



February 3, 2020

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

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

Re: RE: Proposed Rule on Procedural Requirements and Resubmission Thresholds under Exchange Act Rule 14a-8; File Number S7-23-19

Dear Ms. Countryman:

I am providing these comments on behalf of the Sustainable Investments Institute (Si2) regarding the "Proposed Rule on Procedural Requirements and Resubmission Thresholds under Exchange Act Rule 14a-8," File Number S7-23-19.

Si2 is a nonprofit organization that provides impartial research and analysis about corporate responsibility issues for institutional investors. We are funded largely by subscription fees paid by a group of assets owners who collectively hold investments totaling more than \$1 trillion; this includes some of the largest endowed U.S. colleges and universities and some of the largest North American public and private pension funds.

We closely follow social, environmental and sustainability shareholder proposals and the issues they raise to inform our subscribers, but we do not offer proxy voting recommendations. We also publish benchmarking reports analyzing how and why companies respond to reform pressures from investors and other stakeholders. This research on the filings and fate of shareholder proposals examines the extent to which these issues have traction with investors at large, while the benchmarking reports provide a sense of how much traction the issues have with companies. Both the source of reform pressures and the reception by other investors of these ideas are critical to consider when evaluating the proposed changes to the shareholder proposal rule.

This letter submits information about trends in shareholder resolutions filed about social, environmental and sustainability issues. Si2's database enables a nuanced analysis of these proposals not fully captured in the rulemaking's discussion, including the types of companies that receive proposals, the types of proposals, and the types of proponents. It also tracks the ultimate fate of the proposals, documenting the reasons for withdrawals and omissions. We offer below our analysis of the likely impact of the proposed rule with regard to increased resubmission thresholds (Rule 14a-8(i)(12)), showing the results of a back test on the universe of proposals filed from 2010 to 2019; this suggests a substantially larger impact than what the commission describes in the rulemaking.

Appended to this comment letter is a submission we made to the U.S. Senate Banking Committee on December 6, 2018, when it considered the shareholder resolution process. In addition to examining recent issue trends, that submission also explains flaws in one assessment of proposals that the Commission cites in the rulemaking from the Manhattan Institute that the Commission should consider.

**Our primary concern is that the economic analysis section of the rulemaking provides an incomplete picture of baseline data relevant to an accurate assessment of the proposed rule’s impact.** As explained, the rulemaking does not explain:

1. How key issues that have attracted growing levels of investor support in shareholder votes would be differentially affected.
2. That proposal volume is heavily concentrated among an exceedingly small number of companies that would enjoy disproportionate benefit from the proposed restrictions on proposals.

**A second concern is that the rulemaking’s focus on majority vote outcomes appears to display a misunderstanding of the shareholder engagement process and what prompts companies to implement new policies that are suggested in shareholder resolutions. We give two examples relating to climate change and corporate political activity risk management approaches. (Page 9.)**

**A third concern is that at least one of the highly regarded comment letters comes from companies that have little experience dealing with shareholder resolutions, calling into question the validity of the concerns expressed. (Page 11.)**

**Si2 universe:** As noted above, our analysis examines the subset of proposals filed about social and environmental issues, for all publicly traded U.S. companies. More careful examination of the Si2 dataset of 4,310 shareholder proposals filed between 2010 and 2019 is relevant to the rulemaking process because it covers the highly contested policy areas that appear to have prompted many of the calls for reducing the number of shareholder proposals. We offer more detail on these resolutions so that the Commission can better understand baseline data.

#### **I. Rulemaking provides incomplete analysis of proposed rule’s impact.**

***1. The discussion about the proposed amendments to Rule 14a-8(i)(12) appears to substantially underestimate the number of proposals that would be excluded by the proposed increased resubmission thresholds.***

**Differences in dataset used in analysis:** The rulemaking on p. 101 presents information about resubmitted proposals, based on a 2018 analysis of ISS Analytics data by the Council of Institutional Investors (CII) referenced in footnote 92. As the rulemaking says, any such analysis depends on an accurate reading of what constitutes “substantially the same subject matter.” Si2’s issue taxonomy for environmental and social issue proposals is more granular than that employed by ISS Analytics and we believe it provides a more accurate reading of what constitutes a resubmission. The rulemaking also uses shorter time periods—2011 to 2017 for its assessment of resubmissions by topic (p. 104) and 2011-2018 for its estimates of the number of projected ineligible resubmissions (p. 131). In contrast, the Si2 dataset covers 2010 to 2019. (We do not include most of the proposals categorized by ISS Analytics as “governance” issues, although we include any governance topics with a social or environmental aspect.)

**Impact:** We conclude that the rulemaking substantially understates how many proposals would be ineligible for resubmission should the proposed rule be approved. The SEC presents an analysis of ineligible proposals for the CII study period and concludes on p. 165 that there would be a 7 percent reduction in the overall number of resolutions, and in Table 9 on p. 131 estimates likely exclusions for governance, environmental and social issue proposals as a proportion of resubmitted resolutions. Our analysis suggests that the number of environmental and social proposals ineligible for resubmission would be higher than the SEC envisages. The overall number of filings on these issues therefore would fall by more than 7 percent.

