Shareholder Proposals:

An Essential Investor Right



INTERFAITH CENTER ON CORPORATE RESPONSIBILITY

Shareholder Rights Group

US/SIF
US Sustainable Investment Forum

Acknowledgments

February 2025

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We would like to thank Rick Alexander (The Shareholder Commons), Brittany Blanchard Goad (Ceres), Mike Garland (Office of the Comptroller, New York City), Greg Hershman (PRI), Susana McDermott and Tim Smith (Interfaith Center on Corporate Responsibility), Bryan McGannon (US SIF), Tejal Patel (SOC Investment Group), Brandon Rees (AFL/CIO) and Natalia Renta (Americans for Financial Reform Education Fund) for their careful review and valuable feedback. All errors are the authors'.

About

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The Interfaith Center on Corporate Responsibility (ICCR) is a broad coalition of more than 300 institutional investors collectively representing over $4 trillion in invested capital. ICCR members, a cross-section of faith-based investors, asset managers, pension funds, foundations, and other long-term institutional investors, have over 50 years of experience engaging with companies on environmental, social, and governance ("ESG") issues that are critical to long-term value creation. ICCR members engage hundreds of corporations annually in an effort to foster greater corporate accountability. Visit our website www.iccr.org and follow us on LinkedIn, Bsky and X.

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The Shareholder Rights Group is an association of investors formed to defend the shareowner's right to engage with public companies on governance, corporate accountability and long-term value creation. Visit our website at www.shareholderrightsgroup.com.

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US SIF works to ensure that the US capital markets play an active role in driving investments toward more sustainable and equitable outcomes. The US SIF and its members are the leading voices of sustainable investment. We aim to create a level playing field in Capital Markets which includes increased transparency and disclosure across the industry. US SIF's 200+ Members represent trillions in assets under management. The Membership includes actors across the entire capital markets value chain—including asset owners, financial advisors, asset managers, institutional investors, community investment institutions and data & service providers. Visit our website at www.ussif.org.

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Foreword

Long-standing safeguards in our capital markets are at risk. The shareholder proposal process is a critical tool for investors to guard investment value from material risks and to protect the American public from corporate misconduct and egregious behavior. In 2025, legislative, regulatory and judicial assaults threaten these rights.

This report is intended to set the record straight and to defend this essential investor right.

Executive Summary

Investors' right to file shareholder proposals has contributed to the success of the US capital markets.

The shareholder's right to place proposals on the proxy, and the freedom to express a collective voice by voting on such proposals, are part of the social and legal compact between investors and companies that maintains the trust needed for capitalism to thrive. This trust has resulted in the US becoming the largest and most envied capital market in the world.

Shareholder proposals are largely non-binding. Non-binding proposals give companies the flexibility to address shareholder concerns without displacing the traditional role of the board of directors to oversee the operations of the company.

Shareholder proposals are one of the few opportunities that ordinary American investors have to influence policies at the companies that they own.

Environmental and social shareholder proposals protect the American public by promoting accountability for corporate mismanagement and egregious behavior.

Environmental and social shareholder proposals play a pivotal role in surfacing key issues facing companies that boards—the representatives of shareholders—may not be aware of, or may be trying to ignore or even conceal. Shareholder proposals have enabled investors to take actions benefitting the American public across a range of topics and industries, including on excessive drug pricing by pharmaceutical companies, improvements in online child safety by tech companies, greater board oversight of opioid manufacturers, distributors and pharmacies, enhanced attention to worker health and safety and greater accountability for the potentially toxic effects of corporate products on consumers and drinking water.

The SEC's no action process represents a structured, time-tested process to guide company decisions by allowing the SEC to indicate in advance whether it concurs with company decisions to eliminate proposals from the proxies. Without the no action process, companies would lack SEC guidance regarding decisions to eliminate proposals, and investors would only have recourse to file suit against companies that choose to block proposals in federal court, a lengthy and costly alternative for both parties.

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Environmental and social shareholder proposals address financially relevant investment risks.

