

**Statement of C. Edward (“Ted”) Allen**  
**Vice President, Policy & Advocacy**  
**Society for Corporate Governance**  
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**Introduction**

Chairman McHenry, Ranking Member Waters, and Members of the Committee, my name is Ted Allen, and I am Vice President for Policy & Advocacy at the Society for Corporate Governance.<sup>1</sup>

The Society appreciates the opportunity to present its views on the corporate governance and proxy voting issues being considered by the Committee. Founded in 1946, the Society is a non-partisan, professional membership association of more than 3,700 corporate secretaries, in-house counsel, and other governance professionals and service providers to the industry who serve approximately 1,200 entities, including about 1,000 public companies of almost every size and industry across the United States. Society members are responsible for supporting the work of corporate boards of directors, their committees, and the executive managements of their companies on corporate governance and disclosure. Our members oversee their companies’ efforts to engage with institutional investors and proxy advisors over shareholder proposals and other governance matters.

The Society has a long history of sharing our members’ views on proxy voting matters, including shareholder proposals, proxy advisory firms, beneficial ownership disclosure, and proxy voting mechanics.<sup>2</sup> The Society also comments frequently on the Securities and Exchange Commission’s disclosure rules and tries to offer practical suggestions to reduce compliance burdens on public companies while ensuring that investors receive material information.

**Background on Rule 14a-8**

The shareholder proposal process in the United States historically has been a mechanism for eligible shareholders – even those with modest stakes<sup>3</sup> – to share their views with management,

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<sup>1</sup> I have more than 20 years of experience following shareholder activism and corporate governance as a lawyer, journalist, and association executive. I previously worked at Proskauer Rose LLP, Bloomberg News, Institutional Shareholder Services (ISS), and the National Investor Relations Institute (NIRI).

<sup>2</sup> The Society’s previous comment letters and testimony can be found on the Society’s website at: <https://www.societycorp.gov/governanceprofessionals/advocacy/views-comments>.

<sup>3</sup> The United States is one of a handful of global markets that allows shareholders with modest stakes to put their own measures on corporate ballots. The United Kingdom requires an investor to hold at least a 5% voting stake in a company (or assemble a group of 100 investors who own a 100 GBP stake on average) to submit a resolution for consideration. *See* Principles for Responsible Investment, “Filing a shareholder proposal in the UK” (Feb. 23, 2023), available at: <https://www.unpri.org/filing-shareholder-proposals/filing-a-shareholder-proposal-in-the-uk/10993.article>. In Germany, proponents must hold a 5% voting stake or a stake worth at least 500,000 euros. *See*

board members, and other investors by placing their proposal in the company’s proxy statement and providing investors an opportunity to vote on the proposal at the annual shareholder meeting. While public companies (also known as “corporate issuers”) are governed by state law, the Commission has maintained disclosure rules to facilitate the ability of shareholders to utilize their state law rights to present proposals for an investor vote at the annual meeting. When adopting these original rules in 1942, the SEC made clear that these proposals had to relate to a “proper subject for action” by investors.<sup>4</sup> Three years later, the SEC staff issued guidance that reinforced this subject matter limitation, noting that it was not the intent of Rule X-14A-7 [the precursor to current Rule 14a-8] to permit shareholders to obtain the consensus of other shareholders with respect to matters which are of a general political, social, or economic nature.<sup>5</sup>

The SEC subsequently adopted further limits on shareholder proposals, including minimum ownership requirements,<sup>6</sup> and identified 13 substantive and procedural grounds under Rule 14a-8 that warrant the exclusion of certain shareholder proposals. The SEC’s Division of Corporation Finance staff provides informal guidance on these exclusion grounds through staff determinations in response to “no-action letter” requests by companies to exclude specific proposals.<sup>7</sup> The staff also periodically issues Staff Legal Bulletins that explain their

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Principles for Responsible Investment, “Filing a shareholder proposal in Germany” (Feb. 23, 2023), *available at*: <https://www.unpri.org/filing-shareholder-proposals/filing-a-shareholder-proposal-in-germany/10990.article>.