The proposed rule would have differential effects depending on the topic. Climate change and sustainability proposals—which receive higher support levels than other environmental and social issues—would see less impact (15 percent and 13 percent reductions, respectively), for instance, while animal welfare and health proposals would see a greater impact (39 percent and 43 percent reductions). Overall, 21 percent fewer proposals on environmental and social issues would be eligible for resubmission. Table 1 contrasts the reduction in proposals eligible for resubmission under the current and proposed rule thresholds. This augments the information presented in Table 9 of the rulemaking and presents a clearer contrast between the current and proposed rule.

Topic	# Votes, 2010-19	Current Rule Eligible		Proposed Rule Eligible		Reduction in Eligible Proposals
		#	%	#	%	
Environment (Climate Change)	343	320	93%	268	78%	15%
Environment (Ind. Agriculture)	79	57	72%	37	47%	25%
Environmental Management	98	92	94%	67	68%	26%
Governance (Board)*	124	96	77%	66	53%	24%
Governance (Sustainability)	176	166	94%	142	81%	13%
Social (Animal Welfare)	31	20	65%	8	26%	39%
Social (Decent Work)	93	90	97%	69	74%	23%
Social (Ethical Finance)	21	17	81%	11	52%	29%
Social (Health)	35	26	74%	11	31%	43%
Social (Human Rights)	188	151	80%	110	59%	21%
Social (Media)	22	18	82%	14	64%	18%
Social (Political Activity)	711	672	95%	527	74%	21%
Social (Workplace Diversity)	98	93	95%	70	71%	24%
<b>Total</b>	<b>2,019</b>	<b>1,818</b>	<b>90%</b>	<b>1,400</b>	<b>69%</b>	<b>21%</b>

\*board diversity and oversight of environmental/social issues

Put another way, as shown in Table 2 below, three times as many proposals that went to votes over the course of the last decade on these issues would have been ineligible had the proposed rule been in place. The greatest number dealt with corporate political activity, a dominant proxy season issue during this time period.

<b>Topic</b>	<b># Votes</b>	<b>Ineligible - Current Rule</b>	<b>Ineligible - Proposed Rule</b>	<b>Additional Ineligible Proposals</b>	<b>% of Additional Failures</b>
Environment (Climate Change)	343	23	75	52	12%
Environment (Industrial Agriculture)	79	22	42	20	5%
Environmental Management	98	6	31	25	6%
Governance (Board)*	124	28	58	30	7%
Governance (Sustainability)	176	10	34	24	6%
Social (Animal Welfare)	31	11	23	12	3%
Social (Decent Work)	93	3	24	21	5%
Social (Ethical Finance)	21	4	10	6	1%
Social (Health)	35	9	24	15	4%
Social (Human Rights)	188	37	78	41	10%
Social (Media)	22	4	8	4	1%
Social (Political Activity)	711	39	184	145	35%
Social (Workplace Diversity)	98	5	28	23	6%
<b>Total</b>	<b>2,019</b>	<b>201</b>	<b>619</b>	<b>418</b>	
*board diversity and oversight of environmental/social issues					

It is relevant to consider not only the proposals that would not meet the new and higher resubmission thresholds, but also those that could not be resubmitted because earlier iterations of the proposals failed to meet these thresholds (“blocked”). Table 3 shows how resubmission failures differ by topic in terms of threshold failures and “blocked” resolutions. Table 4 further breaks out the failures by each threshold level while also providing information on the status outcomes for each topic area.

This examination shows important differential impacts. For major topics, these include most prominently:

- **Corporate political activity** proposals would have been affected the most; this topic accounts for 145 additional ineligible resolutions.
  - More than one-quarter of all proposals filed and 35% of those voted dealt with this topic.
  - 60 political activity failures would have occurred because of the new 25% threshold (27 proposals) and the preclusion of proposals' subsequent refiling during a three-year cooling off period (33 proposals).
- **Climate change** resolutions account for the second largest number of proposals newly ineligible under the proposed rule—52 additional failures.
  - These proposals accounted for 18% of all filings and 17% of votes.
  - 15 climate proposals would have missed the 25% threshold and 7 more would not have been eligible for resubmission because of these failures.
- **Human rights** proposals represent the next largest category of proposals ineligible under the new rule, with 41 additional failures.
  - These proposals accounted for 9% of all filings and 9% of all votes.
  - New threshold failures would occur most often for these proposals at the 5% level; 49 proposals did not earn more than that.