Under SEC Rule 14a-8, shareholder proposals must address issues that are relevant to a company. Certain issues like climate change and human capital management, which also happen to be currently debated in the social and political arena, are nonetheless highly relevant to the financial future of many companies. A recent study by the National Bureau of Economic Research estimates that climate change costs the world 12% in gross domestic product losses for every 1°C of warming, and that the macroeconomic damages from climate change are six times larger than previously thought due to the impact of extreme weather.[1] Concerning human capital management, a growing body of research shows that the workforce is a critical source of competitive advantage and fundamental resilience for companies.[2]

Environmental and social shareholder proposals address financially relevant risks at companies and protect the American public by promoting accountability for corporate misconduct and egregious behavior.

Investors are the most knowledgeable parties to determine investment risk in the form of legal, regulatory, operational and ethical risks to a company's value. Informed investors filing shareholder proposals are often the first movers on addressing a range of risks relevant to their investments, long before such risks are addressed by government regulations. One of many examples of this are the shareholder proposals concerning predatory subprime lending long before the banking crisis of 2007-2008.

Issues relating to corporate governance, potential lawsuits, supply chain disruptions from extreme weather, regulation, higher labor costs from human capital mismangement and ethical scandals that could negatively impact an individual company's profitability or the larger economic system that all shareholder returns depend—issues far from being considered "picayune"—on have all been topics of shareholder proposals. All shareholders benefit from the increase in disclosures gained from shareholder proposals.

Many corporate governance policies that today are viewed widely as best practice were initially driven by the shareholder proposals of small individual "Main Street" investors—not large institutions—and then expanded to common adoption by markets.

Going back to the 1940's, a small, dedicated group of individual investors have played a leading role in the filing of governance-related shareholder proposals that received high levels of investor support and drove many reforms covering a range of governance topics. These reforms have enhanced capital markets by strengthening the ability of boards to oversee shareholder interests and by addressing power imbalances between investors and company boards and management, proof that many constructive ideas have come from smaller individual investors.

Raising ownership filing thresholds threatens the demonstrated positive impact of small investors on company governance and management.

Shareholders with a wide array of investment strategies and perspectives have the freedom and rights embodied in the shareholder proposal process to make recommendations to management, and to have those recommendations considered by fellow shareholders. *In recent years, conservative investors have increased the number of proposals that they have filed, including over 100 such proposals in the 2024 proxy season.*

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Shareholder proposals and the SEC's no action process are the most efficient and cost-effective means for companies to understand specific investor concerns.

The ability to file shareholder proposals has the benefit of efficiently focusing investor attention on a material risk to the company that could impact its reputation, value creation or longer-term competitiveness. Without the right to place proposals concerning specific topics of concern on the proxy statement, investors would only have the option to vote against certain directors or the entire board—a simple yay or nay with no specifics.

The SEC's no action process represents a structured, time-tested process to guide company decisions by allowing the SEC to indicate in advance whether it concurs with company decisions to eliminate proposals from the proxies. Without the no action process, companies would lack SEC guidance regarding decisions to eliminate proposals, and investors would only have recourse to file suit against companies that choose to block proposals in federal court, a lengthy and costly alternative for both parties.

Shareholder proposals address issues relevant to companies that are neither trivial nor "picayune." Risks of potential lawsuits against the company, operational disruptions from droughts, floods and fires, and of ethical scandals that shake consumer or investor confidence—these are typical issues in shareholder proposals and raise material concerns for investors.

Introduction: Shareholder proposals and the freedom to invest

Large, publicly traded companies play a dominant role in the U.S. economy: pharmaceutical companies influence the medicines available in our pharmacies and their cost, health insurers influence which treatments will be affordable to patients, and tech companies influence the degree to which consumers are subject to surveillance or privacy in their use of email and social media.