<sup>4</sup> When the SEC first adopted its shareholder proposal rules, the proposal process was the only way for shareholders to convey messages to companies and other investors. We now have the internet and social media as means by which shareholders can easily share their views. In addition, the SEC has dramatically relaxed its rules relating to communication between and among shareholders.

<sup>5</sup> In 1952, the Commission codified its earlier interpretation of topics that were not appropriate for shareholder proposals, providing that a proposal need not be included in a company’s proxy materials “if it clearly appears that the proposal is submitted by the security holder primarily for the purpose of enforcing a personal claim or redressing a personal grievance against the issuer or its management or primarily for the purpose of promoting general economic, political, racial, religious, social, or similar causes.” In 1972, the SEC amended this language to include a more objective standard, allowing exclusion if a proposal “consists of a recommendation, request or mandate that action be taken with respect to any matter, including a general economic, political, racial, religious, social or similar cause, that is not significantly related to the business of the issuer or is not within the control of the issuer.” However, in 1976 and again in 1998, the SEC created an exception to the “ordinary business” exclusion under Rule 14a-8(i)(7) for proposals that relate to “sufficiently significant social policy issues.”

<sup>6</sup> In 2020, the SEC amended Rule 14a-8 and updated its resubmission and ownership requirements. The SEC adopted a three-tier set of minimum ownership standards that require resolution proponents to demonstrate they have owned at least \$25,000 in the target company’s shares for at least one year, a \$15,000 stake for at least two years, or a \$2,000 stake for three or more years. The \$2,000 threshold dates back to 1998, when it was raised from \$1,000.

<sup>7</sup> Under SEC rules, companies must submit a no-action letter request at least 80 days before the date when the company plans to file its definitive proxy statement. In those requests, a company will ask the SEC staff to concur with one or more of the company’s proposed grounds for exclusion under Rule 14a-8. The SEC staff typically rules on several hundred no-action requests each year.

evolving interpretations of the Rule 14a-8 exclusion grounds. Historically, the SEC staff has tried to balance the interests of shareholder proponents with the interest of companies while also being mindful of the additional burdens investors would face if presented with more prescriptive resolutions that relate to a company’s ordinary business operations or personal grievances.

If a company disagrees with the SEC staff’s no-action determination (or wishes not to go through that process), a company may go to federal court to obtain a ruling that it does not have to include a shareholder proposal on its ballot. However, the condensed proxy season calendar makes this option challenging as companies may not learn of the SEC staff’s determination on whether to exclude a specific proposal until a few days before the deadline for printing copies of proxy materials.<sup>8</sup>

Most companies also try to negotiate with proponents and typically will offer to provide more disclosure on a particular topic or adopt a policy change if the proponent agrees to withdraw its proposal. However, more recently, some proponents have become increasingly reluctant to withdraw their proposals, even when a company is willing to comply with substantially all of their demands, because they apparently want the “publicity” of having their proposal go to a vote.

### **Changing Nature of Shareholder Proposals**

Since the 2010s, there has been a steady increase in the volume of environmental and social proposals being filed and appearing on corporate proxy ballots. By 2017, those proposals had grown to account to 43% of the 465 proposals that went to a vote at Russell 3000 companies.<sup>9</sup> Since 2021, there has been another spike in the volume of shareholder proposals. As of June 17, 2023, at least 961 proposals have been filed this year, an 18% increase from 2021.<sup>10</sup> So far, 629 proposals have gone to a vote, a 40% increase from 2021. The recent increase in shareholder proposals has been particularly pronounced with respect to proposals related to environmental and social topics. Over the past two proxy seasons, the number of environmental and social proposals has soared by 52% to 597; these proposals have accounted for 62% of the total proposals filed at Russell 3000 companies so far this year.<sup>11</sup> Meanwhile, the number of

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<sup>8</sup> Even if companies had enough time to go to court, very few companies would be willing to sue an investor over a shareholder proposal, given the risk of negative media publicity and adverse recommendations from proxy advisory firms.

