Shareholder Rights Group

Via Electronic Submission

December 1, 2025

Investor Advisory Committee
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: Recommendations Regarding the Shareholder Proposal Process

Dear Members of the Investor Advisory Committee:

The Shareholder Rights Group (SRG) writes to offer recommendations in advance of the Committee's discussion on Thursday of the SEC's shareholder proposal process. The Shareholder Rights Group is an association of investors formed to defend the shareowner's right to engage with public companies on governance, corporate accountability and long-term value creation.

Chairman Atkins' October 9 speech and the Division of Corporation Finance's November 17 announcement have disrupted functional rules and processes and created significant uncertainty for investors and companies for the upcoming proxy season. They have also heightened governance risk for companies, and destabilized long-standing expectations about shareholders' ability to engage and communicate concerns on the corporate proxy. We suggest that the Committee consider making the following recommendations to the Commission.

1. Restore Substantive No-Action Review, or at Minimum Initiate Data Gathering on the Consequences of Its Suspension

For decades, the no-action process has provided clarity for companies, shareholders, and the market. By indicating that it will no longer provide substantive responses to most no-action requests, the Division of Corporation Finance has shifted interpretive responsibility to individual issuers and left investors with the sense that private litigation is the only enforcement pathway if an issuer improperly excludes a proposal. The only carveout for which the SEC will evaluate substantive claims is for assertions that proposals are improper for business at the annual meeting under state law (Rule 14a-8(i)(1)), citing "recent developments" which apparently referred to Chairman Atkins' October 9 statements on that exclusion.

The Committee should recommend that the SEC restore substantive no-action decision making. If the Commission is unwilling to do so immediately, it should at minimum begin a structured effort to gather data on the effects of this change. This includes the consequences for smaller

Arjuna Capital

As You Sow

Boston Common Asset Management, LLC

Ceres

Clean Yield Asset Management

Harrington Investments, Inc.

Interfaith Center on Corporate Responsibility

James McRitchie

John Chevedden

Mercy Investments

Natural Investments, LLC

Newground Social Investment, SPC

NorthStar Asset Management, Inc.

Pax World Funds

The Shareholder Commons

Trillium Asset Management, LLC

shareholders who lack resources for litigation, for companies that may face governance or legal backlash when omitting proposals without staff input, and broader impacts such as reduced innovation and foresight in the market. Shareholder proposals have historically driven important governance reforms and have often served as early warnings of emerging risks and crises.

2. Recommend that the Commission Reverse Its Position Under Rule 14a-8(i)(1) Regarding "Proper Subject" for Shareholder Action

The Chairman's October 9 assertion that advisory shareholder proposals are not proper business for annual meetings misreads Delaware law, undermines the role that advisory proposals play as a settled and legitimate part of shareholder governance, and reflects a significant shift in the policies previously established by the Commission, circumventing notice-and-comment requirements under the Administrative Procedure Act that would normally accompany such a dramatic change in the agency's Rule 14a-8 program. The Committee should advise the Commission to restore the long-standing understanding that advisory proposals are proper business for shareholder meetings.

Precatory proposals allow investors to express concerns and preferences while leaving board discretion intact, serving as a valuable communication channel between the board and its investors. Through that channel, management gains insight into whether significant blocs of the company's own shareholders view an issue as material.

If precatory proposals are curtailed, investor pressure will move into other channels. Shareholders seeking to raise concerns or express dissatisfaction would likely turn to voting on director elections and say on pay matters, and even binding bylaw amendments. The outcome would be more conflict, more litigation, and less flexibility for boards. The Committee should urge the Commission to evaluate whether this shift would serve market participants.

3. Affirm Rule 14a-8's Preemptive Effect Over Conflicting Corporate Bylaws and State Laws

Maintaining a consistent federal framework for shareholder proposals is essential to ensure that all investors, regardless of where a company is incorporated, have access to the same rights and protections. Rule 14a-8 provides that uniform national process, grounded both in fair disclosure and in protecting the shareholder suffrage. Corporate bylaws or state law should not be permitted to impose conflicting restrictions. Yet, Texas has enacted a law authorizing corporations to adopt ownership thresholds of $1 million—far higher than those permitted under federal rules. Chairman Atkins, on October 9, stated that a company that adopted this higher threshold could use it as a basis for excluding proposals under Rule 14a-8(i)(1), despite the contradiction with the Rule 14a-8 standards.

The Committee should recommend that the SEC reaffirm that Rule 14a-8 allows for only narrow, well-established exceptions involving state or corporate restrictions on shareholder proposal rights. Those appropriate exceptions include: (1) improper binding bylaw amendments that would interfere with the board's exercise of its fiduciary duties; and (2) proposals requesting actions that are plainly illegal under state law and therefore excludable under Rule 14a-8(i)(2). Outside these limited circumstances, companies and states should not be permitted to impose heightened eligibility thresholds or other barriers that undermine shareholders' ability to submit legally permissible proposals. Doing so would frustrate the intent of Congress and the Commission's exercise of congressional delegated authority in Rule 14a-8. *See SEC v. Transamerica Corporation et al.*, 163 F.2d 511 (3d Cir. 1947).

4. Request Transparency Regarding the Chairman's Consultations Before the October 9 Speech and the November 17 Announcement

The policy shifts reflected in the Chairman's speech and the Division's announcement are consequential. It is important for the public record to reflect who was consulted before these decisions were made. There is no indication that shareholder proponents played a meaningful role.

The Committee should formally request that the Chairman disclose the parties consulted in advance of the October 9 and November 17 decisions. If necessary, the Committee could consider a FOIA request, although a direct request from the IAC may produce disclosure without the need for such a formal process.

5. Encourage Transparent Rulemaking Rather Than Unilateral Shifts in Interpretation

The recent radical policy shifts evinced by Chairman Atkins' October 9 speech and the Division of Corporation Finance's November 17 announcement reinforce the need for the SEC to provide notice and comment prior to substantial policy changes regarding shareholder proposals.

The pendulum shifts between Staff Legal Bulletin 14 L and 14 M regarding interpretation of ordinary business and relevance also reflect this need to solicit investor input.

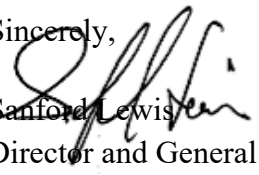
For instance, we agree that shareholder proposals should be relevant to the receiving company, as required by the text of the rule. But recalibrating how Staff interprets and applies the relevance standard was accompanied by a willingness to depart from legal precedent regarding significance of a proposal to a company under Rule 14a-8(i)(5) by stating that, in determining whether a proposal is "otherwise significantly related", it will *not* look to a case directly analyzing that standard from the District Court for the District of Columbia in *Lovenheim v. Iroquois Brands, Ltd.*, 618 F. Supp. 554 (D.D.C. 1985). It is an unusual posture to disregard federal court precedent, and changes of that nature merit input from shareholders and other stakeholders.

The Committee should recommend that the SEC reinforce the legitimacy and stability of the shareholder-proposal framework by subjecting any material reinterpretation of Rule 14a-8 to formal rulemaking.

Conclusion

Rule 14a-8 has supported a dynamic system with guardrails in which investors of all sizes can raise issues of governance, risk, and long-term value. Recent disruptive developments will likely force shareholder concerns about material issues at portfolio companies into more blunt, adversarial and less transparent channels. We appreciate the Committee's attention to these issues, which have taken on new urgency as a result of recent developments.

Sincerely,



Sanford Lewis
Director and General Counsel