate-disclosure-on-risks-from-climate-change-idUSKCN1AU1KJ>, interview with Glenn Booraem, Investment Stewardship Officer

- “Our support for these proposals is not a matter of ideology, it's a matter of economics. To the extent there are significant risks to a company's long-term value proposition, we want to make sure there is long-term disclosure of those risk to the market.”

3. ClearBridge Investments

Source: <https://www.clearbridge.com/content/dam/clearbridge/banner-images/ESGcampaign2017/cbi-esg-engagement-report.pdf>

- **Firm Overview**

- \$124.3 billion—Assets for which ESG risk and opportunities are analyzed
- 1,000+—Company meetings per year
- 334—Companies where we are a top 20 shareholder

- **Company Engagement**

Public equity ownership can also be a powerful tool to influence companies and drive change. As active investors in the public markets, we engage with company management on a variety of material ESG issues and urge them to improve policies and practices.

As a firm, ClearBridge conducts over 1,000 company meetings ever year.

As a large institutional money manager, just asking the right questions, whether about gender equality, energy efficiency, better board governance or disclosure, can result in positive changes in the mindset and eventually the operations of public companies.

- **Proxy Voting**

The proxy voting process is one of the more visible and often powerful tools public equity investors may use to advocate for sustainable business impact.

Our votes on shareholder proposals are an effective way to signal confidence in the companies we own or to suggest the need for a change in policies, disclosures or related aspects of a company's business.

In voting proxies, we are guided by general fiduciary principles. Our goal is to act prudently and solely in the best interest of the beneficial owners of the accounts we manage. We attempt to provide for the consideration of all factors that could affect the value of the investment and will vote proxies in the manner that we believe will be consistent with efforts to maximize shareholder values.

- **Measuring Progress on Climate: Carbon Intensity Analysis**

Furthermore, we are committed to engaging companies on climate change issues. We advocate in meetings with management teams to advance issues such as carbon emissions disclosure, setting benchmarks on emissions reductions, influencing corporate strategy to be longer-term and improving supply chain efficiency.

4. Neuberger Berman

Source: Neuberger Berman 2017 Engagement and Proxy Voting Report (www.nb.com)

- **Our Investment Platform**
 - AUM \$295bn
- **Chief Investment Officer Statement (Mr. Joseph V. Amato)**

An important part of how we serve our clients is by engaging with corporate management teams and board members. Active managers that hold concentrated positions with long investment horizons have an outsized responsibility to use their formal and informal influence to support sustainable value creation. We have a long tradition of being unafraid to take strong positions in order to bring positive change, whether at individual companies or in the market as a whole. This work is a core responsibility of each of our portfolio managers and analysts—we are all stewards of our clients' capital.

With more than 1,500 in-person management meetings held in our offices for equity investments during 2017, we are in constant dialogue with the companies in which we invest.

- **Approach to Engagement at Neuberger Berman**

In 2017, we conducted more than 1,500 in-person and in-depth meetings with management teams in our offices for equity investments and another 750-plus for fixed income investments. We aim to prioritize engagements that have the

largest impact on the protection and improvement of our clients' assets, be it through the advancement of actionable disclosure, understanding of risks and risk management at an issuer, or through influence and action to mitigate risks and take advantage of investment opportunities. In 2017 we conducted structured engagements with over 590 companies across our equity portfolio holdings alone.

- **Voting Statistics**

In 2017, we supported over 200 shareholder proposals (approximately 38%) and this reflects our stronger, more detailed stances on a number of ESG issues as articulated in our public Guidelines.

We do not take the view that opposing management on any issue is a confrontation; as mentioned, proxy voting is but one method of engagement and we pursue a variety of methods to assure that our clients' assets are managed by company insiders with the same care and attention as their portfolios are by our managers.

5. BlackRock

Source: <https://www.blackrock.com/corporate/literature/whitepaper/viewpoint-investment-stewardship-ecosystem-july-2018.pdf>

- “Your company’s strategy must articulate a path to achieve financial performance. To sustain that performance, however, you must also understand the societal impact of your business as well as the ways that broad, structural trends – from slow wage growth to rising automation to climate change – affect your potential for growth.”
Larry Fink, BlackRock, Annual Letter to CEOs, January 2018
- How do asset managers approach investment stewardship and to what degree do they factor in environmental, social, and governance (ESG) considerations?