<sup>9</sup> Thomas Singer, The Conference Board, “Environmental and Social Proposals in the 2017 Proxy Season” (Oct. 26, 2017), *available at*: <https://corpgov.law.harvard.edu/2017/10/26/environmental-and-social-proposals-in-the-2017-proxy-season/>.

<sup>10</sup> *See* Commissioner Mark Uyeda, Remarks at the Society for Corporate Governance, 2023 National Conference (June 21, 2023), *available at*: <https://www.sec.gov/news/speech/uyeda-remarks-society-corporate-governance-conference-062123>

<sup>11</sup> Proxy Analytics data (as of June 17, 2023).

environmental and social proposals appearing on corporate ballots climbed by 125% to 364 and have accounted for 55% of all proposals voted on.<sup>12</sup>

Many of these environmental and social proposals are prescriptive, focus on ordinary business or non-material economic matters, and do not appear to be grounded in advancing long-term shareholder value. Many of these resolutions also raise contentious policy issues, such as phasing out the use of fossil fuels, which have little to do with traditional governance issues and may be more appropriately addressed by Congress or state legislatures.

A number of companies have been besieged with multiple proposals from across the political spectrum and some corporate issuers have found themselves facing shareholder demands that are diametrically opposed. Here are several examples of the dueling political proposals on corporate proxy ballots:

- This year, the proxy materials for a major oil company included a prescriptive proposal calling for medium-term “Scope 3” emission reduction targets, while another proposal called for a new “Board Committee on Decarbonization Risk,” and alleged that the company had “not fully considered the risk that decarbonization on activist schedules might entail.”<sup>13</sup> The company’s proxy statement included seven other environmental proposals; one presumably would have to be a climate scientist to understand the nuances of this multitude of resolutions.
- In 2022, a healthcare company’s proxy statement included competing proposals on conducting a third-party racial equity audit. While one proposal called on the company to “combat systemic racism” and to remedy “industry- and company-specific barriers to everyone’s full inclusion in social and economic participation,” another resolution asserted that “anti-racist programs are themselves deeply racist” and requested that any audit must include a consultation with right-leaning civil rights groups.<sup>14</sup> Obviously, there is no way that the company could have satisfied the demands of the proponents had both proposals received majority support.

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<sup>12</sup>As Commissioner Uyeda explained in his recent remarks, which cited Proxy Analytics data, very few of these proposals are attracting broad support, presumably because they are viewed by many investors as too prescriptive or advancing narrow special interests. So far this year, just 3 percent of environmental and social proposals have received majority support, down from 23% in 2021. Average support levels for those topics have fallen from 37% in 2021 to 20% this year. While few of these special interest proposals are earning significant support, they still pose a significant time and financial burden to companies and their investors.

<sup>13</sup> See ExxonMobil, 2023 Proxy Statement, Item 5 (Decarbonization Risk Committee) and Item 9 (Scope 3).

<sup>14</sup> See Johnson & Johnson, 2022 Proxy Statement, Item 7 (Proposal by Mercy Investment Services) and Item 6 (filed by the National Center for Public Policy Research, available at: <https://www.investor.jnj.com/annual-meeting-materials/2022-proxy-statement>). As Johnson & Johnson explained in its proxy materials, the company already produces two annual reports on its diversity goals, yet shareholders were asked to vote again on this topic.

- Last year, investors at a major retailer approved a labor-sponsored proposal calling for a racial equity audit to analyze the company’s “adverse impact on nonwhite stakeholders.”<sup>15</sup> This year, shareholders were asked to vote on a proposal from a conservative group calling for rescission of that racial equity audit, warning that such an audit may jeopardize the company’s value by “elevating divisive identity politics.”<sup>16</sup> Regardless of one’s views on the merits of corporate diversity policies, this is not a matter that should be relitigated by shareholders every year.

