

September 11, 2026

Vanessa A. Countryman
Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: Rulemaking Petition 4-917 — Petition Regarding Amendments to Rule 14a-8 Under the Securities Exchange Act of 1934

Dear Ms. Countryman:

I am writing on behalf of William Michael Cunningham, a citizen of the United States, and Creative Investment Research, Inc. to comment in support of Rulemaking Petition 4-917 concerning Exchange Act Rule 14a-8.

Petition 4-917 asks the Commission to retain Rule 14a-8, preserve and restore the shareholder-proposal no-action process, and make several targeted procedural improvements rather than dismantle a framework that has developed over decades. We support that request.

More importantly, we believe the issues raised by Petition 4-917 should be evaluated as part of a much larger question: whether the Commission intends to preserve meaningful channels through which investors—particularly individual investors, smaller institutional investors, minority investors, and other shareholders without substantial litigation budgets—can obtain information, raise material concerns, and hold corporate management accountable.

Rule 14a-8 Is Market Infrastructure, Not an Administrative Convenience

The shareholder proposal process should not be viewed merely as an administrative burden imposed upon issuers. It is part of the informational and accountability infrastructure of the U.S. securities markets.

Petition 4-917 correctly observes that Rule 14a-8 establishes a mechanism through which eligible shareholders may raise questions involving corporate governance, strategy and risk oversight, and communicate those concerns to fellow shareholders through the proxy process.

The Commission itself has previously described the shareholder proposal process as a "cornerstone" of engagement between shareholders and management. Petition 4-917 further notes that shareholder campaigns have contributed to practices now taken for granted in modern corporate governance, including annual director elections, majority voting standards and proxy access.

Removing or substantially weakening that mechanism does not eliminate shareholder concerns. It merely changes where—and at what cost—those concerns must be resolved.

The 2026 Experience Shows What Happens When the SEC Withdraws

Petition 4-917 provides especially important evidence from the 2026 proxy season.

When substantive staff review of most Rule 14a-8 no-action requests was suspended, the result was not simply regulatory "efficiency." The petition reports that issuers increasingly made exclusion decisions without the benefit of a neutral administrative review process; novel and revised shareholder proposals became particularly vulnerable; and disputes moved toward litigation and market pressure.

Most troubling, the petition reports that issuers considered whether proponents had sufficient resources to pursue injunctive litigation, making proposals from smaller shareholders easier to exclude. Six lawsuits seeking injunctive relief were filed, while investors without litigation budgets could effectively be silenced. This creates the wrong economic incentive.

A system in which a shareholder's practical rights depend on his or her ability to finance federal litigation is neither efficient nor equitable. It transforms a securities-law process into a test of financial resources. The predictable result is a structural advantage for large institutions and wealthy market participants. That is inconsistent with fair and efficient capital markets.

Creative Investment Research Has Raised These Issues for More Than Three Decades¹

Our support for Petition 4-917 is consistent with positions Creative Investment Research has taken before the Commission for more than thirty years.

On July 9, 1993, Mr. Cunningham wrote to Mary Schapiro, the former Chair of the SEC, when she was a Commissioner to notify the Commission about a certain, specific investing "scam." A timely warning was not issued to the investing public. That letter to the SEC, dated July 3, 1993, described correspondence to Mr. Cunningham dated July 2, 1993 from an "officer" of the Nigerian Ministry of Finance. The SEC acknowledged receiving this warning, in a letter to Mr. Cunningham dated October 29, 1993. See: <https://www.creativeinvest.com/SECNigerianLetter.pdf>

In our December 22, 2003 comments concerning **Security Holder Director Nominations, File No. S7-19-03**, we addressed a proposed mechanism intended to enhance security holders' ability to participate meaningfully in the proxy process and obtain access where companies had been unresponsive to shareholder concerns.

(<http://www.sec.gov/rules/proposed/s71903/wmccir122203.pdf>).

¹ We incorporate our earlier comments by reference.

Our subsequent comments on the SEC proxy process argued for technology-enhanced, flexible proxy voting policies and procedures and expressly incorporated our earlier SEC comments concerning shareholder participation. (<https://www.sec.gov/comments/4-537/4537-29.htm>).

