

Congress of the United States
Washington, DC 20515

June 13, 2022

The Honorable Gary Gensler
Chair
U.S. Securities and Exchange Commission
100 F Street NE
Washington, DC 20549-1090

Dear Chair Gensler:

We appreciate and applaud the important steps that the Securities and Exchange Commission (“Commission”) has taken under your leadership to encourage shareholder engagement: revising the 2019 proxy-advisory rule that restricted shareholder speech, approving the long-dormant universal proxy rule to ensure fair corporate board elections, and advancing a robust agenda on climate risk, human capital investment and corporate board diversity. Coupled with the positive role that government can play in fostering responsible regulatory oversight, shareholder engagement is the single most valuable private sector tool available to ensure corporate accountability and encourage social responsibility.

That is why we are deeply troubled by the concerns raised by advocates of corporate accountability and social responsibility regarding recently proposed rules at the Commission that may impair the ability of engaged shareholders to seek important changes at America’s public corporations. As David Webber, respected labor scholar at Boston University School of Law and author of *The Rise of the Working-Class Shareholder: Labor’s Last Best Weapon*, noted in his comment letter, “Whatever problems we may face in America, we should all agree that an overabundance of corporate accountability is not one of them.”

Respected leaders within the labor, academic and environmental, social and governance (“ESG”) communities have voiced opposition to Proposed Rule 10B-1, which relates to security-based swaps (“SBS”), and Proposed Rules 13D/G, which concern beneficial ownership reporting, warning that the rules would dramatically shift the balance of influence away from shareholder advocates to the favor of entrenched corporate managers who will enjoy less oversight. By significantly reducing the amount of time and methods available to dissident shareholders to build a meaningful economic stake and providing corporate boards and CEOs with an informational advantage, they assert the rules would essentially put a “thumb on the scale” on the side of corporate management, further insulating them and making activism less economically viable. These concerns must be carefully weighed by the Commission, and we are alarmed that the potential impact on shareholder engagement was neither examined as part of the cost-benefit analyses nor discussed in the proposals.

Specifically, the Commission should address the impact the proposals may have on the material positive benefits of activism that have been observed and identified by consensus academic literature and were highlighted in the joint comment letter of 85 law and finance professors:

- Reduced management entrenchment, as measured by CEO turnover
- Reduced emissions, as measured using plant-chemical level data
- Reduced value-destroying mergers and acquisitions activity
- Improved firm performance, as measured by return on assets
- Improved firm productivity, as measured by plant-level performance
- Increased board diversity
- Improved environmental and social performance
- Improved corporate innovation, as measured by patent counts and citations

We respectfully request your response as to the proposals' expected impact on shareholder engagement, corporate accountability and social responsibility, the extent to which that impact was considered in the proposal process, and the steps the Commission plans to take to ensure the final rules do not harm these important priorities of the Administration and our Caucus.

We encourage the Commission to rethink the proposed rules to advance healthy transparency without causing harmful unintended consequences and without undermining the ability of shareholder advocates to ensure corporate accountability and encourage social responsibility. Considering the risks that these proposed rules pose to shareholder engagement, we respectfully urge you to reconsider the proposals and continue to work toward protecting shareholder rights.

Sincerely,



Ritchie Torres
Member of Congress



Jake Auchincloss
Member of Congress



Josh Gottheimer
Member of Congress