There are dozens of other examples each proxy season where shareholders are being asked to vote on proposals on politically sensitive topics – such as abortion, the hiring of formerly incarcerated people, and the consideration of diversity during layoff decisions.

### **Growing Burden on Companies and Their Investors**

The filing of these politically inspired proposals has become an increasing burden on public companies and a growing distraction for board members and executives, particularly at large-cap issuers that receive the bulk of shareholder resolutions. For example, one Society member reported that his company received 25 proposals in 2022, followed by 23 this year. In addition, 48 other companies received more than five proposals in 2022; and 46 companies received at least that many in 2023.

In an April 2023 survey of Society members, nearly half of respondents (49.1%) said that managing shareholder proposals is “a significant time commitment for my company.” In addition, 43.4% of respondents said they spend 31 hours (or more) of staff time each year on managing shareholder proposals. Those estimates do not include the many hours spent by others at the company, such as board members, senior executives, and the company’s various subject matter experts, who often are asked to participate in engagement calls with proponents and explain that the company had already considered the shareholder’s concerns. Companies also have to devote valuable executive and board time to engage with their investors to explain the nuances of multiple shareholder proposals on related topics and explain why voting for certain proposals would not be in the long-term interest of shareholders. Finally, almost a third (32%) of respondents reported that they have to hire outside consultants, law firms, and/or other advisors to help them manage shareholder proposals. While it is difficult to estimate the full cost in terms of outside consultant fees and staff time that companies devote to shareholder resolutions, it is apparent that some companies end up spending hundreds of thousands (or even millions) of

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<sup>15</sup> See Home Depot, 2022 Proxy Statement, Item 10 (filed by the Service Employees International Union Master Trust) at 46, available at: <https://ir.homedepot.com/~media/Files/H/HomeDepot-IR/2022/2022%20Proxy%20Statement%20-%20Final.pdf>.

<sup>16</sup> See Home Depot, 2023 Proxy Statement, Proposal 8 (filed by the National Center on Public Policy Research), at 37-38, available at: <https://ir.homedepot.com/~media/Files/H/HomeDepot-IR/2023/Proxy-AGM/2023%20Proxy%20Statement.pdf>.

dollars each year to thoughtfully respond to the demands of investors who may own little more than a \$2,000 stake.

While the vast majority of these proposals are legally non-binding, companies invest significant management time and corporate resources into managing these proposals, as there can be serious implications for companies if the proposals receive significant support. If a proposal opposed by the company's board receives more than 50% of votes cast, the company may face additional scrutiny from the two major U.S. proxy advisors, ISS and Glass Lewis, which will assess what the company has done in response to that resolution before the next annual meeting.<sup>17</sup> If a proxy advisor deems the company's response to be insufficient, then the proxy firm likely will recommend voting against a board committee chair or multiple directors.

We believe the recent increase in the volume of shareholder proposals (particularly those relating to environmental, social, and political topics) also is a significant burden on investors. Our members report hearing from some institutional investors that they do not have sufficient time anymore to read corporate proxy statements in detail. That is not surprising given the thousands of pages of shareholder proposal text in proxy statements that managers of indexed funds could potentially receive each year.<sup>18</sup> Some of the larger institutions have had to hire more governance staff members to keep up with the flood of proposals. Other institutions have increased their reliance on the proxy advisors, which provide investors with an opportunity to effectively outsource the analysis of shareholder proposals (and potentially their voting responsibilities) to these firms.