For BlackRock, the answers are inseparable from our role as a fiduciary to our clients' assets. **Our mission is to create a better financial future for our clients and our number one focus is on generating long-term sustainable performance.** Just as we expect the companies in which we invest to understand the macroeconomic and industry trends in which they operate, we also believe that a company's awareness of regulatory and societal trends helps drive long-term performance and mitigate risk.

- **Investment Stewardship** encompasses engagement with companies and the voting of proxies.

BlackRock takes an **engagement-first approach** to investment stewardship, emphasizing direct dialogues with companies on issues that we believe have a material impact on financial performance.

- Proxy voting is often associated with investment stewardship, however, voting is not the only form that stewardship can take. Engagement can also be an important component of asset owners' and asset managers' stewardship activities. Engagement can include one-on-one meetings with representatives of company boards and/or management, writing letters to companies, and a variety of other activities.
- BlackRock's approach to investment stewardship is driven by our role as a fiduciary to our clients, the asset owners. In this role, we look to engage constructively with company management to maximize the value of our clients' investments in each individual company. BlackRock has had an in-house team dedicated to investment stewardship since its inception.

- **Engagement**

Our Investment Stewardship team engages extensively with companies around the world on issues that we have identified as material to companies' long-term financial sustainability, and votes on behalf of our clients and funds that have delegated voting authority to BlackRock.

As a long-term investor, we are willing to be patient with companies when our engagement affirms they are working to address our concerns. However, our patience is not infinite – when we do not see progress despite ongoing engagement, or companies are insufficiently responsive to our efforts to protect the long-term economic interests of our clients, we will exercise our right to vote against management recommendations.

- **Shareholder Proposals**

Shareholder proposals are one mechanism for shareholders to put an issue on the ballot at a company's shareholder meeting.

A subset of asset owners, and some asset managers use shareholder proposals as a tool to signal investor concern to companies about emerging issues and/or as a catalyst for engagement.

Companies can also discuss shareholder proposals with its proponents, and if an agreed upon outcome can be reached in advance of the vote, the shareholder could withdraw the proposal. Withdrawals of shareholder proposals occur with some frequency. For example, of the 608 shareholder proposals filed in the 2017 Form N-PX filing year, 123 (20.2%) were withdrawn.

6. JPMorgan Chase

Source: <https://www.jpmorgan.com/global/research/esg>

Critics of ESG investing have long seen it as an approach where investors have to sacrifice potential returns in order to match their investments with their values or mandates, but ESGQ shows how investing sustainably can actually boost returns.

“The best way for investors to capture these changes and identify new issues and controversies is to better understand the building blocks of E, S, and G. When ESGQ is added to traditional investment styles such as value, growth, momentum and quality, the composite returns are higher, sharp ratios or risk adjusted returns increase dramatically, but drawdowns are significantly lower,” he added.

Khuram Chaudhry, European Equity Quant Strategist & Lead ESGQ Analyst

November 13, 2018

The Honorable Jay Clayton
Chairman
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549

Re: Rule 14a-8 and Proxy Process Reform

Dear Chairman Clayton:

We, the undersigned investors, representing total assets under management of almost \$570 billion, respectfully write to express our views about the importance and benefits of shareholder proposals and proxy voting, and to urge the Securities and Exchange Commission (“SEC”) to maintain Rule 14a-8 (the “Rule”) as is. We appreciate the opportunity to comment on these matters prior to the SEC’s upcoming Roundtable on the Proxy Process on November 15.

We believe that the current rules and thresholds under Rule 14a-8 work well for investors and issuers, and should be maintained. Under Rule 14a-8, a company is required to include shareholder proposals from eligible shareholders in its proxy materials unless the proposals do not meet the eligibility and procedural requirements of the Rule or are subject to exclusion on other bases as set forth therein. Shareholders who rely on the Rule may submit only one proposal per corporate annual meeting and are required to have continuously owned at least \$2,000 in market value, or 1%, of an issuer’s outstanding voting securities for a year or more by the date the proposal is submitted.

