



The Forum for Sustainable and Responsible Investment

November 9, 2018

[Via email to rule-comments@sec.gov](mailto:rule-comments@sec.gov)

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

Re: Staff Roundtable on the Proxy Process (File No. 4-725)

Dear Mr. Fields,

On behalf of US SIF: The Forum for Sustainable and Responsible Investment, I respectfully submit the following comments in response to your announcement on July 30, 2018, about the Securities and Exchange Commission's (SEC) Staff Roundtable on the Proxy Process on November 15, 2018. US SIF's comments focus on maintaining the current shareholder proposal process (including supporting the role proxy advisors play for investors and rebutting false claims made about the shareholder proposal process made in a letter submitted to the SEC on this matter.)

US SIF is the leading voice advancing sustainable, responsible and impact (SRI) investing across all asset classes. Our mission is to rapidly shift investment practices toward sustainability, focusing on long-term investment and the generation of positive social and environmental impacts. Our member firms and organizations represent more than \$3 trillion in assets under management.

The US SIF Foundation's *Report on US Sustainable, Responsible and Impact Investing Trends 2018* finds that \$12 trillion in US-domiciled assets under management use SRI criteria, representing 1 in 4 dollars under professional management.¹ Money managers who responded to the report's survey cited client demand, risk, return, social benefit, mission and fiduciary duty as the leading reasons that they consider environmental, social and governance factors.²

The Shareholder Proposal Process Works Well

The shareholder proposal rule is a vitally important, market-based mechanism for a range of investors to communicate with boards, management and other shareholders on important corporate governance, risk and policy issues affecting companies. This process is one of the most visible and verifiable ways in which investors can practice responsible ownership. A key element is to allow shareholders to raise issues before a

¹ *Report on US Sustainable, Responsible and Impact Investing Trends 2018* US SIF Foundation, Washington, DC. www.ussif.org/trends

² *Ibid*, p. 28, fig. 2.13

crisis that erodes shareholder value arises. The SEC should be seeking to enhance these fiduciaries' abilities to fulfill their duties.

Those who are advocating for weakening shareholder rights argue that submission criteria and resubmission thresholds must be revised upwards. It is US SIF's view that those advocates have not substantiated a clear problem that would require the SEC to propagate a rulemaking to alter Rule 14a-8. The current vote thresholds allow relevant issues to be resubmitted and to gradually build support.

Shareholder proposals that required resubmission in order to build support have contributed to significant and tangible benefits at countless companies. Shareholder proposals are responsible for:

- the now standard practice that independent directors constitute at least a majority of the board and now mandated by US stock exchanges' listing standards;
- "say-on-pay" vote requirements – now mandated by the Dodd-Frank Act;
- wide-scale adoption of international human rights principles as part of corporate codes of conduct and supply chain policies, protecting companies from legal and reputational risk;
- an increase to 81 percent at S&P 500 companies that publish sustainability reports in 2015 compared to just under 20 percent in 2011.³

Changes to resubmission thresholds will have unintended consequences that are costly and inefficient. Alternatives to shareholder proposals include voting against directors, lawsuits, books and records requests and requests for additional regulations. Each of these is more onerous and adversarial than including a 500-word proposal in the proxy statement for the consideration of shareholders.

Most importantly, any analysis of the costs of the shareholder proposal process must be balanced against the benefits. Poor corporate governance and inadequate environmental, social and governance (ESG) practices hurt company performance and investor returns.

Further information about the impacts of this change and the reasons for maintaining the current shareholder rule and resubmission levels can be found in this [document](#), which US SIF has co-authored.

Defending Shareholder Engagement

In a comment letter for this proceeding, the National Association of Manufacturers (NAM) repeatedly and disingenuously refer to the shareholder process as being "hijacked" by political activists and make unsubstantiated claims that this abuse is

³ <https://www.ga-institute.com/press-releases/article/flash-report-eighty-one-percent-81-of-the-sp-500-index-companies-published-corporate-sustainabi.html>

creating an increase of "zombie" proposals that reappear year after year.⁴ The letter states, "...the 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."

This is not the case for two reasons. First, Rule 14a-8 offers issuers a number of pathways to seek no-action relief to exclude proposals. Second, just because NAM attempts re-frame certain issues in the media as "political" doesn't make those issues immaterial to the well-being of the corporation. In addition, NAM fails to identify which of these issues are "political" or become "zombies". Simply stated, NAM has not presented credible arguments.

Proxy Advisory Firms

The US system of corporate governance relies on the accountability of boards of directors to their shareholders, and the proxy system is an important means by which shareowners communicate with companies and with one another on substantive issues. Each year, companies seek votes from shareholders on items pending on their annual proxy statements, including approval of their boards of directors. According to the SEC, more than 600 billion shares are voted at more than 13,000 shareholder meetings every year⁵. The SEC requires investment managers to disclose to clients their proxy voting policies and their voting records.

The investment firms and asset owners that are US SIF members are active leaders in proxy voting and take this responsibility very seriously. They use proxy voting advisory firms for assistance in digesting and analyzing the often dense and complicated questions that appear in company proxy statements before casting their shares. These proxy advisory firms issue vote recommendations on the proposals submitted by management and by shareholders. The proxy advisory firms will also execute votes on behalf of asset owners or their investment managers in line with the client's guidelines if contracted to do so.

US SIF members frequently use proxy advisory services to help with this responsibility and thus are very concerned about the calls for new, onerous regulations on proxy advisory firms. We emphasize the following key points:

- There is already a robust existing regulatory structure for proxy advisory firms. Current Securities and Exchange Commission (SEC) 2014 guidance on proxy advisors makes it clear that investment advisors have a duty to maintain sufficient oversight of third-party voting agents. Therefore, there is no need for further regulatory action.

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

⁵ U.S. Securities and Exchange Commission, "SEC Votes to Seek Public Comment on U.S. Proxy System," July 14, 2010. Available at <http://www.sec.gov/news/press/2010/2010-122.htm>.

- Proxy advisory firms neither control nor dictate how clients should or do vote. Instead, investors take the proxy voting recommendations into account as they vote according to their own proxy voting guidelines and judgment, which may differ from recommendations by proxy advisory firms.
- The primary role of proxy advisory firms is to serve investors (not “companies”), who are the major recipients of proxy advisory research, analysis or recommendations.
- We do not support giving companies the automatic right to preview proxy advisory firm reports and to lobby the authors to change recommendations or requiring these firms to employ ombudsmen to receive complaints. These provisions would give corporate management substantial editorial influence over reports on their companies.
- Proxy voting advisory firms help investors meet their fiduciary responsibilities by providing efficient and cost-effective research services to them to inform their proxy voting decisions.

We believe that attempts to constrain the important work of proxy advisory firms also weakens the ability of investors to fulfill their fiduciary duties. Therefore, we urge you not to consider any further attempts to restrict the work of proxy advisory firms.

Thank you for taking our views into consideration. If you have any questions regarding the contents of this letter, please contact me directly at lwoll@ussif.org or Bryan McGannon, US SIF's Director of Policy and Programs at [REDACTED].

Sincerely,

Lisa Woll
CEO