<b>Table 3: Types of Failures - Environmental &amp; Social Proposals Ineligible Under Proposed Rule 14a-8(i)(12) Thresholds</b>								
<b>Topic</b>	<b># Voted</b>	<b>Missed Threshold</b>		<b>Blocked<sup>#</sup></b>		<b>Ineligible</b>		<b>Survival Rate</b>
		<b>#</b>	<b>%</b>	<b>#</b>	<b>%</b>	<b>#</b>	<b>%</b>	
Environment (Climate Change)	343	58	17%	17	5%	75	22%	78%
Environment (Industrial Agriculture)	79	38	48%	4	5%	42	53%	47%
Environmental Management	98	22	22%	9	9%	31	32%	68%
Governance (Board)*	124	48	39%	10	8%	58	47%	53%
Governance (Sustainability)	176	31	18%	3	2%	34	19%	81%
Social (Animal Welfare)	31	19	61%	4	13%	23	74%	26%
Social (Decent Work)	93	17	18%	7	8%	24	26%	74%
Social (Ethical Finance)	21	8	38%	2	10%	10	48%	52%
Social (Health)	35	19	54%	5	14%	24	69%	31%
Social (Human Rights)	188	66	35%	12	6%	78	41%	59%
Social (Media)	22	8	36%	0	0%	8	36%	64%
Social (Political Activity)	711	114	16%	70	10%	184	26%	74%
Social (Workplace Diversity)	98	16	16%	12	12%	28	29%	71%
<b>Grand Total</b>	<b>2,019</b>	<b>464</b>	<b>23%</b>	<b>155</b>	<b>8%</b>	<b>619</b>	<b>31%</b>	<b>69%</b>
*board diversity and oversight of environmental/social issues								
<sup>#</sup> Could not be resubmitted because earlier similar proposal missed threshold								

**Table 4: Details on Types of Failures - Environmental & Social Proposals Ineligible Under Proposed Rule 14a-8(i)(12) Thresholds**

Topic	Number of Proposals				Type of Failure									Impact		
	Total Filed*	Omitted	With-drawn	Voted	5% threshold	15% threshold	25% threshold	earlier 25% failure	earlier 15% failure	earlier 5% failure	momentum failure	earlier momentum failure	Total Failures	% of all failures	% of all voted	% of all filed
Environment (Climate Change)	770	89	338	343	18	23	15	7	5	3	2	2	75	12%	17%	18%
Environment (Industrial Agriculture)	145	15	51	79	29	9			4				42	7%	4%	3%
Environmental Management	216	37	81	98	10	12			7	2			31	5%	5%	5%
Governance (Board)*	388	32	232	124	40	7	2	3	1	5			58	9%	6%	9%
Governance (Sustainability)	448	32	240	176	17	13			2	1	1		34	6%	9%	10%
Social (Animal Welfare)	79	25	23	31	16	3				4			23	4%	2%	2%
Social (Decent Work)	245	50	102	93	8	8	1		5	2			24	4%	5%	6%
Social (Ethical Finance)	76	36	19	21	4	4			2				10	2%	1%	2%
Social (Health)	106	46	25	35	19	1			1	3			24	4%	2%	2%
Social (Human Rights)	407	85	134	188	49	15	2	2	6	4			78	13%	9%	9%
Social (Media)	68	26	20	22	4	2	2						8	1%	1%	2%
Social (Political Activity)	1074	90	273	711	41	41	27	34	23	11	5	2	184	30%	35%	25%
Social (Workplace Diversity)	274	24	152	98	7	2	6	9		3	1		28	5%	5%	6%
<b>Total</b>	<b>4,296</b>	<b>587</b>	<b>1,690</b>	<b>2,019</b>	<b>262</b>	<b>140</b>	<b>55</b>	<b>55</b>	<b>56</b>	<b>38</b>	<b>9</b>	<b>4</b>	<b>619</b>			

\*board diversity and oversight of environmental/social issues

**2. The proposed rulemaking does not acknowledge that the number of proposals filed and voted on is heavily concentrated among an exceedingly small number of companies. The outcomes for proposals filed at this small group of top recipients differ markedly from all other companies.**

The rulemaking notes (p. 74) the average annual number of proposals submitted to S&P 500 companies has been 1.56 per year and .33 per year for Russell 3000 firms. Figure 3 on p. 75 notes the well-known fact “that larger companies receive more proposals than smaller companies,” and observes that the number for both has fallen over time while the proportion of governance proposals has dropped and the proportion of environmental and social proposals has grown.

The rulemaking does not go into further detail about what sort of S&P 500 companies receive the most proposals. Looking at the Si2 universe, it turns out that only 12 companies—out of all publicly traded U.S. firms—saw more than two social or environmental proposals go to votes on average annually in the 2010s. An additional 47 companies saw one or more such proposals voted on during each year of the decade, on average. Collectively, these 59 companies were the “top recipients.” They represent just 5.5 percent of the 867 companies that received proposals over the 10-year period.

The proposal outcomes at the 59 top recipients (which received 38.2 percent of all environmental/social filings) were markedly different than for the other 808 company recipients (which received 61.7 percent of all filings). At these top recipients, proposals were:

- More likely to be omitted
- Less likely to be withdrawn
- More likely to be voted on

	Top Recipients	All Other Recipients	All Environmental/ Social Proposals	
			#	%
# Companies	59	808	867	
# Proposals Filed	1,650	2,660	4,310	
# Omitted	19.5 %	10.2%	593	13.8%
# Withdrawn	21.6%	50.2%	1,692	39.3%
# Voted on	58.9%	39.6%	2,025	47.0%

Additional detail on the differential outcomes of resolutions filed at the top recipients and all other companies that received proposals from 2010 to 2019 appear in Table 5 below.