In our February 6, 2006 comments concerning **Internet Availability of Proxy Materials, File No. S7-10-05**, we supported modernization of the proxy process while warning the Commission that broader capital-market practices were deeply flawed and needed to be considered from a systemic perspective. Those comments also warned that our statistical models indicated a growing possibility of system-wide economic and market failure. (<https://www.sec.gov/files/rules/proposed/s71005/wcunningham5867.pdf>).

And in our 2006 comments on **Executive Compensation and Related Party Disclosure, File No. S7-03-06**, we supported efforts to provide investors with a clearer and more complete understanding of compensation, governance and financial relationships while raising broader concerns about deteriorating ethical behavior in financial markets. (<https://www.sec.gov/files/rules/proposed/s70306/wcunningham6601.pdf>).

These comments share a common belief: **Markets function best when investors have information, access, accountability mechanisms and a meaningful ability to challenge management.** Rule 14a-8 serves all four purposes.

Petition 4-774 Is Directly Relevant

We also ask the Commission to consider Petition 4-917 in conjunction with our **Rulemaking Petition 4-774**, filed May 30, 2021.

Petition 4-774 asked the Commission to establish mandatory rules requiring public companies to provide high-quality, comparable and decision-useful information concerning fulfillment of public Black Lives Matter-related corporate commitments. The Commission continues to identify 4-774 on its rulemaking petition docket. The economic principle underlying 4-774 extends well beyond any specific corporate pledge.

We argued that voluntary disclosure alone could not reliably provide investors with consistent, complete and comparable information and therefore requested a standardized disclosure framework capable of giving investors auditable information.

We further explained that fair and efficient markets depend upon reducing information asymmetries because accurate price discovery requires informed market participants. Concealing or inadequately reporting corporate performance creates undisclosed risk and can produce inaccurate valuations and capital misallocation. That principle applies directly to Rule 14a-8.

Where mandatory disclosure does not address an emerging issue, shareholder proposals often become one of the mechanisms through which investors identify risks, ask management questions and request additional information.

It would therefore be contradictory for the Commission simultaneously to limit mandatory disclosure requirements and restrict shareholders' ability to request information through the proxy process. The combination would increase—not decrease—information asymmetry.

The Commission Should Not Create a Pay-to-Participate System of Corporate Governance

Substantial curtailment of Rule 14a-8 would have distributional consequences that deserve considerably more attention.

Large pension funds, hedge funds, asset managers and wealthy shareholders can retain major law firms and litigate disputed exclusions. Most individual shareholders cannot.

Smaller investment organizations, minority-owned investment firms, community-oriented investors and shareholders seeking to address emerging risks are similarly unlikely to possess litigation resources comparable to those available to public corporations.

The SEC should not replace a relatively inexpensive administrative mechanism with a system under which access to corporate governance becomes dependent upon the ability to finance litigation. Such a change would amount, in practice, to a **pay-to-participate system of shareholder democracy**.

Before adopting any rule that could have that effect, the Commission should conduct an economic analysis examining not merely aggregate issuer compliance costs, but also:

1. the cost transferred from issuers and the Commission to shareholders;
2. likely increases in litigation;
3. barriers created for smaller investors;
4. effects on information production and price discovery;
5. potential effects on market competition;
6. consequences for emerging-risk disclosure; and
7. the differential impact upon investors and investment organizations with limited financial resources.

We Support the Practical Reforms Proposed in Petition 4-917

Petition 4-917 does not simply defend the status quo. It proposes reasonable reforms.

Among other things, it recommends extending the issuer exclusion-notice period from 80 to 90 days, establishing a two-week issuer-proponent engagement period, establishing clearer deadlines for proponent responses, requiring staff consideration of timely proponent submissions, maintaining the burden of persuasion on issuers, and eliminating obsolete paper-copy requirements. These proposals deserve serious consideration.

We particularly support the concept of a structured engagement period. A mechanism that encourages issuers and shareholders to resolve disputes before consuming Commission resources is substantially preferable to eliminating federal administrative oversight and forcing the parties toward litigation.

Technology should also be used to make the process less expensive rather than as an excuse for reducing investor rights. This is consistent with positions we presented to the Commission in our comments concerning internet availability of proxy materials and modernization of shareholder communications. (<https://www.sec.gov/files/rules/proposed/s71005/wcunningham5867.pdf>).