While there is a lot of focus on asset managers and other large institutional investors, we think it is important to consider how the current shareholder proposal framework impacts individual (also known as "retail") investors. This includes the millions of retirees and other individual investors who own shares directly in companies. It's hard to imagine that even the most diligent individual investor, who does not have access to proxy advisors, legal experts, or other assistance, would have the time, patience, or expertise to make it through a proxy statement with even just one or two shareholder proposals (let alone possibly more than a dozen), including dueling and largely duplicative resolutions on polarizing social issue topics. Proxy voting participation by these retail investors is already well below that of institutions, and this recent surge of shareholder proposals likely will further dampen their participation.<sup>19</sup>

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<sup>17</sup> Glass Lewis applies a stricter standard and will analyze a company's responsiveness when more than 20% of investors vote against management. *See* Glass Lewis & Co., 2023 Proxy Voting Guidelines, at 18, *available at*: <https://www.glasslewis.com/wp-content/uploads/2022/11/US-Voting-Guidelines-2023-GL.pdf>.

<sup>18</sup> One Society member reported that 80% of his company's 2023 proxy statement was devoted to shareholder proposal supporting statements and the company's responses.

<sup>19</sup> Retail investors voted 29% of the shares they owned in 2022, down from 32% in 2019. By contrast, institutions voted 82% of their shares. *See* Broadridge Financial Solutions, ProxyPulse (2022), at 7.

## What Contributed to This Sea-Change With Shareholder Proposals?

The primary cause of this surge in proposals are the professional “activists”<sup>20</sup> who have taken advantage of the Commission’s latest guidance on shareholder proposals, where the staff sought to clarify its approach to significant social policy issues. In November 2021, the Corporation Finance staff released a Staff Legal Bulletin 14L (SLB 14L), which reversed three prior staff bulletins that addressed the exclusion of proposals on ordinary business or economic relevance grounds.<sup>21</sup>

SLB 14L has significantly narrowed the availability of no-action relief under those two grounds and Society members have observed a meaningful increase in the submission of prescriptive and political proposals that go far beyond identifying areas of concern for management.<sup>22</sup> Likely encouraged by the new ordinary business standard under SLB 14L, which requires the staff to assess “whether the proposal raises issues with a broad societal impact” rather than focus on the particular proposal’s significance to a specific company and its operations, proponents have made increasingly granular demands on companies to take specific actions during the past two proxy seasons. Despite evidence of a surge in filings and the increasingly prescriptive nature of these resolutions, the SEC is poised to make matters potentially more burdensome on companies and investors. In July 2022, the SEC proposed amendments to Rule 14a-8 that will reduce the ability of companies to exclude duplicative proposals and those that request policy changes that the company already substantially implemented. The proposed rules, which codify the staff’s current interpretations, also may provide an end-run for proponents to evade the stricter resubmission requirements that were adopted in 2020.<sup>23</sup>

Another contributor to the increase in shareholder proposals is the role that proxy advisory firms play, primarily ISS and Glass Lewis, which often recommend votes in favor of environmental, social, and political resolutions that have little to do with a company’s long-term economic

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<sup>20</sup> Recalling then-Commissioner Paul Atkins’ warning about the “tyranny of the minority,” Commissioner Uyeda noted that the five most prolific proponents have accounted for 55% of all proposals submitted in 2023. *See* Commissioner Mark Uyeda, Remarks at the Society for Corporate Governance, 2023 National Conference (June 21, 2023).

<sup>21</sup> *See* Securities and Exchange Commission, Shareholder Proposals: Staff Legal Bulletin No. 14L (CF), *available at*: <https://www.sec.gov/corpfin/staff-legal-bulletin-14l-shareholder-proposals>.

<sup>22</sup> In advance of the 2022 proxy season, just 32.3% of no-action requests were granted by the SEC staff, down from 53.6% in 2021, according to Proxy Analytics data. There were significantly fewer no-action requests (184) submitted before the 2023 proxy season, down from 248 in 2022 and 274 in 2021, presumably because some companies expected a negative response from the SEC staff.