Shareholder proposals are one of the few opportunities that investors, including individual Americans saving for retirement or other needs, have to allow them to influence major policies at the companies that they own. Critics are working to take even this limited right away through actions such as:

- **Legislation passed by the House of Representatives in the 118th Congress giving companies sole discretion as to whether to exclude investor proposals from the proxy statement**
- **A lawsuit brought by Exxon against its own shareholders to stop them from proposing a climate vote at a shareholder meeting**
- **New staff interpretations of longstanding SEC regulation Rule 14a-8 making it harder for investors to ask for other investors to vote for proposals addressing material risks to the sustainable value of companies.**
- **A letter written by 18 state attorneys general insinuating that major asset managers and banks were violating fiduciary duties and other legal obligations simply by considering climate and other social issues when voting proxies on behalf of clients.**
- **A speech from an SEC Commissioner arguing for new rules that will disenfranchise smaller investors from accessing the shareholder proposal process.**

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The free market, and the relationship between investors and issuers, is grounded in investors' rights as company owners to elect directors as well as file shareholder proposals. The job of boards is to oversee the executives who are day-to-day managing the company. The rights to vote upon directors, as well as to present focused issues through shareholder proposals, are part of the bundle of rights investors possess and value as company owners. The unfettered exercise of these rights reinforces the relationship of trust needed for capitalism to thrive.

Shareholder proposals address issues relevant to companies that are neither trivial nor "picayune." Risks of potential lawsuits against the company, operational disruptions from droughts, floods and fires, and of ethical scandals that shake consumer or investor confidence—these are typical issues in shareholder proposals and raise material concerns for investors. This private ordering process can allow good ideas to proliferate in the market, advancing best practices and reducing the pressure for government regulation or for more confrontational or costly approaches by shareholders, such as voting against the board, or litigation.

Without the right to make proposals, corporate management can more easily ignore the voice of small shareholders, pension funds, and other investors.

The only cost associated with the shareholder proposal rule is for the company to publish a proposal limited to no more than 500 words in the proxy. All other costs related to the shareholder proposal process are at the discretion of management. Management's prudent attention and engagement to the important issues surfaced by proposals is more likely to be a net benefit to the company than a cost.

Shareholder proposals indicate to a company the material concerns of its investor base. Corporate disclosure and decision-making are driven by the concept of materiality. Information is 'material' "if there is a substantial likelihood that a reasonable investor would consider it important in deciding how to vote, or to buy or sell a stock, or would view it as significantly altering the 'total mix' of information made available."[3] The level of investor support demonstrates for the company, board and management what the "reasonable investor" would view as material information for disclosure and action.

Shareholders—as owners of a company—have a legal right to offer proposals to appear on the corporate proxy statement to be voted upon at a company's annual shareholders meeting.

Shareholder proposals are part of the social and legal compact between investors and companies that builds the trust needed for capitalism to thrive. They enable dialogue between shareholders and their companies to bring improvements in disclosure and risk management that all investors benefit from.

Without the right to make proposals, corporate management can more easily ignore the voice of small shareholders, pension funds, and other investors. Many corporate governance policies that today are viewed widely as best practice were initially driven by the shareholder proposals of smaller individual "Main Street" investors—not large institutionss— and then expanded to common adoption by markets, companies and investors.

In this report, we provide information on the origins of the shareholder proposal process as an investor right, its regulation and functioning, its role in corporate accountability, and the benefits to capital markets, companies and investors.

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What is a shareholder proposal?

Shareholders—as owners of a company—have a legal right to offer proposals to appear on the corporate proxy statement to be voted upon at a company's annual shareholders meeting. Corporations are required to hold these annual meetings in order for shareholders to vote on matters related to the corporation such as auditor ratification, election of directors, and executive compensation. The Securities and Exchange Commission (SEC) requires public companies to file an announcement ahead of the annual meeting including its items of business called the proxy statement.[4] SEC Rule 14a-8 allows shareholders to submit statements of up to 500 words ("shareholder proposals") to be included in the company's proxy statement.

The proxy statement is therefore the vehicle by which investors are informed of proposals by other investors. Without the ability to file shareholder proposals, investors seeking better disclosure on neglected issues could be forced to vote against directors or the entire board, which would be highly inefficient and costly to all concerned.

