

Via Hand Delivery

August 21, 2017

Brent J. Fields  
Secretary  
U.S. Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549-1090

Dear Mr. Secretary:

The purpose of this letter is to express our opposition to the July 17, 2017, “Request for rulemaking to amend Rule 14a-8 under the Securities Exchange Act of 1934 regarding resubmission of Shareholder Proposals” submitted by the Corporate Governance Coalition for Investor Value (Petition).

The Council of Institutional Investors (CII) is a non-profit, nonpartisan association of public, corporate, and union pension funds, and other employee benefit plans, foundations and endowments with combined assets that exceed \$3 trillion. Our member funds are major, long-term investors committed to protecting the retirement savings of millions of American workers. CII also has associate members, including asset managers with more than \$20 trillion in assets under management.<sup>1</sup>

CII and its members have a deep interest in ensuring that Rule 14a-8<sup>2</sup> is a fair and workable standard for shareowners and companies.<sup>3</sup> We believe the current rule provides institutional and retail investors an orderly and cost-effective means to communicate important policy issues to their fellow shareowners, boards of directors, and corporate management.

We are mindful that many positive advances in U.S. corporate governance practices simply would not have occurred without a robust shareowner proposal process in place. For example:

- Shareholder proposals were the impetus behind the practice—currently mandated by major U.S. stock exchanges’ listing standards—that independent directors

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<sup>1</sup> For more information about the Council of Institutional Investors (“CII”), please visit CII’s website at [http://www.cii.org/about\\_us](http://www.cii.org/about_us).

<sup>2</sup> 17 CFR 240.14a-8 - Shareholder proposals, Cornell U. L. School, LII, <https://www.law.cornell.edu/cfr/text/17/240.14a-8> (last viewed Aug. 18, 2017).

<sup>3</sup> See, e.g., Examining the U.S. Proxy Voting System: Is it Working for Everyone?, Corporate Governance Roundtable, Hosted by Rep. Scott Garrett, 114<sup>th</sup> Cong. 7 (Nov. 16, 2015) (Statement of Amy Borrus, Interim Executive Director, CII), [http://www.cii.org/files/issues\\_and\\_advocacy/correspondence/2015/11\\_16\\_15\\_cii\\_Rep%20Garrett\\_roundtable\\_submission\\_amy\\_borrus.pdf](http://www.cii.org/files/issues_and_advocacy/correspondence/2015/11_16_15_cii_Rep%20Garrett_roundtable_submission_amy_borrus.pdf).

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constitute at least a majority of the board, and that all the members of the following board committees are independent: audit, compensation, nominating and corporate governance.<sup>4</sup>

- In 1987, an average of 16% 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% level of support on average. Ten years ago, less than 40% of S&P 500 companies held annual director elections compared to more than two thirds of those companies today.<sup>5</sup>
- Shareholder proposals were critical in demonstrating investor support for expensing of stock compensation in financial reports. For example, many companies voluntarily adopted employee stock option expensing before it was required as a result of more than 150 proposals to expense stock options submitted during the 2003 and 2004 proxy seasons.<sup>6</sup>
- Electing directors in uncontested elections by majority (rather than plurality) vote was considered a radical idea a decade ago when shareholders pressed for it in proposals they filed with numerous companies. Today, 90% of large-cap U.S. companies elect directors by majority vote, largely as a result of robust shareholder support for majority voting proposals.<sup>7</sup>
- A proposal that built momentum even more rapidly and influenced the practices of hundreds of companies in the last few years is the request for proxy access. Resolutions filed by the New York City Comptroller to allow shareholders meeting certain eligibility requirements to nominate directors on the company's proxy ballot achieved majority votes at numerous companies. As a result, since 2015, more than 400 public companies have adopted proxy access bylaws.<sup>8</sup>
- Shareholder proposals over 25 years have built support for more diversity on boards of directors. For example, during the current proxy season a proposal at Cognex Corp. requesting that the company's board adopt a policy for improving board diversity received 62.8% of votes cast.<sup>9</sup>
- Shareholder proposals were critical in building support over many years for better disclosures on environmental risk in corporate reporting. For example, during the current proxy season proposals requesting disclosure of how climate change could

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<sup>4</sup> See Kenneth Bertsch, Executive Director, CII et al., Joint Statement on Defending Fundamental Shareholder Rights 2 (June 2, 2016),