Currently, there are a number of bases upon which a company may rely to exclude shareholder proposals, including the provision of the Rule that governs the resubmission of such proposals. Pursuant to this provision, if the proposal addresses substantially the same subject matter as another proposal that has been previously included in the company’s proxy materials within the prior five (5) calendar years, the proposal may be excluded for any shareholder meeting held within three (3) calendar years of the last submission if the proposal received: less than (i) 3% of the vote on its first submission; (ii) 6% on the second; or (iii) 10% on the third.¹

Critics of the benefits of shareholder proposals and the manner in which Rule 14a-8 has effectively governed the proposal process express various arguments purporting to justify unnecessary reforms and prohibitive requirements. These proposed new requirements would restrict shareholders’ ability to put forth and vote on important proposals. However, the arguments used to justify these new restrictions do not withstand scrutiny.

¹ 17 C.F.R. § 240.14a-8(i)(12).

Shareholder Proposals Should Remain Open to Investors of All Sizes

Some critics argue that the SEC makes it too easy for shareholders to submit a proposal. Currently, a shareholder owning \$2,000 worth of a company's shares for at least one year is permitted to submit a shareholder proposal. While at one time, ownership of a single share of stock came with the right to submit a proposal, in 1983 the SEC decided it made sense to have a modest but still low requirement, setting the threshold at \$1,000 held for at least one year. The SEC in 1998 raised this to \$2,000, "to adjust for the effects of inflation," but did not raise it further "in light of rule 14a-8's goal of providing an avenue of communication for small investors."

Such a requirement helps to ensure that smaller, 'Main Street' investors have the same rights to file a proposal as wealthier individuals and institutional investors. As such, the filing threshold ensures a form of shareholder democracy that is open to nearly all investors, as it should be.

Shareholder Proposals Cannot Currently be Re-submitted Too Easily

Critics of Rule 14a-8 suggest that resubmission thresholds should be raised to reduce the number of proposals filed repeatedly for a number of years. The data, however, do not support that re-filings are a problem. According to Institutional Shareholder Services ("ISS") data, from 2010 to 2017, shareholders resubmitted environmental and social issue proposals only 35 times after receiving votes under 20% for two or more years. This affected only 26 companies.² In other words, resubmission of proposals receiving less than 20% support for a third or fourth time is very rare. Moreover, the current resubmission thresholds create significant pressure on shareholder proponents and a higher threshold would put a high percentage of proposals at risk for exclusion from proxies. The ISS database tracked 459 shareholder proposals that went to a vote at Russell 3000 companies as of the third quarter of 2017. Of these proposals, 104 proposals (22.7%) received less than 10% of the For/Against vote. In comparison, 252 proposals (54.9%) received less than 30% of the For/Against vote.³

Experience indicates that it often takes several years for a proposal regarding an emerging issue to gain enough traction with investors to achieve double-digit votes. In many cases, these proposals eventually receive substantial support, leading to widespread adoption by companies.

For example, in 1987 an average of 16 percent of shareholders voted in favor of shareholder proposals to declassify boards of directors so that directors stand for election each year. In 2012, these proposals enjoyed an 81 percent level of support on average. Ten years ago, fewer than 40 percent of S&P 500 companies held annual director elections compared to more than two thirds of these companies today.⁴ The current thresholds provide a reasonable amount of time for emerging issues to gain support among investors while ensuring that only those proposals that garner meaningful support remain on the ballot for multiple years.

² ISS Voting Analytics database.

³ Ibid.