SEC Rule 14a-8 defines a shareholder proposal as a specific request from the shareholder - a "recommendation or requirement that the company and/or its board of directors take action, which you intend to present at a meeting of the company's shareholders." The SEC states that the proposal "should state as clearly as possible the course of action" that the shareholder believes the company should follow.[5]

Some shareholder proposals seek changes in governance infrastructure, for example, requesting that the CEO and the board chair be separate people to increase the independence of the board and its ability to oversee the company on behalf of shareholders. Or they might request a change in voting standards to allow proposals to be passed by a vote of a simple majority rather than a larger voting threshold of supermajority, thus creating a better balance of power between the company and its investors.

Other proposals may address environmental or social challenges facing the company—issues that may also be the subject of a wider social or political debate, but which nonetheless have a potential financial impact on the company or the larger economy on which returns depend.

For example, a proposal may request the disclosure of the company's assessment of its operations, policies and practices designed to mitigate environmental, regulatory or liability risks associated with its mining operations. In another instance, a proposal may request that a company report as to its timeline and plan for how it expects to transition to meet its stated objective of net zero greenhouse gas emissions. Or a proposal may request disclosure concerning the risk of supply chain disruption due to unrest in regions facing civil conflict, or the impact of increases in employment turnover costs from failure to pay a living wage. Some of these proposals might be described as "social or political proposals," but they must nonetheless be relevant to the company's business according to SEC rules and comply with more than a dozen strict SEC rules for acceptable proposals and filings.[6]

Most shareholder proposals are non-binding. Non-binding proposals give companies the flexibility to address shareholder concerns without displacing the traditional role of the board of directors to oversee the operations of the company.

Shareholder proposals are a crucial tool for investors to engage with their companies. Engagement covers a host of strategies investors use to obtain additional information and influence the policies and practices of their portfolio companies on governance and sustainable value creation.

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Some commentators have expressed the view that shareholder proposals place too high a cost on management. However, the process generates the benefit of allowing an efficient referendum on a single topic, thereby improving the company's understanding of all of its investors' views on a specific issue or concern. When viewed in light of this advantage, the shareholder proposal process is cost-effective for companies.

Who files shareholder proposals and why

An essential engagement tool

Shareholder proposals are a crucial tool for investors to engage with their companies. Engagement covers a host of strategies investors use to obtain additional information and influence the policies and practices of their portfolio companies on governance and sustainable value creation.

Multiple studies suggest shareholder engagement increases company returns. Studies have found engagement to deliver substantial benefits for investors by lowering downside risk exposures, with each $10,000 spent on engagement expected to increase firm value by approximately one-third of one basis point.[7] One study found that firms targeted for shareholder engagement on ESG issues outperformed their peers by 7.5% in the following year.[8] Studies have also found that shareholder proposals create long-term value by providing input on management decisions, holding corporate management accountable, and addressing governance considerations in public companies.[9]

Investor engagement typically begins with dialogue in the form of a letter or request to meet with the company concerning a specific topic or topics of material concern to the investors. If the company is unresponsive, a shareholder proposal may be filed by investors as a means of encouraging broader investor support by inviting votes by other shareholders. In many cases, with a proposal filed that would lead to a shareholder vote, the companies and proponents reach an agreement to address the concerns raised by the proposal in some manner to avert the need for the proposal to go to a vote. Companies often consider and implement investors' recommendations because they see the value in the proposals, demonstrating that the shareholder process is effective in facilitating changes that are beneficial both to the company and share value. Over the last 10 years, an average of 40% of the shareholder proposals filed with companies each year have been subsequently withdrawn after the company agreed to address the proponents' concerns.[10]

Shareholder proposals have helped investors make their companies more lucrative, resilient, and responsive to key governance, social and environmental challenges.

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Engagement is especially important for long-term, diversified investors, whose financial returns rely upon a healthy, resilient economy over the coming decades. Retirement savers and other investors—who are known as "universal owners" because they may own shares in the entire market (typically through broad market indexed investments)—are examples of these types of investors. These investors are exposed to broader economic risks that threaten the entire economy, such as the accelerating crisis in homeowners' insurance due to climate change,[11] or the systemic challenges in the healthcare system.[12] Engagement and shareholder proposals are an effective means of addressing these concerns by alerting directors and other shareholders that the pursuit of short-term gains that come at the expense of large swaths of the population may not be in the best interest of the average shareholder.