<sup>23</sup> For more on the Society’s concerns on these proposed rules, please see Society Comment Letter, Substantial Implementation, Duplication, and Resubmission of Shareholder Proposals Under Exchange Act Rule 14a-8 (Sept. 13, 2022), *available at*: [https://higherlogicdownload.s3.amazonaws.com/GOVERNANCEPROFESSIONALS/a8892c7c-6297-4149-b9fc-378577d0b150/UploadedImages/Society\\_14a8\\_2022\\_comment\\_letter\\_final\\_.pdf](https://higherlogicdownload.s3.amazonaws.com/GOVERNANCEPROFESSIONALS/a8892c7c-6297-4149-b9fc-378577d0b150/UploadedImages/Society_14a8_2022_comment_letter_final_.pdf).

prospects. These firms, which do not hold any shares in U.S. companies and are largely unregulated, generally apply “one-size-fit-all” guidelines to shareholder proposal topics and sometimes will support proposals based in part on political considerations, rather than focusing on the specific impacts on the company or whether the proposal would promote a company’s long-term shareholder value.

Many public companies pay close attention to proxy advisor recommendations because the two primary firms can collectively influence 20% to 35% of the shareholder vote depending on the topic and the company’s share roster.<sup>24</sup> In a 2019 Society member survey, 25% of respondents reported that more than 20% of their shares are voted within 48 hours of the release of proxy reports while another 32% estimated that between 10 and 20% of their shares were voted. These responses suggest that many investors are utilizing the proxy firms’ automated voting platforms, which allow for the pre-population of voting instructions based on guidelines established before the proxy season.<sup>25</sup>

As the Society has detailed in comment letters<sup>26</sup> to the SEC, our members have reported factual errors, omissions, or misunderstandings that they have brought to the attention of proxy firms. While proxy advisors have mechanisms for companies to report errors in already published proxy reports, the firms do not always correct the reports, either because they assert that the error is not material or because they view the company’s concern as a difference in opinion. Even in those cases when material corrections are made, some investors will not go back to review their votes in response to the corrected information.

For more than a decade, the Society has urged the SEC to exercise greater oversight over the proxy advisors, given their considerable influence over proxy voting outcomes. After years of

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<sup>24</sup> Proxy advisory firms’ influence is more prevalent with smaller passive investors, quantitative fund managers, or those who simply own one stock as a hedge against another position. Such investors simply do not have an incentive to devote the resources or expertise to in-house proxy staffs to analyze and vote at the numerous shareholder meetings. The largest asset managers generally view proxy voting as core to their overall management strategy and typically have large teams of employees to engage with companies on corporate governance matters, analyze the company’s policies and proxy statements, and make vote recommendations. *See* Society for Corporate Governance, Comment Letter on SEC File Number 4-725 on Roundtable on the Proxy Process -- Proxy Advisory Firms (Nov. 9, 2018), at 7-9, available at: <https://www.sec.gov/comments/4-725/4725-4640411-176449.pdf>.

<sup>25</sup> For more on the Society’s concerns about automated proxy voting, please see Society Comment Letter on SEC File Number S7-22-19 (Proxy Voting Advice)(Feb. 3, 2020), at 8-9, available at: <https://www.sec.gov/comments/s7-22-19/s72219-6743687-207853.pdf>. The Society has recommended that the SEC require proxy advisory firms to “disable the automatic submission of votes” if a company has submitted a response to the proxy advisor’s report and where the proxy firm is recommending against the management position. By disabling automated voting in these circumstances, the SEC can ensure that the appropriate level of human consideration is applied in the situations where it is most needed.