⁴ AFL-CIO letter to Stanford professors Larcker and Tayan, January 18, 2013

Shareholder Proposals are Not Abused by Activist Investors

Abuse of the proposal process by alleged activist investors is another misguided argument used in favor of restricting shareholders' rights. According to this allegation, a small number of activist investors abuse the system by accounting for a disproportionate volume of proposals. While the ISS database does show that the Chevedden, Steiner, and McRitchie families submitted 14.5% of the 11,706 proposals filed between 2004 and 2017, *the average vote on these proposals was 40%*.⁵ This average vote level indicates that these filers provide a valuable service to fellow shareholders by promoting good corporate governance. For example, these investors frequently focus on encouraging companies to adopt best-practice corporate governance reforms such as eliminating supermajority voting requirements, appointing an independent board chair, eliminating staggered boards, and giving shareholders a "say on pay" and "proxy access" to nominate candidates for board elections.⁶

Shareholder Proposals Are Not the Cause of the Reduction in Public Traded Companies

Only a small proportion of proposals are filed at companies with a recent IPO -- less than 9% of Russell 3000 companies that have had an IPO since 2004 have received a shareholder proposal.⁷ Because large companies make up a larger portion of investors' equity portfolios than small companies, larger companies are more likely to receive shareholder proposals. According to the ISS Voting Analytics database, S&P 500 companies received 659 proposals in 2017, which was equal to 77% of the 852 proposals that Russell 3000 companies received.⁸ Moreover, only 3.7% of shareholder proposals in the ISS database were filed at companies with a market capitalization below \$1 billion.⁹

There are numerous factors contributing to the reduction in the number of public companies in the U.S. According to Vanguard, these include:¹⁰

- a steep drop in the number of small and micro-firm IPOs compared with the number of IPOs during the tech bubble in the late 1990s. Vanguard explains: "It appears that companies are choosing to be acquired by larger public companies rather than go public themselves."
- In 2016, more than 4,800 private companies were acquired, compared with about 1,950 during the IPO peak in 1996.¹¹
- Mergers are also the leading cause (and a generally growing proportion) of delistings.

⁵ ISS Voting Analytics database.

⁶ <https://www.lexology.com/library/detail.aspx?g=b6ad9d24-4a68-4736-8b28-3bbbadfbd7f5>

⁷ ISS Voting Analytics database, and

https://www.iccr.org/sites/default/files/resources_attachments/investor_response_to_chamber_14a-8_nov_9_final_2.pdf

⁸ ISS Voting Analytics database.

⁹ Ibid.

¹⁰ <https://personal.vanguard.com/pdf/ISGPCA.pdf>

¹¹ [https://www.ey.com/Publication/vwLUAssets/an-analysis-of-trends-in-the-us-capital-markets/\\$FILE/ey-an-analysis-of-trends-in-the-us-capital-markets.pdf](https://www.ey.com/Publication/vwLUAssets/an-analysis-of-trends-in-the-us-capital-markets/$FILE/ey-an-analysis-of-trends-in-the-us-capital-markets.pdf)

- Overall, Vanguard concludes that “the shrinking number of publicly listed companies consists almost entirely of those [micro] securities that would not have been invested in by active and passive funds anyway.”

Vanguard also points out that growth in private equity is outpacing growth in public equity. Contributing to the growth in private funding of companies is a series of regulatory changes. The 1996 Securities Markets Improvement Act made it easier for private companies to sell stock to “qualified purchasers,” meaning institutional investors and wealthy individuals.¹² In 2012 Congress boosted the allowed number of investors in large private firms from 500 to 2,000. The SEC also adopted rules to encourage “private placements,” allowing private firms to raise millions of dollars while avoiding public reporting.¹³ In addition, the growth in investment by mutual funds in late-stage private start-ups is providing resources that help companies delay going public.¹⁴

Due to these factors, among other macro forces such as low interest rates spurring debt financing,¹⁵ private assets under management grew from less than \$1 trillion in 2000 to more than \$5 trillion last year. As a result, many companies no longer need an IPO to raise capital.¹⁶

At the same time, Wall Street fees for small company IPOs tend to be far higher than those paid by large companies. For example, Facebook paid around 1.1%, whereas many small companies pay roughly 7%.¹⁷ SEC Commissioner Jackson labels these fees a “middle-market tax.”¹⁸

These changes in market structure, and the deregulation of private investments, are far more important than shareholder proposals in reducing the number of public companies and offerings. In fact, there is no evidence that shareholder proposals are a factor in reducing IPOs, or in increasing the number of mergers, or companies going private.¹⁹

Shareholder Proposals Do Not Meaningfully Increase Costs

Most public companies do not receive any shareholder proposals. On average, 13% of Russell 3000 companies received a shareholder proposal in a particular year between 2004 and 2017 according to the ISS database.²⁰ In other words, the average Russell 3000 company can expect to receive a proposal once every 7.7 years. For companies that receive a proposal, the median number of proposals is one per year.