The concentration of filings at the very largest U.S. companies defines what is arguably a special interest group that may not share the same interests as all companies subject to the provisions of Rule 14a-8. As clearly shown here, companies that receive more shareholder proposals also are more likely to file no-action challenges producing omissions; they choose to incur higher discretionary legal costs. They are more likely to see proposals go to votes. They are less likely to find common ground with proponents that produces withdrawals. As a result, these top recipients have a greater interest than other companies in seeing Rule 14a-8 changed to reduce the number of filings, as the current proposal would accomplish. The rule would favor this special interest group.

Table 5: Outcomes of Proposals Filed at Top Recipients						
Company	Total	Omitted	Withdrawn	Voted	Average # Proposals/Year	
					Filed	Voted
Chevron	78	10	13	55	7.8	5.5
Exxon Mobil	97	19	25	53	9.7	5.3
Dominion Energy	59	14	9	36	5.9	3.6
Alphabet	39	2	4	33	3.9	3.3
ConocoPhillips	39	1	6	32	3.9	3.2
Amazon.com	56	16	17	23	5.6	2.3
McDonald's	44	9	13	22	4.4	2.2
JPMorgan Chase	53	20	11	22	5.3	2.2
Facebook	22	1		21	2.2	2.1
Verizon Communications	39	10	9	20	3.9	2.0
Kroger	31	2	9	20	3.1	2.0
Citigroup	29	4	5	20	2.9	2.0
Emerson Electric	22		3	19	2.2	1.9
Caterpillar	21	2	1	18	2.1	1.8
Tyson Foods	24	2	5	17	2.4	1.7
Walmart	44	15	13	16	4.4	1.6
Wells Fargo	34	8	10	16	3.4	1.6
Kinder Morgan	16			16	1.6	1.6
Home Depot	35	9	10	16	3.5	1.6
Charles Schwab	16			16	1.6	1.6
Altria	19		3	16	1.9	1.6
Bank of America	40	8	16	16	4.0	1.6
PepsiCo	36	8	13	15	3.6	1.5
Occidental Petroleum	20	2	3	15	2.0	1.5
FedEx	25	7	3	15	2.5	1.5
Motorola Solutions	16		1	15	1.6	1.5
Duke Energy	27	9	3	15	2.7	1.5
Du Pont	19	2	2	15	1.9	1.5
Devon Energy	24	2	8	14	2.4	1.4
Ameren	21	3	4	14	2.1	1.4
Apple	34	12	8	14	3.4	1.4
Boeing	23	8	1	14	2.3	1.4
AT&T	39	15	10	14	3.9	1.4
Kraft Heinz	15		2	13	1.5	1.3
Cisco Systems	21	3	5	13	2.1	1.3
DTE Energy	19	3	3	13	1.9	1.3
United Parcel Service	18		6	12	1.8	1.2
Pfizer	40	18	10	12	4.0	1.2
Philip Morris Int'l	17		5	12	1.7	1.2
Western Union	14	1	1	12	1.4	1.2
Goldman Sachs	30	12	6	12	3.0	1.2
Oracle	13		2	11	1.3	1.1
Travelers	16		5	11	1.6	1.1
TJX	22	5	6	11	2.2	1.1
Valero Energy	14		3	11	1.4	1.1
Starbucks	17	3	3	11	1.7	1.1
Mondelez International	19	4	4	11	1.9	1.1
General Electric	31	13	7	11	3.1	1.1
IBM	22	3	8	11	2.2	1.1

Company	Total	Omitted	Withdrawn	Voted	Average # Proposals/Year	
					Filed	Voted
Anadarko Petroleum	17	1	5	11	1.7	1.1
Allstate	13	1	1	11	1.3	1.1
Procter & Gamble	14	2	2	10	1.4	1.0
Reynolds American	15	1	4	10	1.5	1.0
Ford Motor	17	6	1	10	1.7	1.0
Johnson & Johnson	32	17	5	10	3.2	1.0
Monsanto	14		4	10	1.4	1.0
Nucor	12		2	10	1.2	1.0
FirstEnergy	21	2	9	10	2.1	1.0
CVS Health	26	7	9	10	2.6	1.0

Includes all proposals filed on social and environmental issues at all publicly traded U.S. companies, 2010-2019.

**II. The proposal’s focus on proposals receiving majority support and concomitant discounting of proposals with otherwise significant support (above approximately 20 percent and less than 50 percent) represents a misunderstanding of the shareholder engagement process, its dynamics, and what prompts companies to implement new policies.**

In Section IV.B.3, the rulemaking repeatedly discusses the proportion of resolutions that earn majority support, noting that the number of majority votes has fallen at the same time that the proportion of filings about social and environmental topics has risen (pp. 89-91). There is a brief discussion on p. 87 noting, “the probability of implementation of a shareholder proposal increases significantly once the proposal receives majority support” (pp. 87 and 91). This is followed by an observation that the proportion of proposals earning majority support has fallen overall, at the same time that majority-supported governance proposal votes have fallen in number and majority-supported environmental proposals have risen (Figures 8A and 8B, p. 90). The clear implication is that investors are being faced with an increasing number of proposals on social and environmental issues that, despite a recent blip up, fail to earn enough support to prompt management consideration. It is a short leap from this conclusion to one that views social and environmental proposals as bothersome clutter in the proxy statement.