Normally, the engagement described in the preceding paragraphs requires minimal investor disclosure. However, on February 13, 2025, the SEC issued a new Compliance and Disclosure Interpretation, Question 103.12, which clarified that an individual or group of shareholders who hold in excess of 5% of a company's voting shares and who are conditioning favorable voting support for board members on addressing environmental, or social, or governance related shortcomings could trigger a requirement for complex 13D filing requirements rather than the shorter form 13G.[13] The additional filing requirements of 13D impose substantial additional costs in cases where a large shareholder is undertaking efforts with the purpose or effect of changing or influencing control of the issuer.

To the extent that an investor, asset manager or group of shareholders hold in excess of 5% of a company's voting shares and have identified environmental, social or governance shortcomings on which they seek to engage a company, the February 2025 13G guidance may have the result of encouraging these investors to use shareholder proposal voting or filing in their engagements. Since most shareholder proposals are framed as advisory requests, they do not attempt to alter control and could potentially communicate concerns to companies without the risk of triggering more onerous disclosure.

Since the 1940's, a small dedicated group of individual investors have played a leading role in driving many corporate governance reforms through shareholder proposals, made possible by regulatory ownership requirements reasonable for the smaller investor.

Proposals that win significant support elevate shareholder concerns issues facing companies that boards—the representatives of shareholders—may not be aware of, or may be trying to ignore or even conceal.

Governance proposals and the role of individual investors

Governance engagements seek to ensure that a well-functioning board can effectively oversee the interests of shareholders. For example, proposals to increase the independence of the audit or risk committee have the potential to reduce accounting fraud risk. Likewise, engagements to increase the holding period of equity-based pay reduce management incentives to manipulate short-term earnings.

Governance shareholder proposals can also increase investors' ability to engage with companies. It has been shown that it is more costly for investors to engage with companies with entrenched managers.[14] The entrenchment of management is principally measured and affected by the corporate governance infrastructure including whether the company has characteristics such as:

- Staggered boards
- Limits to shareholder by-law amendments

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- Supermajority requirements for mergers
- Supermajority requirements for charter amendments
- Poison pills
- Golden parachutes[15]

Shareholder proposals that improve corporate governance structures on these aspects are frequently part of an overall strategy by investors to provide a better balance of power between investors and a company's management and board.[16]

Since the 1940s, a small, dedicated group of individual investors including John[17] and Lewis[18] Gilbert, Wilma Soss,[19] Evelyn Davis,[20] William[21] and Kenneth[22] Steiner, Emil Rossi,[23] John Chevedden[24] and James McRitchie[25] have played a leading role in the filing of governance-related shareholder proposals that have received high levels of investor support and driven many reforms covering a range of governance topics, including eliminating staggered director terms, reducing supermajority voting thresholds, requiring an independent board chair, eliminating dual class voting, requiring shareholder approval of bylaw amendments, requiring majority voting in uncontested director elections, and proxy access for shareholder director candidates.[26] The governance-related proposals of individual investors attracted, on average, 47.8% shareholder support between 2005 and 2018, and accounted for a large portion of the passed proposals, an indication that these proposals were receiving widespread support from larger investors.[27] Many of these issues were also adopted by major investors in their proxy voting guidelines and corporate engagements, by market exchanges, and by companies—compelling evidence that constructive ideas have come from these smaller individual investors.

Some examples of corporate governance policies that today are viewed widely as best practice and that were initially driven by shareholder proposals and then expanded to common adoption by companies and markets, include:

- **Independent Directors and Board Recruitment:** Shareholder proposals have encouraged norms such as independent directors constituting a majority of the board, independent board leadership, transparency of board recruitment and qualifications, and annual elections for all directors. For example, in 2013, shareholders submitted approximately 70 proposals requesting the adoption of a policy requiring that the company's board chair be an independent director.[28]
- **Electing Directors by Majority Vote:** Shareholder proposals have encouraged electing directors by majority vote, rather than by plurality—a radical idea a decade ago when shareholders pressed for it in proposals, and now the norm at 90% of large-cap U.S. companies.[29] In 2011, Apple was one of 58 companies the California Public Employees Retirement System urged to adopt majority rather than plurality voting, which more evenly balances power between the company and its investors.[30] The proposal had majority support from shareholders at Apple and many other companies.[31]
- **"Say-on-pay" vote requirements:** now mandated by the Dodd-Frank Act—also resulted from shareholder proposals. The Say-on-Pay vote asks investors to vote on the compensation of the top executives of the company—the CEO, the Chief Financial Officer, and at least three other most highly compensated executives ("named executive officers").[32]