¹² <https://www.theatlantic.com/magazine/archive/2018/11/private-inequity/570808/>

¹³ Ibid.

¹⁴ <https://corpgov.law.harvard.edu/2017/09/28/the-evolution-of-the-private-equity-market-and-the-decline-in-ipos/> and [https://www.ey.com/Publication/vwLUAssets/an-analysis-of-trends-in-the-us-capital-markets/\\$FILE/ey-an-analysis-of-trends-in-the-us-capital-markets.pdf](https://www.ey.com/Publication/vwLUAssets/an-analysis-of-trends-in-the-us-capital-markets/$FILE/ey-an-analysis-of-trends-in-the-us-capital-markets.pdf)

¹⁵ Ibid.

¹⁶ Ibid.

¹⁷ <https://www.theatlantic.com/magazine/archive/2018/11/private-inequity/570808/>

¹⁸ Ibid.

¹⁹ https://www.iccr.org/sites/default/files/resources_attachments/investor_response_to_chamber_14a-8_nov_9_final_2.pdf, p. 10

²⁰ Ibid.

Importantly, the cost to companies of the existing shareholder proposal process is generally low (and something companies have control over managing),²¹ and the process often results in benefits to companies. As noted, most companies receive few, if any, shareholder proposals. In 2016, there were fewer than 1,000 total shareholder proposals filed at all reporting companies in the U.S.²² Only half of the proposals submitted by shareholders appear in companies' proxies and, consequently, relatively few companies (fewer than 500 in 2016) held votes on issues submitted by shareholders.²³ This is in part due to meaningful dialogues that happen between investors and management that leads to win/win agreements - resulting in the withdrawal of resolutions. In any given year one quarter to one third of resolutions on environmental and social issues, for example, are withdrawn because of such agreements. And some governance issues like majority vote for directors and access to the proxy result in even higher rates of agreement, making a vote unnecessary.

Finally, the SEC oversees a robust "no-action letter" process that allows companies to exclude proposals from the proxy ballot that do not meet specific procedural or substantive hurdles.

Investors Benefit from the Valuable Services Proxy Advisors Provide to Advance Good Corporate Governance

Some argue that investors over-rely on proxy advisors ISS and Glass Lewis who account for 97% of market share in the industry. The alleged result is that ISS and Glass Lewis functionally control substantial voting shares of thousands of companies in their portfolios, and that this control empowers them to set standards for corporate governance by choosing which shareholder proposals to support.

In fact, while many institutional investors do rely on proxy advisors for advice and administrative help, voting decisions remain the ultimate responsibility of investors. As CII states in their letter to the House Committee on Financial Services, dated Nov 9, 2017:

"Indeed, many pension funds and other institutional investors contract with proxy advisory firms to review their research, but most large holders have adopted their own policies and employ the proxy advisory firms to help administer the voting of proxies during challenging proxy seasons.

In short, most large institutional investors vote their proxies according to their own guidelines. While large institutional investors rely on proxy advisors to manage the analysis of issues presented in the proxy statements accompanying over 38,000 meetings annually, and to help administer proxy voting, this does not mean that they abdicate their responsibility for their own voting decisions.

²¹ The Dangerous "Promise of Market Reform": No Shareholder Proposals, Harvard Law School Forum on Corporate Governance and Financial Regulation, Adam Kanzer, 2017

²² ISS Voting Analytics database.

²³ Ibid.