While it is true, as noted in the rulemaking, that majority-supported resolutions are more likely to be implemented, once boards and management affirm their importance to a business, it is also true that many resolutions that earn less than majority support are implemented. The reform ideas raised in shareholder resolutions make their way into corporate best practice responses to many of the most confounding issues facing companies today, and they do so after garnering less than majority support. This is one of the key benefits of the advisory process of the shareholder proposal process that does not appear to be acknowledged in the rulemaking. We offer two examples below.

**Climate change:** In the mid-2010s, shareholder resolutions started to ask for corporate reporting on climate risk scenario reporting that would provide investors with more information about how each company would respond to the necessity of a lower-carbon world. In 2017, votes on two such proposals at Exxon Mobil and Occidental Petroleum earned approximately 60 percent support and a total of 16 companies saw votes on the subject, while four such proposals were withdrawn. The next year, there

were 15 withdrawn resolutions and only five votes, as companies acceded to the requests and agreed to report. While the Exxon and Occidental votes signaled extraordinary (and majority-supported) investor interest in these disclosures, other votes of less than 50 percent at many other companies on these issues underscored this investor interest. This example shows that shareholder resolutions present a clear way to discern investor sentiment about a subject. Focusing only on proposals that receive majority support and not on the host of additional proposals that earn somewhat less support but still raise new potential solutions for business challenges enmeshed in social and environmental impacts misrepresents the process.

**Political activity:** Before the start of a campaign from the Center for Political Accountability (CPA) in 2003, few companies had policies for boards to oversee their corporate political spending and report on it to investors. This issue has since the start of the CPA campaign become a key request by investors who support the oversight and disclosure model; this gives companies a way to manage the reputational risks presented to them in our contentious national political environment. Votes for these resolutions have rarely surpassed 50 percent, but a growing number of companies nonetheless have decided to implement the CPA model. Proponents began asking companies for similar oversight and disclosure of lobbying expenditures in 2012 and a growing number of companies are adopting policies and disclosure approaches for this issue, as well. The figure below illustrates the increase in average support for both types of proposals over the last decade, which now stands at about 30 percent.

As support for these resolutions grew—while still averaging less than 50 percent, companies changed their practices. Table 6 below illustrates the growing market acceptance for an oversight and disclosure approach to both election spending and lobbying, presenting data collected in an annual assessment by Si2 of S&P 500 company policies and practices. Individual companies have changed their policies in response to shareholder resolutions, but others that have not received resolutions also have made similar changes. The shareholder resolution process identified what is now accepted corporate best practice, and companies decided to adopt such policies without majority votes, for the most part.

