



AthenaImpact

January 17, 2019

The Honorable Jay Clayton
Chairman
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20001

Re: S7-23-19 Procedural Requirements and Resubmission Thresholds under Exchange Act Rule 14a-8 (File No. S7-23-19)

Dear Chairman Clayton,

I am writing on behalf of Athena Capital Advisors, LLC, a Lincoln, Mass.-based registered investment advisor (“RIA”), to express our opposition to the rule the Securities and Exchange Commission (“SEC”) proposed on November 5, 2019 related to shareholder proposals. We believe the proposed rule will weaken corporate accountability and is inconsistent with the SEC’s mission to “protect investors” and “maintain fair, orderly, and efficient markets.”ⁱ

The current shareholder proposal process, outlined in 17 CFR 240.14a-8 (“Rule 14a-8”), has worked effectively for years to facilitate dialogue between corporate management and the shareholders they serve. The process is ever more critical today as corporate managers face increasing pressure to deliver short-term results, even at the expense of long-term performance.ⁱⁱ Shareholder proposals often help draw management’s attention to strategic risks and opportunities they might not otherwise recognize or adequately address.

Athena Impact, our firm’s impact investing practice, has been actively involved in supporting the Women’s Inclusion Project (“WIP”), a shareholder advocacy initiative focused on increasing gender diversity and promoting equal pay in US corporations.ⁱⁱⁱ Though we regard gender equity as a moral imperative, our participation in WIP is motivated as much by our conviction that gender equity is a driver of long-term corporate performance.^{iv} As a participant in the WIP, we assist clients in using the shareholder proposal process to raise awareness of gender-related issues among other shareholders, corporate boards, and corporate management teams with the ultimate goal of enhancing the value of their holdings.

The proposed changes to 17 CFR 240.14a-8 (“Rule 14a-8”) would stifle these types of efforts and do so in a manner that disproportionately affects the access rights of younger and less affluent shareholders. According to the U.S. Census Bureau’s 2016 Survey of Income and Participation, “householders” under the age of 35 and households with less than \$500,000 in net worth had far less invested in “stocks and mutual fund shares” than their older and wealthier peers.^v The SEC is not charged with addressing wealth inequality and, on this measure, any eligibility threshold based on a fixed ownership stake will have distributional effects. But the SEC should avoid proposing rules that exacerbate those effects, heightening the barriers for some investors more than others.

Critics, such as former Business Roundtable President John Engler, have pushed back against arguments for equal and open access with claims that proposals from small shareholders are typically “frivolous” and consume “time and money that could be put to better use.”^{vi} The evidence suggests otherwise. Corporate

managers are already quite successful at dismissing shareholder proposals they consider a waste of time. Between 2003 and 2015, according to researchers at Harvard University and the University of British Columbia, the SEC approved 73% of management's requests to exclude shareholder proposals from their proxy materials.^{vii} More telling, though, is that 21% of the requests the SEC denied involved proposals that went on to win a proxy vote or were withdrawn after the company compromised with proponents.^{viii} "Our evidence supports the idea," the researchers concluded, "that managers often seek to exclude proposals that are not necessarily frivolous and are ultimately supported by a significant proportion of shareholders."^{ix}

Finally, we are concerned that the proposed increase in resubmission thresholds would suppress shareholders' ability to raise awareness about complex issues that investors need time to understand. We believe the commission's concern about the "burdens" these resubmissions impose on companies is overstated.^x In 2016, approximately 1,000 resolutions were filed, equivalent to "1 proposal every 4 years per company on average," according to a report jointly published by the Forum for Sustainable and Responsible Investment, Ceres, and the Interfaith Center on Corporate Responsibility.^{xi} The majority of these were filed with the largest companies, which have ample resources to handle the inflow. Citing data from Institutional Shareholder Services, the Council of Institutional Investors reports that between 2004 and 2017, only 3.7% of shareholder proposals were directed at companies with less than \$1 billion in market capitalization.^{xii}

Companies that issue securities in the U.S. public equity markets accept a bargain. They gain access to a vast pool of investor capital in exchange for greater transparency and broader accountability. The proposed changes to Rule 14a-8 will weaken a critical tool shareholders have to ensure companies hold-up their end of the deal. We appreciate the opportunity to express our views and urge the SEC to reconsider its proposal.

Sincerely,



Lisette Cooper
Founder & Managing Partner
Athena Capital Advisors



Jeff Finkelman
Vice President, Impact Investments
Athena Capital Advisors

ⁱ "What We Do," U.S. Securities and Exchange Commission, June 10, 2013. Accessed: December 9, 2019, <https://www.sec.gov/Article/whatwedo.html>

ⁱⁱ Dominic Barton et al, "Measuring the Economic Impact of Short-Termism" (McKinsey Global Institute, New York, February 2017). Accessed: December 9, 2019, https://www.fcltglobal.org/docs/default-source/default-document-library/20170206_mgi-shorttermism_vfinal_public4dc2494db5326c50be1cff0000423a91.pdf?sfvrsn=df0258c_0

ⁱⁱⁱ "Women's Inclusion Project," Aperio Group, 2016. Accessed: December 10, 2019, <https://www.aperiogroup.com/Resources/Info%20Sheets/Shareholder%20Engagement%20-%20Women's%20Inclusion.Info%20Sheet.pdf>

^{iv} "Diversity & Inclusion Framework" (Athena Capital Advisors, Lincoln, December 2019). Accessed December 10, 2019, <https://athenacapital.com/wp-content/uploads/Athena-Capital-Advisors-Diversity-and-Inclusion-Framework.pdf>

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- v “Wealth and Asset Ownership Data Tables” (U.S. Census Bureau, Washington, 2016), Tables 1 & 5. Accessed: December 16, 2019, <https://www.census.gov/topics/income-poverty/wealth/data/tables.html>
- vi John Engler, “How Gadfly Shareholders Keep CEOs Distracted,” *Wall Street Journal* (New York, NY), May 26, 2019. Accessed: December 10, 2019, <https://www.wsj.com/articles/how-gadfly-shareholders-keep-ceos-distracted-1464300425>
- vii Soltes, Eugene F. and Srinivasan, Suraj and Vijayaraghavan, Rajesh, What Else Do Shareholders Want? Shareholder Proposals Contested by Firm Management (July 14, 2017). Harvard Business School Accounting & Management Unit Working Paper . p. 3. Available at SSRN: <https://ssrn.com/abstract=2771114> or <http://dx.doi.org/10.2139/ssrn.2771114>
- viii Ibid, p.4
- ix Ibid, p. 3
- x Proposed Rule, “Procedural Requirements and Resubmission Thresholds Under Exchange Act Rule 14a-8,” *Federal Register* 84, No. 233 (December 4, 2019): 66470, <https://www.federalregister.gov/d/2019-24476/p-284>
- xi “The Business Case for the Current SEC Shareholder Proposal Process,” USSIF.org, Jointly: Forum for Sustainable and Responsible Investment, Ceres, and the Interfaith Center on Corporate Responsibility, April 2017. Accessed: December 10, 2019, [https://www.ussif.org/files/Public Policy/Comment Letters/Business%20Case%20for%2014a-8.pdf](https://www.ussif.org/files/Public%20Policy/Comment%20Letters/Business%20Case%20for%2014a-8.pdf)
- xii Jonas Kron and Brandon Rees, “Frequently Asked Questions about Shareholder Proposals,” (Council of Institutional Investors) Accessed: December 19, 2019, [https://www.cii.org/files/10_10_Shareholder_Proposal_FAQ\(2\).pdf](https://www.cii.org/files/10_10_Shareholder_Proposal_FAQ(2).pdf)