The independence that shareowners exercise when voting their proxies is evident in the statistics related to “say on pay” proposals and director elections. Although Institutional Shareholder Services Inc. (ISS), the largest proxy advisory firm, recommended against say on pay proposals at 11.92 percent of Russell 3000 companies in 2017, only 1.28 percent of those proposals received less than majority support from shareowners.²⁴ Similarly, although ISS recommended votes in opposition to the election of 10.43 percent of director-nominees during the most recent proxy season, just 0.185 percent failed to obtain majority support.”²⁵

The Growth of Index Funds is Not Resulting in Too Much Power for Proxy Advisors

Another complaint posits that passive fund managers of index funds do not have the time or incentive to obtain the necessary information about each company whose shares are owned in their funds to be well-informed voters. According to these critics, this problem is becoming more pressing with the growth of index funds. Nearly one-third of equity investment in the United States is via index funds, and index funds are the largest shareholders in 40% of public U.S. companies.²⁶ As a result, critics claim that passive fund managers’ reliance on the advice of proxy advisors cedes shareholder power to, functionally, two firms. As index funds continue to account for more and more of equity ownership, proxy advisors will continue to obtain even more influence over shareholder proposals.

Again, the critics’ argument assumes that passive fund managers blindly follow the recommendations of the proxy advisors. These managers almost always have detailed proxy voting guidelines that frequently result in a divergence between their votes and the recommendations of the proxy advisors. For example in 2017, BlackRock and Vanguard voted for 2% of all climate-related shareholder proposals tracked by the non-profit organization Ceres, including many proposals that proxy advisors recommended voting for.²⁷

Proxy Advisors Decrease Costs For Investors

Reliance on proxy advisers provides cost savings and market externality benefits to investors. Large, widely diversified institutional investors must manage proxy voting related to up to 38,000 annual meetings globally each year according to CII. Clearly, it is more efficient for most investors to rely on assistance from proxy advisors who can spread some of the costs of voting across thousands of clients than for each institutional investor to try to manage this herculean ask on their own. CII’s November 9th 2017 letter to House Financial Services Committee²⁸ noted that...

²⁴ Ibid.

²⁵ ISS Voting Analytics Database (last viewed on Oct. 23, 2017 & on file with CII).

²⁶ Phil Gramm and Mike Solon, "Keep Politics Out of the Boardroom," WALL STREET JOURNAL, July 18, 2018.

²⁷ <https://www.ceres.org/news-center/blog/four-mutual-fund-giants-begin-address-climate-change-risks-proxy-votes-how-about>

²⁸

https://www.cii.org/files/issues_and_advocacy/correspondence/2017/Attachment%20to%20December%202012,%202017%20Letter.pdf

...in recent months the United States Department of Treasury (Treasury) performed outreach to identify views on proxy advisory firms in connection with its recently issued report to the President on “A Financial System that Creates Economic Opportunities, Capital Markets.” In that report, the Treasury found that ‘institutional investors, who pay for proxy advice and are responsible for voting decisions, find the services valuable, especially in sorting through the lengthy and significant disclosures contained in proxy statements.’ More importantly, the Treasury did not recommend any legislative changes governing the proxy advisory firm industry.²⁹

Corporate Managers Benefit From Investor Input on Environmental, Social, and Governance Issues

One complaint argues that the shareholder proposal process is redundant because company management already considers environmental, social and governance (ESG) issues. However, if management already addresses a particular ESG issue set forth by the proposal, investors are far less likely to waste time filing the proposal in the first place, and the proposal can be challenged and rejected as “substantially implemented.”

A second complaint concerns an alleged lack of connection between ESG issues and shareholder value. However, the Department of Labor has recognized that ESG issues can be significant:

[T]he Department merely recognized that there could be instances when otherwise collateral ESG issues present material business risk or opportunities to companies that company officers and directors need to manage as part of the company’s business plan and that qualified investment professionals would treat as economic considerations under generally accepted investment theories. In such situations, these ordinarily collateral issues are themselves appropriate economic considerations, and thus should be considered by a prudent fiduciary along with other relevant economic factors to evaluate the risk and return profiles of alternative investments. In other words, in these instances, the factors are more than mere tie-breakers. To the extent ESG factors, in fact, involve business risks or opportunities that are properly treated as economic considerations themselves in evaluating alternative investments, the weight given to those factors should also be appropriate to the relative level of risk and return involved compared to other relevant economic factors.³⁰

In addition, investors such as BlackRock, State Street and more than 1,700 members of the Principles for Responsible Investment have all publicly proclaimed the importance of ESG issues

²⁹ U.S. Department of the Treasury, “A Financial System that Creates Economic Opportunities, Capital Markets” 31 (Oct. 7, 2017), <https://www.treasury.gov/press-center/press-releases/Documents/A-Financial-System-CapitalMarkets-FINAL-FINAL.pdf>.