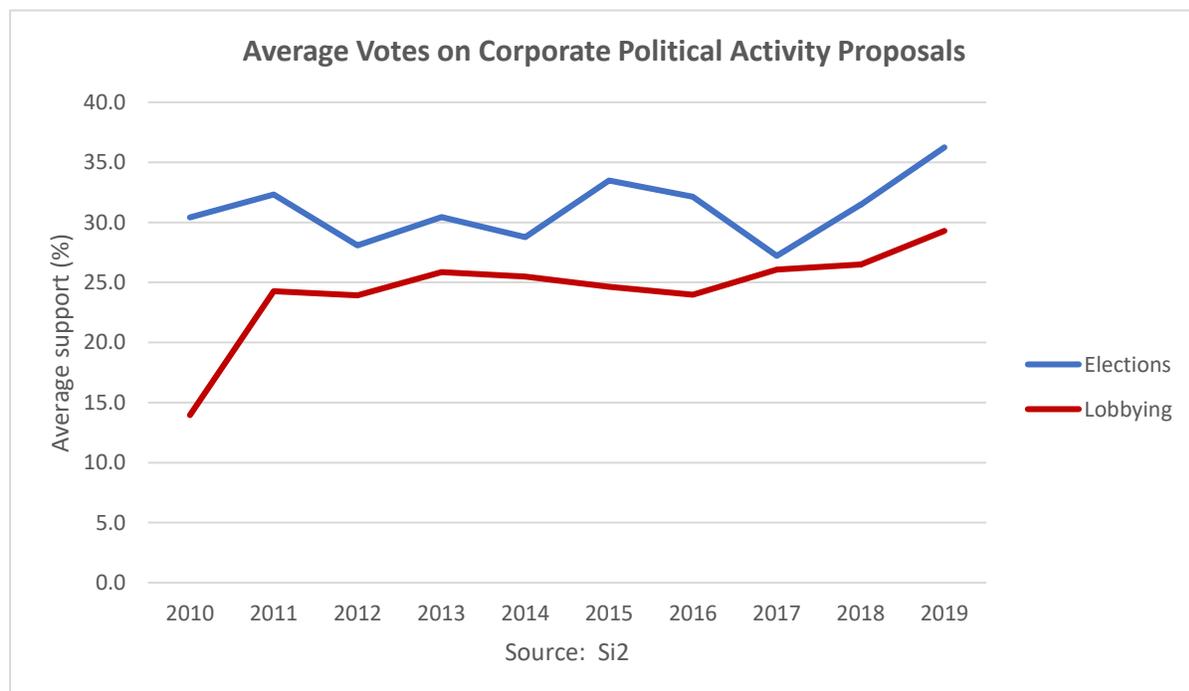


Table 6: Campaign Spending and Lobbying Governance in the S&P 500, 2010-2018							
Key Performance Indicator	2011	2013	2014	2015	2016	2017	2018
Has any political activity policy?	85%	88%	88%	87%	90%	91%	92%
<b>Electoral Spending Policies and Disclosures</b>							
Management transparency on decisions?*	64%	70%	71%	72%	75%	76%	77%
Board oversight of political activity?	31%	42%	46%	46%	50%	50%	52%
Spends from treasury on elections?	76%	73%	68%	64%	62%	66%	67%
Policy on independent expenditures?	16%	18%	25%	29%	34%	38%	38%
Discloses treasury election \$ to investors?	20%	29%	35%	37%	41%	42%	43%
<b>Lobbying Policies and Disclosures</b>							
Lobbying included in policy?	36%	53%	57%	61%	62%	64%	66%
Lobbying governance disclosed?		39%	44%	47%	51%	54%	54%
Board oversight of lobbying?		16%	19%	23%	26%	29%	30%
Discloses any lobbying \$ to investors?	3%	7%	8%	12%	12%	13%	14%
<b>Non-Profit Groups</b>							
Policy on trade association spending?	24%	39%	46%	51%	54%	56%	58%
Policy on other non-profit groups?	5%	11%	17%	23%	30%	31%	31%
Discloses non-profit memberships?#	20%	29%	36%	40%	44%	45%	48%
Discloses non-profit payments?#	14%	21%	26%	29%	31%	33%	34%
*Management official making decisions on election spending identified.							
#Yes and Partial							

**III. The SEC should consider the experience of companies that support the proposed changes to Rule 14a-8. One prominent source claims widespread issuer support for change, but companies making this call have little experience with shareholder resolutions.**

On January 16, 2020, Nasdaq and more than 300 companies sent a [letter](#) to Chairman Clayton expressing support for changes to the shareholder proposal process. Nearly 90 percent of these signatories have no experience with the shareholder proposal process, at least with respect to social and environmental issues.

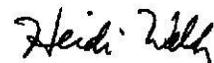
As the Table 7 below shows, of the 317 companies that signed the Nasdaq letter, only 35 (11 percent of the total) received a social or environmental shareholder proposal in the last 10 years, and only four received more than 10 proposals. The top recipients were Chevron, Yum Brands, Oracle and Walgreens Boots Alliance, which each received more than one proposal on average per year. None of the other 31 recipients received, on average, more than one proposal per year. The remaining 282 signatories had no experience with the process (on these issues) at all. The SEC should carefully consider this lack of experience when evaluating how relevant the concerns raised in the Nasdaq letter may be to considerations for reform.

<b>Table 7: Environmental &amp; Social Shareholder Resolutions Received by Nasdaq Letter Signatories</b>												
<b>Company</b>	<b>2010</b>	<b>2011</b>	<b>2012</b>	<b>2013</b>	<b>2014</b>	<b>2015</b>	<b>2016</b>	<b>2017</b>	<b>2018</b>	<b>2019</b>	<b>Total</b>	<b>Avg/yr</b>
Chevron	6	8	7	8	8	11	12	5	6	7	78	7.8
Yum Brands	2	3	2	2		3	3	2	1	4	22	2.2
Oracle	1		1	1		2	1	2	3	2	13	1.3
Walgreens Boots Alliance	1			2		1		4	2	2	12	1.2
Gilead Sciences	1				1	2		3	1	1	9	0.9
Wynn Resorts	1				2	1	1	1	1	1	8	0.8
PayPal								2	3	2	7	0.7
Dollar Tree		1		1	1					1	4	0.4
Ecolab	1	1		1			1				4	0.4
Ensign Group						1	1	1	1		4	0.4
First Solar		1	1				1		1		4	0.4
Jack in the Box	1	1	1					1			4	0.4
Tractor Supply								1	1	1	3	0.3
BioMarin Pharmaceutical					1	1	1				3	0.3
Cincinnati Financial				1	1					1	3	0.3
FMC		1	1			1					3	0.3
Zion's Bancorporation	1						1				2	0.2
Principal Financial Group		1							1		2	0.2
Carrizo Oil & Gas		1					1				2	0.2
Micron Technology							1				1	0.1
W.R. Berkley								1			1	0.1
Arthur J. Gallagher										1	1	0.1
NASDAQ OMX Group					1						1	0.1
Masimo										1	1	0.1
NutriSystem	1										1	0.1
Teradyne				1							1	0.1
Denny's									1		1	0.1
Verisk Analytics								1			1	0.1
Investors Bancorp									1		1	0.1
Endo International				1							1	0.1
Gaming and Leisure Prop. Covenant Transportation										1	1	0.1
Ryder System						1	1				1	0.1
Steven Madden										1	1	0.1
Liberty Global	1										1	0.1
<b>Grand Total</b>	<b>17</b>	<b>18</b>	<b>13</b>	<b>18</b>	<b>15</b>	<b>24</b>	<b>25</b>	<b>24</b>	<b>23</b>	<b>26</b>	<b>203</b>	