<sup>26</sup> *See* Society Comment Letter on File No. S7-17-21(Proxy Voting Advice)(Dec. 30, 2021), available at: [https://higherlogicdownload.s3.amazonaws.com/GOVERNANCEPROFESSIONALS/a8892c7c-6297-4149-b9fc-378577d0b150/UploadedImages/Comment%20Letters/Society\\_Comment\\_Letter\\_Proxy\\_Advice\\_2021.pdf](https://higherlogicdownload.s3.amazonaws.com/GOVERNANCEPROFESSIONALS/a8892c7c-6297-4149-b9fc-378577d0b150/UploadedImages/Comment%20Letters/Society_Comment_Letter_Proxy_Advice_2021.pdf).

consideration, the SEC adopted a compromise set of rules in 2020 that included an issuer engagement mechanism to allow companies concurrently to review final reports for errors and to have proxy firm clients notified if the company provided a response. In 2021, the new leadership of the SEC decided to freeze these modest reforms and then adopt a new set of rules in 2022 that effectively ended the issuer review process, an important safeguard to ensure the accuracy of and completeness of proxy research.<sup>27</sup> The SEC also rescinded a related 2020 guidance on investment managers' use of automated voting platforms maintained by proxy advisors.

Finally, it is worth noting that some institutional investors have (perhaps unwittingly) contributed to these trends by continuing to support shareholder proposals for reasons other than long-term shareholder value. While some institutions are applying more scrutiny to highly prescriptive proposals, others continue to support shareholder resolutions -- perhaps based on personal views or short-term reputational concerns because they do not want to be perceived as being on the other side from activists advancing certain environmental or social goals. We believe a substantial number of investors continue to be overly reliant on proxy advisors and are often unwilling to take the necessary actions to override the firms' recommendations, even when a company has made compelling arguments against a shareholder proposal. In addition, Society members have reported that certain pension funds and other institutional investors based in Europe continue to vote in favor of prescriptive environmental and social proposals that many U.S. fund managers no longer support.

### **Reforms Are Needed to Modernize (and Depoliticize) the Shareholder Proposal Process**

The Society respectfully suggests the Committee consider legislation that would advance the following reforms:

*Rescind Staff Legal Bulletin 14L.* The SEC should reinstate the three legal bulletins that were repealed by SLB 14L and make clear that companies are not obligated to include shareholder proposals that relate to their ordinary business operations, cover topics that (in the board's judgment) are already substantially addressed, or are economically irrelevant.

*Eliminate the "significant social policy issue" exception to the ordinary business exclusion in Rule 14a-8(i)(7).* The SEC staff should not be asked to make subjective judgments each year about whether a particular investor concern has become a significant social policy issue, and making such a determination is not within the SEC's mandate. We acknowledge that some social policy issues may be important to certain investors, but those issues may not have a material impact on long-term shareholder value at most companies. The SEC should return to the original intent behind Rule 14a-8 and not force investors to vote on matters that relate to "a political, racial, religious, social or similar cause" and also "is not significantly related to the business of the issuer." While companies and their boards should be responsible for deciding

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<sup>27</sup> Securities and Exchange Commission, Final Rule (Proxy Voting Advice)(July 13, 2022), *available at*: <https://www.sec.gov/rules/final/2022/34-95266.pdf>.

whether to take stands on controversial policy issues, they should not be forced by shareholder proposals to take sides or to preside over political debates at their annual meetings.

*Withdraw the proposed 2022 amendments to Rule 14a-8.* The SEC should table these amendments, which likely will lead to even more proposals on corporate ballots and undermine the stricter resubmission standards that the SEC adopted in 2020.

*Increase the economic thresholds under Rule 14a-8.* Investors should hold a meaningful stake in order to have access to a company's proxy statement. The \$2,000 requirement for investors holding shares for at least three years is not sufficient given the significant direct (and indirect opportunity) costs that are imposed on companies and other investors. That modest stake is not meaningful enough to ensure that investors with real economic value tied to companies are the ones submitting proposals to effect change. The Society has previously endorsed a \$50,000 threshold and suggested that it be indexed for inflation.<sup>28</sup>