³⁰ [Field Assistance Bulletin 2018-01](#)

to shareholder value.³¹ These claims are backed by a robust set of academic research.^{32,33} In fact, more than 20% of assets under management in U.S. markets are managed with some form of ESG strategy according to US SIF.³⁴ Clearly, ESG issues are frequently financially material.

The third and final concern relates to shareholder proposals that are redundant or overlap in content with other proposals filed with same company. In these cases, the SEC already serves as an impartial arbiter using specific guidelines. Under the existing Rule's framework, a company may request to exclude a shareholder proposal that (i) directly conflicts with one of the company's own proposals to be submitted to shareholders at the same meeting; (ii) the company has already substantially implemented the proposal; and (iii) if the proposal substantially duplicates another proposal previously submitted to the company by another proponent that will be included in the company's proxy materials for the same meeting.

* * * * *

We do not believe revision of Rule 14a-8 is necessary at this time. The existing Rule currently allows institutional investors of all sizes and individual shareholders alike to engage corporate boards and senior management on their need to address important environmental, social, and governance issues and long-term risk management. Shareholder proposals frequently address emerging systemic risks to the U.S. and globally economies, such as the predatory lending that contributed to the 2008 financial crisis.

The current process also allows investors to communicate with boards, management, and other shareholders about the most effective, proactive way to protect investor interests with respect to corporate governance, risk, and policy issues affecting companies prior to a crisis.

As such, the existing process serves an important self-regulatory function for U.S. capital markets, allowing shareholders a means to protect their interests through a form of shareholder democracy. Additional government interference in this private ordering process is not necessary or advisable.

For these reasons, we oppose further restricting shareholder proposals, which are helpful to companies, investors, and the economy as whole. Thank you for considering these views. We welcome the opportunity to work with you to address these concerns.

Sincerely,

Addenda Capital
Adrian Dominican Sisters, Portfolio Advisory Board
Bailard, Inc
Bon Secours Mercy Health

³¹ <https://www.unpri.org/pri/what-are-the-principles-for-responsible-investment>

³² <https://responsiblebusiness.haas.berkeley.edu/research/moskowitz-past-winners.html>

³³ <https://www.ussif.org/performance>

³⁴ [https://www.ussif.org/files/SIF_Trends_16_Executive_Summary\(1\).pdf](https://www.ussif.org/files/SIF_Trends_16_Executive_Summary(1).pdf)

Boston Common Asset Management
CCLA Investment Management
Christopher Reynolds Foundation
Committee on Mission Responsibility Through Investment of the Presbyterian Church U.S.A.
Congregation of St. Joseph
Connecticut Retirement Plans and Trust Funds
Daughters of Charity, Province of St. Louise
Dignity Health
Educational Foundation of America
Friends Fiduciary Corporation
Green Century Capital Management
Impax Asset Management LLC
Inherent Group, LP
Interfaith Center on Corporate Responsibility
Loring, Wolcott & Coolidge
Maryknoll Sisters
Maryland State Retirement and Pension System
Maryland State Treasurer
McKnight Foundation
Mercy Investment Services, Inc.
Miller/Howard Investments, Inc
Oregon State Treasury
Parametric
Parnassus Investments
Progressive Investment Management
Seattle City Employees' Retirement System
Seventh Generation Interfaith, Inc.
The Episcopal Church USA
Tri-State Coalition for Responsible Investment
Trillium Asset Management
Trinity Health
Unitarian Universalist Association
USA West Province of the Society of Jesus
Walden Asset Management / Boston Trust

Cc: Commissioner Robert J. Jackson, Jr.
Commissioner Hester M. Pierce
Commissioner Kara M. Stein
Commissioner Elad L. Roisman