In summary, we believe the Commission's rulemaking provides an incomplete assessment of baseline data important to understanding its impact, that the rulemaking does not give sufficient deference to how companies use the shareholder proposal process to evaluate and act on investor sentiment about important public policy risks that affect their operations, and that the call for reform of the shareholder proposal process in at least one instance does not come from market players that have much experience and thus standing to assess any need for reform.

Thank you for your attention to these matters. I would be happy to further explicate any of the points made in this letter.

Sincerely,

A handwritten signature in black ink that reads "Heidi Welsh". The signature is written in a cursive, slightly slanted style.

Heidi Welsh  
Executive Director



December 5, 2018

The Honorable Michael Crapo, Chair  
The Honorable Sherrod Brown, Ranking Member  
Committee on Banking, Housing & Urban Affairs  
U.S. Senate  
Washington, DC 20510

Re: Hearing on the Proxy Process December 6, 2018

Dear Chairman Crapo and Ranking Member Brown:

I'm writing to provide comments to your committee for consideration in conjunction with your scheduled December 6 hearing on the shareholder resolution process and rules. These comments reiterate and expand on a comment I submitted to the Securities and Exchange Commission Staff Roundtable on the Proxy Process, File No. 4-725, held on November 15, 2018.

This letter submits information about trends in shareholder resolutions filed by investors on social, environmental and sustainability issues, including information about the volume of these filings and their ultimate disposition since good policy flows from an accurate assessment of the activity being regulated. Also included are conclusions from new research about corporate disclosure about sustainability issues, many of which are raised in disclosure requests in shareholder resolutions, since this signals how companies are responding to investor requests. Finally, I include important information about an oft-cited source of proxy season activity which has some procedural flaws, about which the Senate should be aware.

The Sustainable Investments Institute (Si2) is an impartial, nonprofit organization that researches and analyzes information about U.S. shareholder proposals for leading North American institutional investors, including the largest endowed U.S. colleges and universities and several large public pension funds, among others, who collectively manage assets of more than \$1 trillion. While we closely follow these proposals and the issues they raise to inform our subscribers, we do not provide voting recommendations. We also publish benchmarking reports analyzing how and why large public companies respond to reform pressures from their investors and other stakeholders—matters that often are raised in shareholder resolutions. Our reports on the filings and fate of shareholder proposals

illustrate the extent to which these issues have traction with investors at large, while the benchmarking reports provide a sense of how much traction the issues have with corporations.

### **1. Proxy season provides a signal of investor sentiment**

Shareholder proposals clearly serve as a useful barometer of the full spectrum of engagement between investors and their investee companies on key current and long-term issues of market and public policy concern. Our research about company behavior on key proxy season topics has documented how many corporations have responded to their shareholders' requests by changing their behavior. (Reports available at <https://siinstitute.org/reports.html>). For instance, on three major themes we have tracked over the course of this decade—climate change, corporate political activity disclosure, and diversity—companies increasingly are reporting on greenhouse gas emissions and climate change risk planning, disclosing more about political expenditures, and making efforts to diversify their boards and workplaces. While shareholder resolutions are filed by investors with a particular viewpoint, the levels of support for these proposals from investors at large helps companies evaluate their options for responding most effectively. The increasing number of negotiated withdrawals of proposals, in which companies and proponents agree, illustrates how this private ordering process identifies common ground and good ideas.

While some suggest that the shareholder proposal process has run amok and raises issues irrelevant to investors and companies, this does not in general appear to be the case from our perspective. What is clear is that shareholder proponents do present companies and fellow investors with a wide range of ideas about how to respond to important issues that affect the market and corporate fortunes. Investors at large are free to vote against resolutions that they do not support—and do. The key question the committee and the Securities and Exchange Commission should consider in evaluating any proposal that would further limit proponents and proposals is why less information and fewer ideas will make for better functioning capital markets.

Attached here is a report that examines shareholder proposal filings on social, environmental and sustainability issues, with trends since 2010 and details about the issues considered in 2018. It highlights a recent reduction in the number of proposals going to votes on these issues and an increase in withdrawals. It also illustrates the jump in the number of climate change omissions in 2018 that came after a shift in SEC staff interpretation of Rule 14a-8 following Staff Legal Bulletin 14I in November 2017. Most importantly, however, it documents a broadening of investor support for more corporate disclosure, with environmental and sustainability concerns topping the list.

