

October 24, 2024

Brian L. Schorr, Chair
Colleen Honigsberg, Secretary
Investor Advisory Committee
Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549

Dear Chair Schorr and Secretary Honigsberg,

We are writing to the Investor Advisory Committee (Committee) concerning the discussion about shareholder proposals and the Securities and Exchange Commission's (SEC) Rule 14a-8 that took place at the Committee's September 19, 2024, meeting.

Based on the Committee's agenda for the meeting, it seems the original intent of the session was to discuss the implications of securities litigation, including the lawsuit of *Exxon v. Arjuna*. The impact of the suit certainly merits the attention of the Committee, particularly for its chilling effect on investors' ability to raise material concerns with our companies through the shareholder proposal process.

The focus on shareholder proposals merits continued engagement by the Committee. Shareholder proposals are a vital right of shareholders, and we urge the Committee to defend these rights against current and what we believe to be misguided and misleading assaults.

Investors file shareholder proposals that they believe address important concerns. Voting outcomes provide a practical assessment of whether a significant number of the company's other investors also view the issues as important. In this way, the company is able to gauge the collective voice of all of its investors, not just the largest investors that they may otherwise be engaging with, and take that collective view into account in determining what issues are material to its "reasonable investors".

In the last year, the number of environmental and social shareholder proposals actually dropped, if anti-ESG proposals are excluded. In our view, the modest growth in environmental and social shareholder proposals over the last *several* years reflects the fact that major enterprise and systemic risks posed by our companies threaten the economy and our portfolios, as well as the quality of life of communities around the globe. Informed investors are often the first movers on addressing a range of risks relevant to their investments, long before such risks are addressed by government regulations. The market prices these risks, often based on incomplete information and disclosure, and voting on shareholder proposals is an essential investor tool to improve the baseline of available information from issuers on issues such as climate risk management and human rights due diligence as well as emerging topics such as the ethical use of artificial intelligence and the impact of corporate policy on biodiversity.

The SEC's Rule 14a-8 and the SEC Staff's administration is a dynamic process. By and

large it is working effectively to allow shareholders to express our collective voice on important issues and to screen out inappropriate proposals. It can always be fine-tuned.

We hope that when the Committee further explores this topic, it will invite proponents and their counsel to provide a more complete picture of the “what and why” of shareholder proposals. In the meantime, we enclose some notes to provide some additional perspective on some of the points raised in the meeting.

Sincerely,

Frederick Alexander, The Shareholder Commons
John Chevedden
Lauren Compere, Boston Common Asset Management, LLC
Danielle Fugere, As You Sow
Julie Goodridge, NorthStar Asset Management, Inc.
Julie Gorte, Impax Asset Management
John Harrington, Harrington Investments, Inc.
Michael Kramer, Natural Investments PBLLC
Sanford Lewis, Shareholder Rights Group
Katie McCloskey, Mercy Investment Services
Jim McRitchie, CorpGov.net
Brandon Rees, AFL-CIO
Tim Smith, Interfaith Center on Corporate Responsibility

Cc: Caroline Crenshaw, Commissioner
Hester Peirce, Commissioner
Mark Uyeda, Commissioner
Jaime Lizarraga, Commissioner
Erik Gerding, Director Corporate Finance

Notes regarding Investor Advisory Committee
discussion regarding shareholder proposals of September 19, 2024

Are there too many shareholder proposals?

During the September 19 meeting, there was reference to a single proxy containing 30 or 40 shareholder proposals. To our knowledge **there is no company that received that many proposals for a proxy statement**. Later in the meeting, the Amazon and Alphabet proxies were referenced. Here are the counts of proposals at those companies in recent years.

Year	Amazon	Alphabet
2022	14	17
2023	17	13
2024	13	12

The proponents of those proposals appearing on the proxy statements believe that these companies receive more proposals than others because of the enterprise and societal risks associated with these large companies, and because they are among the most unresponsive to requests for engagement. Notably, the number of proposals at those companies declined after a peak, demonstrating that proponents and proposals fluctuate from year to year.

In terms of volume of voting demands on investors, shareholder proposals represent a minor portion of the bulk of the proxy statement, which also requires votes on director elections, executive and director compensation and other matters. As an example, the AFL-CIO Equity Index Funds (covering the S&P and Russell indexes) voted 27,259 management proposals and 717 shareholder proposals for the 2024 proxy season.¹

It also should be noted that the number of proposals appearing on proxies neglect the number of engagements that lead to withdrawals of a proposal rather than becoming a proxy ballot item.² Many issuers accommodate investors' concerns because they see the value in the proposals; the shareholder process is effective in facilitating changes that are beneficial to the company and therefore share value.

Are proposals declining in quality?

From our perspective, many of the proposals filed in 2024 reflected long-standing issues of sustainable value creation and have continued to address important issues for companies and investors. The proposal process continues to serve as a critical tool for engaging companies on a wide range of issues, and for finding valuable common ground between corporate boards, managers, and investors. While not every proposal draws broad support, the ones that break through give voice to substantial concerns of the company's owners that current company

¹ Source: AFL-CIO.