*Provide meaningful oversight of proxy advisors and mandate a draft review process.* The Society strongly supported the Commission's 2019 proposed rules on proxy advice, which included a pre-publication draft review requirement. Even with current processes and procedures, mistakes are inevitable during a busy proxy season when the proxy firms opine on thousands of companies within short periods of time. All public companies should have a reasonable opportunity (such as 3-5 business days) to review draft proxy advice reports for accuracy *before* their investors start voting based on potentially flawed research.<sup>29</sup> The prevalence of automated voting utilized by proxy firm clients is yet another reason that issuers should have an opportunity to review proxy report drafts in advance. This is not an unreasonable request; ISS used to voluntarily provide pre-publication draft reviews to S&P 500 companies and has provided draft reviews to companies in France and Canada.<sup>30</sup>

*Regulate the use of automated proxy voting systems.* The SEC should require the investment advisor clients of the proxy advisory firms to affirmatively verify that they have reviewed the firm's final report before their votes are cast on a company's proxy ballot items. Otherwise, that

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<sup>28</sup> See Society Comment Letter on SEC File Number 4-725 on Roundtable on the Proxy Process -- Shareholder Proposals (Nov. 9, 2018) at 2, available at: <https://www.sec.gov/comments/4-725/4725-4635923-176424.pdf>.

<sup>29</sup> For additional recommendations, please see Society Comment Letter on SEC File Number 4-725 on Roundtable on the Proxy Process -- Proxy Advisory Firms (Nov. 9, 2018), at 1-2, available at: <https://www.sec.gov/comments/4-725/4725-4640411-176449.pdf>.

<sup>30</sup> See Society Comment Letter on File No. S7-17-21(Proxy Voting Advice)(Dec. 30, 2021), available at: [https://higherlogicdownload.s3.amazonaws.com/GOVERNANCEPROFESSIONALS/a8892c7c-6297-4149-b9fc-378577d0b150/UploadedImages/Comment%20Letters/Society Comment Letter Proxy Advice 2021.pdf](https://higherlogicdownload.s3.amazonaws.com/GOVERNANCEPROFESSIONALS/a8892c7c-6297-4149-b9fc-378577d0b150/UploadedImages/Comment%20Letters/Society%20Comment%20Letter%20Proxy%20Advice%202021.pdf).

investment manager's shares could be voted based on the board's recommendations.<sup>31</sup>

### **Creation of a Public Company Advisory Committee at the SEC**

The Society also would like to express its enthusiastic support for the creation of a Public Company Advisory Committee at the SEC, which would help ensure that the Commission hears a balanced array of views on its regulatory objectives.<sup>32</sup>

Regardless of who serves as SEC chair, the commissioners and agency staff all would benefit from having a formal mechanism to hear public companies' various perspectives and receive advice and recommendations on potential disclosure rules and guidance, proxy system reforms, and other regulatory issues.

Investors already are well-represented at the SEC through three current advisory panels: the Investor Advisory Committee (IAC), the Asset Management Advisory Committee, and the Fixed Income Market Structure Advisory Committee. The IAC, the longest running of these advisory panels, has been quite active in making recommendations to the Commission on various issues, including climate risk and human capital disclosure.

Issuers outside the asset management sector have no representation on these advisory committees and effectively have no voice other than submitting letters during the (often abbreviated) public comment process.

The Commission would benefit from having an ongoing dialogue on multiple topics with issuer representatives throughout the year. Receiving input from companies with diverse perspectives on emerging issues *before* new rules (or guidance) are drafted would inform the Commission's rulemaking process; better position the Commission to act proactively to changing market conditions for companies of all sizes and industries; and support the SEC's tripartite mission to protect investors, maintain fair, orderly, and efficient markets, and facilitate capital formation.

Thank you for the Committee's consideration of the Society's views on these important topics for public companies and their shareholders.

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<sup>31</sup> Alternatively, the SEC should require proxy advisory firms to disable automated voting in those cases where the firm's vote recommendations are contrary to the board's recommendations and where the company has provided a response.

<sup>32</sup> The Society has discussed this concept with the SEC staff and several commissioners and they both suggested that legislation would be the most appropriate vehicle to create an enduring committee to represent the interests of public companies.