In a recent report analyzing shareholder proposal voting trends over the last decade, proxy advisor ISS notes: "Investors show little to no interest in proposals that advocate a political viewpoint without demonstrable economic relevance".

A proposal that just asks a company to take a purely political position would be rejected by the SEC under the ordinary business rule.

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Evidence of sustainable value raised in environmental and social proposals

Shareholder proposals frequently address risks due to environmental issues that can be highly costly to companies and their investors when they ultimately materialize in the near- or long-term. Consider that the shareholder value of BP plummeted by 55% after the explosion of the Deepwater Horizon oil rig, from $59.48 per share on April 19, 2010 to $27 per share on June 25, 2010.[33] Climate change-induced changes in severe weather such as drought and flooding, as well as regulatory responses and constraints in various markets worldwide, has been documented to threaten substantial financial risks to the banking,[34] mining,[35] industrials,[36] transportation,[37] agriculture[38] and real estate sectors.[39] Bringing greater transparency to the management of such risks has been the subject of shareholder proposals in these sectors.

Corporations also face risk related to social issues such as disruption of the business or supply chains due to human rights abuses[40] workforce health and safety scandals,[41] or failures to protect the online safety of children.[42] The growth in environmental and social shareholder proposals over the last several years also reflects concern that certain issues threaten the economy as a whole and large swathes of investment portfolios.

Informed investors are often early movers on addressing risks that ultimately prove to be quite material, and even existential, to their investments. As an example, proposals filed by members of the Interfaith Center on Corporate Responsibility ICCR) against predatory lending in the early 2000s at AIG and other companies.[43] At the time, these proposals might have been characterized as *merely addressing social risks* yet they foreshadowed the banking crisis driven by such predatory practices that proved to be very expensive for AIG and the other companies, and for society in the housing crisis and bank bailouts that followed.[44]

Shareholder proposals also mirror public sentiment. A recent study of companies in the Russell 3000 Index found that negative public sentiment about a firm on both financial and broad sustainable investing aspects are significantly related to the number of shareholder-sponsored proposals, with the impact of news sources being slightly stronger than social media in affecting the number of shareholder proposals. The study also found a strong association between the number of shareholder proposals on the ballot and director turnover and forced turnover of CEOs at the firm, finding one additional shareholder proposal is associated with a 10.9% increase in director turnover and a 24.8% increase in forced CEO turnover, both to the mean. The study not only found association between these factors; it also was able to demonstrate causal evidence that negative sentiment around corporate practices that are not sustainable leads to increased shareholder dissent.[45]

Barriers to proposal filing

Among other requirements, the right to file a shareholder proposal under Rule 14a-8 is conditioned on the investor having a number of shares held continuously for a sufficient amount of time. In 2020, the SEC established the current tiered approach for filers. Shareholders who held $2,000 worth of shares for at least three years are permitted to file proposals, but larger holdings are required for those with a shorter duration of holding of the shares - $25,000 for three years and $15,000 for two years. The theory regarding these duration requirements is that the shareholders who have held the shares for three years are likely to continue to retain the shares and therefore bear the benefits or burdens of the proposal as a fellow long-

Shareholders cannot simply make any proposal they want. They must meet a number of hurdles to ensure that the proposal is relevant to the company and to other shareholders.

Policies regarding the amount of compensation paid to employees are generally ordinary business, but proposals that challenge excessive compensation of the CEO or of directors are appropriate. A pharmaceutical company's prices for its products are ordinary business, but company policies exploiting a pandemic to exploit vulnerable consumers may be seen to transcend ordinary business.