[http://www.cii.org/files/issues\\_and\\_advocacy/financial\\_regulation/Joint%20Statement%20on%20Shareowner%20Rights%206\\_2\\_2017%20FINAL.pdf](http://www.cii.org/files/issues_and_advocacy/financial_regulation/Joint%20Statement%20on%20Shareowner%20Rights%206_2_2017%20FINAL.pdf); Ceres et al., The Business Case for the Current SEC Shareholder Proposal Process 6 (Apr. 2017),

[http://www.ussif.org/files/Public\\_Policy/Comment\\_Letters/Business%20Case%20for%2014a-8.pdf](http://www.ussif.org/files/Public_Policy/Comment_Letters/Business%20Case%20for%2014a-8.pdf).

<sup>5</sup> *Id.*

<sup>6</sup> See, e.g., Fabrizio Ferri, Harvard University et al., The Impact of Shareholder Activism on Financial Reporting and Compensation: The Case of Employee Stock Options Expensing, 84 *Acct. Rev.* 433, 434 (Mar. 2009) (“We find that firms targeted by ESO expensing proposals were more likely to subsequently adopt ESO expensing relative to a control sample of S&P 500 firms.”), available at

[https://www.jstor.org/stable/27802659?seq=1#page\\_scan\\_tab\\_contents](https://www.jstor.org/stable/27802659?seq=1#page_scan_tab_contents).

<sup>7</sup> Joint Statement on Defending Fundamental Shareholder Rights at 2; Ceres et al. at 6.

<sup>8</sup> Joint Statement on Defending Fundamental Shareholder Rights at 2-3; Ceres et al. at 6.

<sup>9</sup> See, e.g., Ronald Mueller et al., Shareholder Proposal Trends In 2017 Proxy Season: Part 2, *Law360*, July 20, 2017, at 4 (subscription required), <https://www.law360.com/articles/946033/shareholder-proposal-trends-in-2017-proxy-season-part-2>.

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affect their businesses were approved by shareowners at ExxonMobil, Occidental Petroleum, and PPL.<sup>10</sup>

The Petition ignores these and many other improvements to corporate governance and corporate disclosure that have resulted from the current rule. Instead, the Petition alleges, without any supporting evidence, that Rule 14a-8 is a “contributing factor” in the recent decline in the number of public companies.

We understand that some groups representing managerial interests do not agree with some of these developments. But it does not make sense for the U.S. Securities and Exchange Commission (SEC or Commission) to constrict a well-working tool for communication of shareowner views just because lobbying organizations for managerial interests request such action. As such, we do not believe the Petition is worthy of the Commission’s limited resources. If, however, the Commission decides to consider a new rulemaking in response to the Petition, we would respectfully request that as an initial step the SEC staff consider broadly soliciting input from investors, management and board representatives, and other market participants about their experiences with Rule 14a-8. For example, the solicitation could request information or include a questionnaire about the perceived costs *and benefits* of the current rule and whether the rule can be improved to better meet the needs of investors.<sup>11</sup>

As a second step, the Commission could consider holding public roundtables to have an open exchange among investors, management and board representatives, and other market participants on the input received. Combined, these steps could provide a sound basis for a determination of whether Commission rulemaking should be pursued on this issue of great importance to investors.

We appreciate the consideration of our views on this matter. Please feel free to contact me with any questions.

Sincerely,



Jeffrey P. Mahoney  
General Counsel

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<sup>10</sup> See, e.g., Steven Mufson, Financial Firms Lead Shareholder Rebellion Against ExxonMobil Climate Change Policies, Wash. Post, May 31, 2017, at 3, available at [https://www.washingtonpost.com/news/energy-environment/wp/2017/05/31/exxonmobil-is-trying-to-fend-off-a-shareholder-rebellion-over-climate-change/?utm\\_term=.b4b729506cde](https://www.washingtonpost.com/news/energy-environment/wp/2017/05/31/exxonmobil-is-trying-to-fend-off-a-shareholder-rebellion-over-climate-change/?utm_term=.b4b729506cde).

<sup>11</sup> See Amendments to Rules on Shareholder Proposals, Exchange Act Release No. 39,093, Investment Company Act Release No. 22,828, at 3 (proposed rule Sept. 18, 1997) (“We began the study in February 1997 with the distribution of a Questionnaire on shareholder proposals.”), <https://www.sec.gov/rules/proposed/34-39093.htm>.

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