Fragmentation Through State Law and Corporate Bylaws Would Be a Serious Mistake

We also agree with Petition 4-917 that replacing a uniform federal framework with a patchwork of state-law requirements or issuer-specific bylaws would create substantial uncertainty. The petition warns that such an approach could produce fragmented and conflicting requirements and shift interpretation and enforcement toward expensive private litigation. That would represent a step backward.

One of the fundamental economic benefits of federal securities regulation is standardization. Investors can evaluate thousands of securities without first mastering a different disclosure and governance regime created by each individual issuer. A federal shareholder proposal framework produces the same kind of network benefit.

- Fragmentation increases transaction costs.
- Increased transaction costs reduce participation.
- Reduced participation lowers information production.
- And reduced information production makes markets less efficient.

Racial and Economic Issues Cannot Simply Be Defined Out of Investor Materiality

We are particularly concerned that changes to Rule 14a-8 could be used to restrict proposals involving racial inequality, discrimination, environmental matters, workforce issues or other subjects. Whether such matters are financially relevant cannot properly be determined simply by attaching or removing a political label.

Our Petition 4-774 noted estimates placing the economic cost of racial discrimination in the trillions of dollars. In a June 8, 2021 submission supporting the petition, we cited research estimating that discrimination against African Americans had cost the U.S. economy approximately \$16 trillion and that reducing key disparities could materially increase future economic output. (<https://www.sec.gov/comments/4-774/4774-241157.htm>).

These are economic questions. Corporate exposure to discrimination, human-capital problems, demographic change, reputational damage, climate issues², litigation, consumer behavior, supply-chain vulnerabilities and failures to honor public financial commitments may create material financial risk. Shareholders should retain the ability to ask management about such risks. Management should not receive unilateral authority to decide which difficult questions owners are permitted to ask.

Recommendations

Creative Investment Research therefore urges the Commission to:

- 1. Retain Rule 14a-8 and restore meaningful SEC staff review of shareholder proposal exclusion requests.**
- 2. Give serious consideration to the procedural improvements contained in Petition 4-917, particularly structured issuer-proponent engagement, clear response periods, electronic filing and preservation of the issuer's burden of demonstrating excludability.**
- 3. Reject proposals that would replace uniform federal shareholder-proposal standards with a fragmented system dependent principally upon state law, issuer bylaws or private litigation.**
- 4. Conduct a rigorous economic analysis of the impact any proposed restrictions would have upon individual shareholders, smaller investors and organizations without substantial litigation resources.**
- 5. Evaluate changes to Rule 14a-8 in conjunction with the Commission's broader disclosure policies. Restricting both mandatory disclosure and shareholder requests for information would materially increase information asymmetry.**

² See: How Environmental Issues Impact Stock Returns. Creative Investment Research.
<https://www.eventbrite.com/e/how-environmental-issues-impact-stock-returns-tickets2029288657>

6. **Preserve shareholders' ability to raise economically relevant questions involving racial inequality, discrimination, human capital, environmental risk and other emerging issues without allowing political terminology to substitute for a genuine materiality analysis.**

Finally, we again request that the Commission act on Petition 4-774. The same investor-protection principle is implicated in both proceedings: investors require reliable mechanisms for obtaining information necessary to evaluate corporate conduct, risk and value.

Conclusion

For over three decades, Creative Investment Research has warned the Commission that scams, weakening information flows, accountability and investor participation creates costs that may initially appear small but can ultimately become systemic. The relevant question is not whether every shareholder proposal is wise. Nor is every proposal economically material.

But Rule 14a-8 already contains mechanisms for excluding proposals that fail to satisfy established requirements. The existence of imperfect proposals does not justify dismantling the infrastructure through which legitimate shareholder concerns reach fellow owners.

The better course is to improve that infrastructure. Petition 4-917 proposes several reasonable ways to do so.

The Commission should preserve Rule 14a-8, restore a fair no-action process, modernize that process where appropriate, and resist replacing an established federal investor-protection mechanism with fragmented rules and expensive litigation.

Capital markets work best when information is allowed to surface rather than when it is suppressed.

Shareholders are owners. Their ability to ask difficult questions of the corporations they own should remain a fundamental feature of the American securities markets.

Respectfully submitted,

William Michael Cunningham

Economist

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