### **2. Corporate reporting provides a key signal about the materiality of sustainability**

As noted above, another key matter for the Senate to consider when examining the state of investor-company engagement (as expressed in shareholder resolutions) is the extent to which companies are agreeing to changes suggested in the proposals. Our recently released report, *The State of Sustainability and Integrated Reporting in the S&P 500*, establishes how often companies include quantified environmental, social and sustainability metrics and goals in their reporting to investors and other stakeholders. Findings from the report's analysis of 2018 securities filings include the following, based on an evaluation of corporate websites and filings in summer 2018:

- 78 percent of S&P 500 companies issue a sustainability report.
- 40 percent of S&P 500 companies include voluntary sustainability discussions in annual financial reports or other regulatory filings. This is a key signal that an increasing number of companies believe sustainability issues are financially material.
- Among companies that issue sustainability reports, 95 percent offer quantified, annually comparable environmental performance metrics; two-thirds set quantified and time-bound environmental goals (most often with respect to greenhouse gas emissions). Some 86 percent offer social performance metrics, but only 40 percent set quantified social goals.

The report, published with the support of the Investor Responsibility Research Center Institute, is available at <https://irrcinstitute.org/reports/state-of-sustainability-and-integrated-reporting-2018/>. It is appended to this submission.

### 3. Assessments of shareholder resolution activity

Finally, I urge the Banking Committee to carefully evaluate reports and assessments about shareholder resolutions to ensure that any action it decides to take with respect to the shareholder resolution process is based on a full picture of this investor-corporate engagement practice. An oft-cited source of information about shareholder resolutions is the Manhattan Institute's Proxy Monitor project (<http://www.proxymonitor.org/Default.aspx>), which periodically issues reports about its view on proxy season results. Proxy Monitor's assessment of the state of play has some procedural flaws that make its conclusions somewhat inaccurate, as I have noted in a September 16, 2013 post on the Harvard Law School Forum on Corporate Governance and Financial Regulation. The three key failings are:

1. **The data set has a large company bias.** It does not capture the increasing propensity of investors to file at companies *outside* the *Fortune* 250—missing a key trend of proxy season and developments outside the largest firms. This gives an inaccurate sense of the pace of filings. It also extrapolates to the whole corporate world the tendency of most of the very biggest companies to vigorously contest shareholder resolutions, with challenges to their admissibility using the Rule 14a-8 process on shareholder resolutions that ask for “no-action” letters from the SEC's Division of Corporation Finance. Such legal action incurs costs to companies they themselves choose, but this response to investor proposals is less common outside the very largest firms.
2. **Proxy Monitor undercounts withdrawn and omitted proposals, further limiting its picture of engagement.** To see the full picture of investor engagement with shareholder resolutions, one must identify all filings. This information is non-public unless a) a proponent provides publicity in a press release or other announcement, b) the resolution is challenged at the SEC with a no-action letter, or c) proponents independently confirm information about their filings to researchers. Si2 conducts the primary research needed to identify all filings, not just post-proxy statement numbers, which uncovers a much bigger universe of engagement than the one on display in Proxy Monitor data. This is relevant, for instance, in assessing the differential on specific issues of the proportion of withdrawn proposals to those filed, which shows where companies and proponents find common ground—a key fruit of shareholder engagement that can benefit all investors. For example, high proportions of resolutions seeking nondiscrimination policies for LGBTQ employees, board diversity policies and reporting, and sustainability reports get withdrawn—and are not counted at all by the Proxy Monitor assessments.

3. **Vote results reported by Proxy Monitor are inconsistent.** Each company determines the voting requirement for resolutions considered by investors; these requirements appear in corporate charters—and are a matter of state law. A company might, for instance, require variously-defined super majorities for some subjects voted on by investors and a simple majority for others, thus varying the denominator in reported votes and shifting the goal posts. Companies also sometimes report their voting results on shareholder resolutions by a) counting an abstention as “against” or b) counting votes that are not cast at all as “against” (these are known as “broker non-votes”). While it is clearly valid to note how a company counts its investors’ votes, and what its requirements are, any defensible assessment of comparable trends must compare like with like. The SEC’s Rule 14a-8 resubmission threshold requirements that are based on shares cast for and against, setting asides broker non-votes and abstentions, provides an obvious example of how to do the math, but this is not the approach taken by Proxy Monitor. As a result, Proxy Monitor reports are inconsistent and provide non-comparable data about investor assessments of issues raised at America’s publicly traded companies.

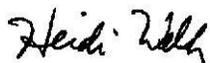
A fuller discussion of Proxy Monitor’s methodology from the Harvard blog post is appended to this letter and also can be found at <https://corpgov.law.harvard.edu/2013/09/16/accuracy-in-proxy-monitoring-2/>.

\* \* \*

I am happy to respond to any questions about the data presented in the attached reports and can be reached at email [REDACTED] or telephone [REDACTED].

Thank you for your consideration.

Sincerely,



Heidi Welsh  
Executive Director  
Sustainable Investments Institute (Si2)

Attached: 2018 Si2 Proxy Season Review  
The State of Sustainability and Integrated Reporting in the S&P 500  
“Accuracy in Proxy Monitoring,” Harvard Governance Forum post