² According to data collected by the Sustainable Investments Institute, over the last ten proxy seasons, from one-third to nearly one-half of environmental and social proposals filed each year are withdrawn by proponents. The average withdrawal rate for the 10-year period is 42%.

policies are missing or mismanaging significant opportunities or risks.

On the other hand, some of the proposals that are being referred to as low quality may be reflective of the increased accommodation in the shareholder proposal process of a diversity of perspectives. According to Morningstar, anti-ESG voted resolutions have doubled over the last 3 years and accounted for 100% of the volume growth in shareholder proposals between 2022 and 2024.³ Although the anti-ESG proposals receive very low voting support from investors,⁴ we respect the right of proponents with diverse perspectives to advance proposals and test their business case hypotheses.

Shareholders generally do not vote for low quality proposals, and the proposal process weeds out many of these proposals. We estimate that about 50% of the lowest supported proposals in 2024 season (below 3% support) were anti-ESG proposals. SEC Rule 14a-8(i)(12) bars the filing of a proposal at a company with substantially the same subject matter for three calendar years.

Are proposals too prescriptive?

There is a perennial problem, often noted by the SEC, that corporate disclosures often follow less informative, vague or boilerplate disclosures on some issues that are of critical interest to investors. Often, company disclosures on issues such as diversity, climate change and deforestation contain evident gaps or contradictions. The investors who are aware of the value propositions on these issues seek reasonable disclosure to assess risks associated with those gaps or vulnerabilities. This sometimes results in shareholder proposals that are more specific in focus.

For example, as it has become clear that many companies with net zero commitments do not currently have a clear pathway to fulfilling those commitments,⁵ investors are demanding concrete evidence of a realistic path. Because fiduciaries now routinely assess and seek to mitigate portfolio risk related to climate change risk, investors need to know whether net zero commitments are empty or merely “hopeful” statements or are accompanied by concrete plans to fulfill them. In many instances, this means focus on specific gaps in current company programs.

Are shareholder proposals being put on the proxy that are not relevant to the company?

Rule 14a-8 provides guardrails to ensure that shareholder proposals are relevant to a company’s business. Rule 14a-8(i)(5) allows companies to exclude proposals that are not relevant to the company’s business or operations, i.e. operations that account for less than 5 percent of its net earnings and gross sales for the most recent fiscal year, and which are not

³ Morningstar, “ESG Shareholder Resolutions”, Harvard Law School Forum on Corporate Governance, October 4, 2024. <https://corpgov.law.harvard.edu/2024/10/04/esg-shareholder-resolutions/>

⁴ Of the 81 anti-ESG proposals that had gone to vote as of June 30, 2024, support averaged only 1.9 percent. See Welsh, Heidi, “Anti-ESG Proposals Surged in 2024 But Earned Less Support”, Harvard Law School Forum on Corporate Governance, July 21, 2024. <https://corpgov.law.harvard.edu/2024/07/31/anti-esg-proposal-surged-in-2024-but-earned-less-support/>

⁵ Downes, Stephen, “Net Zero: How are World’s Biggest Companies Progressing?”, Sustainability Magazine, August 12, 2024. <https://sustainabilitymag.com/articles/net-zero-how-are-worlds-biggest-companies-progressing>

otherwise significantly related to the company's business. Yet during the 2024 proxy season up to May 1, 2024, not a single company had filed a no action request on the basis of relevance.⁶

Does the small percentage of proposals getting majority support imply that too many proposals are reaching the proxy?

The primary purpose of the shareholder proposal process is to give shareholders a way to collectively voice their concerns to the board and management. Rule 14a-8 and the no action process are intended to exclude trivial, irrelevant, and inappropriate proposals. While one may reasonably debate whether all such proposals are being excluded, statistics show that the number of exclusions seems largely dependent on the aggressiveness of issuer challenges to proposals. For the 2024 proxy season, issuers stepped up their filing of no action requests, filing 267 no action requests, of which 141 were granted.⁷

Substantial support for many proposals demonstrates that the process functions in allowing groups of investors to express their concerns and interests. For instance, research by Morningstar⁸ shows that in 2024, 19.5% of the environmental and social proposals voted on in 2024 (excluding anti-ESG proposals) received 30% or more support from independent shareholders. According to data provided by Sustainable Investments Institute, 31.8% of environmental and social proposals voted on in 2024 (excluding anti-ESG proposals) received 20% or more support.⁹

The fact that some large institutional investors or asset managers do not support a particular shareholder proposal may significantly affect the vote outcomes, but it should not be interpreted as necessarily implying that the underlying issue is unimportant to investors. For example, the largest asset managers have exceptional access to company engagement,¹⁰ but these engagements are not transparent. These asset managers may be engaging with companies on the very topics in a proposal and receiving assurances that the manager or its staff determines obviates the need to support the requests in the proposal. As stated by T. Rowe Price, "We believe that the reputation of T. Rowe Price affords us excellent access to the leaders of the companies in which we invest. Where appropriate, we use that access to address matters of concern in the oversight of environmental risks or social matters. In many cases, this obviates the need to support shareholder resolutions in these areas."¹¹