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term shareholder.[46] Nonetheless, these requirements must also be set to ensure that smaller individual investors—not only large institutions—have the ability to file proposals, especially given the role that smaller retail investors have played in initiating important governance changes that large institutional investors overwhelmingly support at annual meetings.

The ownership threshold is only one of several barriers to the filing of shareholder proposals. A number of other requirements make it more costly and time-consuming for a proponent to file a proposal. These include carefully framing the proposal's request so that it does not micromanage the company, is not improper under state law or other federal laws, is not focused on a personal grievance, nor substantially implemented by the company. All told, the requirements for paperwork and proposal drafting present a very significant and time-consuming hurdle. It means that there is a high barrier, especially for new filers.

Ordinary business

A basic principle of SEC Rule 14a-8 is that a proposal should not supplant or attempt to control the day-to-day decision-making of the corporation, referred to as "ordinary business." The company's officers are hired to manage the company under the oversight of the board of directors. The board is accountable as an elected representative of the shareholders. As such, the management and board have important day to day discretion in running the company—who to hire, how much to pay them, what kind of products or services the corporation should offer and many other ordinary business matters that it takes to run a business.

While a focus on ordinary business is not appropriate for a shareholder proposal, the courts and the SEC have made a notable exception when shareholder proposals address important policy issues for a company on *which it is appropriate for shareholders to weigh in*, often referred to as the "social policy" exception. Such proposals are described as *transcending* ordinary business.

For instance, while the day-to-day lending practices of a bank are ordinary business, when there is evidence that the bank is engaging in predatory policies and practices, shareholders are able to file a proposal asking the company to disclose more about this issue and its current policies. Similarly, policies regarding the amount of compensation paid to employees are generally ordinary business, but proposals coming from shareholders that challenge excessive compensation of the CEO or of directors are appropriate. A pharmaceutical company's prices for its products are ordinary business, but company policies exploiting a pandemic to exploit vulnerable consumers may be seen to transcend ordinary business. Day to day legal compliance on environmental regulations is ordinary business, but significant pollution incidents or catastrophes that a company may be liable for may be an appropriate topic for a shareholder proposal because it transcends ordinary business.

An important related limitation is for proposals not to *micromanage*. Even if the topic transcends ordinary business, proponents must not be so *granular in their request* to the company that they attempt to micromanage the business. The discretion of the board and management is protected in this process. That is why many proposals often ask the board or management to disclose more about their policies and practices, and proposals seeking action are typically advisory rather than a mandatory order.

Specialization to meet barriers to proposal filing

As a result of the substantial technical barriers to entry for proposals and proponents, the proposal rules have led to specialization of some investors and advisors with the expertise and capacity to file proposals successfully. On average, roughly 10 entities lead more than half of the

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proposals filed in a proxy season. The top 10 filers during 2024 included individuals, faith-based and socially responsible asset managers, unions, two large public pension funds and a service provider enabling foundations to participate in engagement and the filing of shareholder proposals.[47] These filers represent far more than 10 investing institutions or individuals—they represent a range of beneficiaries and investors for whom the shareholder proposal process is a significant tool.

Using their experience of filing proposals year after year, these entities and individuals hone an expertise developing proposals that can navigate the challenges associated with compliance with SEC Rule 14a-8. This expertise benefits both companies and investors by limiting the number of excludable proposals that are filed, saving considerable time that would be spent crafting and addressing proposals that ultimately would not be included on the ballot. This streamlining allows shareholders to focus on using their vote to indicate which proposals they believe raise important issues that should be addressed by management.

Whether or not a proposal receives majority support, when a significant number of shareholders signifies through their vote that the company needs to bring additional attention to an issue, the shareholder proposal process can be an important prompt to productive action by the company. For instance, research by Morningstar shows that in 2024, 19.5% of the environmental and social proposals voted on in 2024 (excluding anti-ESG proposals) received 30% or more support from independent shareholders. 31.8% of environmental and social proposals voted on in 2024 (excluding anti-ESG proposals) received 20% or more support, according to data from the Sustainable Investments Institute.

A letter from Attorneys General from 16 states and the District of Columbia noted that State or federal laws that interfere with the ability to assess ESG may, in fact, interfere with financial institutions' ability to make sound investment decisions on behalf of hard-working Americans.