⁶ Lewis, Sanford, "SEC No Action Statistics to May 1, 2024" Harvard Law School Forum on Corporate Governance, May 20, 2024. <https://corpgov.law.harvard.edu/2024/05/20/sec-no-action-statistics-to-may-1-2024/>

⁷ Gibson Dunn, Shareholder Proposal Developments During the 2024 Proxy Season, July 29, 2024, <https://www.gibsondunn.com/wp-content/uploads/2024/07/shareholder-proposal-developments-during-the-2024-proxy-season.pdf>

⁸ Morningstar Inc., "ESG Shareholder Resolutions", Harvard Law School Forum on Corporate Governance, October 4, 2024. <https://corpgov.law.harvard.edu/2024/10/04/esg-shareholder-resolutions/>

⁹ Source: Sustainable Investments Institute.

¹⁰ For the 2024 proxy season BlackRock states that its Americas region stewardship group held 1,767 engagements with 1,265 companies. In the case of 369 of these companies, there were multiple engagements. BlackRock Investment Stewardship, 2024 Global Voting Spotlight, BlackRock. <https://www.blackrock.com/corporate/literature/publication/2024-investment-stewardship-voting-spotlight.pdf>

¹¹ From the Field, T. Rowe Price, For or against? The year in shareholder resolutions—2023, April 2024. <https://www.troweprice.com/content/dam/gdx/pdfs/2024-q2/pdf-for-or-against-the-year-in-shareholder-resolutions-2023-apac.pdf>

The information provided by these votes in many instances serves as a complementary source of input from very substantial blocs of investors in a company.

Is it a problem that ten entities are responsible for more than half of the filings?

The subtext of the concern stated about the role of ten entities doing more than half of filing is that these entities are overusing or abusing the process. The top 10 filers during 2024 included individuals, faith-based and socially responsible asset managers, unions, two large public pension funds and a service provider enabling foundations to participate in engagement and the filing of shareholder proposals.¹² In short, they represent far more than 10 investing institutions or individuals-- they represent a range of beneficiaries and investors for whom the shareholder proposal process is a critical tool.

By virtue of filing proposals year after year, these entities and individuals hone an expertise developing proposals that can navigate the technical challenges associated with compliance with Rule 14a-8. This expertise benefits both companies and investors, by limiting the number of excludable proposals that are filed, saving considerable time that would be spent crafting and addressing proposals that ultimately would not be included on the ballot. This streamlining allows shareholders to focus on using their vote to indicate which proposals they believe raise important issues that should be addressed by management.

Do proposals by individual corporate governance activists cause negative returns?

Shareholder proposals regarding corporate governance reforms, whether filed by individuals or by institutions, tend to draw the greatest levels of voting support. Such proposals often seek to extend best corporate governance practices to issuers whose current practices lag their peers. Such proposals are well-received by investors. As Diligent has noted, in 2024 “Support for governance-themed shareholder proposals targeting U.S.-listed companies has surged by over 18% so far this year, with investors seeing greatest success with demands for majority voting, board declassification and improved shareholder rights.”¹³

Improving corporate governance by instilling best practices across the market is a value, not only to individual companies, but also to investors economywide. Some Committee members seemed to be relying upon the paper “The Costs and Benefits of Shareholder Democracy: Gadflies and Low-Cost Activism” by Gantchev and Giannetti¹⁴ (Gantchev) as supporting the idea that governance proposals by a few individuals are value-destroying. The underlying assumption seems to be that commonly adopted governance reforms should be seen as inapplicable or too disruptive to some companies whose shareholders vote to extend those reforms to the issuers.

¹² Sullivan & Cromwell LLP, 2024 Proxy Season Review: Part 1, August 13, 2024. https://www.sullcrom.com/SullivanCromwell/_Assets/PDFs/Memos/2024-Proxy-Season-Review-Part-1.pdf

¹³ Rogerson, Miles, “*In-Depth: Surge in support for governance reforms*”, Diligent, September 18, 2024. <https://www.diligent.com/resources/blog/in-depth-surge-in-investor-support-for-governance-reforms>

¹⁴ Gantchev, Nickolay and Giannetti, Mariassunta, “*The Costs and Benefits of Shareholder Democracy: Gadflies and Low-Cost Activism*”, The Review of Financial Studies, Volume 34, Issue 12, December 2021, Pages 5629-5675. <https://academic.oup.com/rfs/article-abstract/34/12/5629/5976977?redirectedFrom=PDF>

We believe the Gantchev study is being misused to infer conclusions about a much broader causal relationship between individual shareholder proposals and long-term shareholder value, particularly given the focus of the article on the value to companies and their shareholders when shareholders make informed votes on proposals. Gantchev's model did not consider the fact that in many instances, corporate boards adopt the same recommendations made by the proponents and proposals are withdrawn through agreement. Thus, where the proposal goes to a vote, we believe any detriment to value is equally likely to be due to the oppositional nature of the board rather than the nature of the proposal voted upon. Governance proposals tend to garner the greatest voting support among shareholder proposals; it would seem an audacious act of paternalism to claim that investors voting for better governance infrastructure at their companies are acting against their own interests.