Fiduciary duty and shareholder proposals

The concept of fiduciary duty is pivotal to many investors' and investment institutions' decisions regarding filing or voting upon shareholder proposals. Fiduciary duties include a duty of care, loyalty, good faith, confidentiality, prudence, and disclosure. As an example, registered investment advisors (RIAs) have a fiduciary duty to act in the best interests of their clients when providing financial advice and financial planning.[48] In certain instances, following the advice of clients, the RIA may find it necessary to engage with particular companies, to vote proxies consistent with client interests and preferences, and in some instances, to file proposals.

Also relevant to the shareholder proposal process is the monitoring of the fiduciary responsibilities of corporate directors. Directors have a duty to manage corporate assets in the best interest of the corporation and shareholders.[49] Often, shareholder proposals seek to clarify the extent of board oversight of a consequential issue for the company.

As another example, the 1974 Employee Retirement Income Security Act (ERISA), which covers corporate and union pension plans but also serves as a guidepost for the practices of state and local pension plans, requires, among other things, that fund fiduciaries act solely in the interests of plan participants and beneficiaries (duty of loyalty) and that a fiduciary act with the care, skill, and diligence of a prudent man under similar circumstances (duty of prudence).[50]

Currently, a range of opinions has emerged regarding the incorporation of ESG factors by fiduciaries. The organization PRI (Principles of Responsible Investment) states that "empirical and academic evidence demonstrates that incorporating ESG issues is a source of investment

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value" and that consideration of "ESG factors is consistent with legal responsibilities to evaluate potential risk and reward in assessing the merits of an investment." Further, PRI states that a fiduciary's duty of loyalty and prudence often necessitate the incorporation of environmental, social and governance issues into investment analysis and decision-making processes, consistent with their investment time horizons.[51] Similarly, a letter from Attorneys General from 16 states and the District of Columbia noted that State or federal laws that interfere with the ability to assess ESG may, in fact, interfere with financial institutions' ability to make sound investment decisions on behalf of hard-working American pension beneficiaries.[52]

Some state laws require state entities to consider environmental, social, and governance factors in investing and contracting decisions. They may also lead the state pension funds to demand that portfolio companies disclose climate-related metrics and risks, and/or disclosures that report diversity metrics. Some laws prohibit state entities from making new investments in certain industries that are considered to have high ESG risk factors and require divestment from existing investments in such industries.[53]

In contrast, other state laws go in the opposite direction and seek to prohibit the consideration of environmental, social and governance factors by public pension funds, state and local authorities, and their investment managers; prohibit public entities from disqualifying applicants from a public contract, based on ESG factors; restrict the ability of public entities to do business with companies that are thought to "boycott" or "discriminate" against certain industries that are considered to have high ESG risk factors (e.g., fossil fuel or firearms); or prohibit public entities from considering ESG scores during business and contracting decisions.[54]

Shareholder proposals protect against the risk of corporate mismanagement by promoting accountability for management misconduct and egregious behavior that harms the American public and jeopardizes a company's reputation or finances.

Interpreting voting results

The votes on individual proposals by all shareholders are useful guidance to companies in expressing the perspectives of investors.[55]

The fact that some large institutional investors or asset managers do not support a particular shareholder proposal may significantly affect whether a proposal attains a majority vote, but it should not be interpreted as necessarily implying that the underlying issue is unimportant to investors. For example, the largest asset managers have exceptional access to company engagement,[56] but these engagements are not transparent. These asset managers may be engaging with companies on the very topics in a proposal and receiving assurances that management plans to address the requests in the proposal, so they decide not to vote in favor. As stated by asset manager T. Rowe Price, "We believe that the reputation of T. Rowe Price affords us excellent access to the leaders of the companies in which we invest. Where appropriate, we use that access to address matters of concern in the oversight of environmental risks or social matters. In many cases, this obviates the need to support shareholder resolutions in these areas."[57]

Whether or not they receive a majority vote, shareholder proposals are an essential vehicle to allow substantial groups of investors to voice concerns on issues they view as important. Voting outcomes demonstrate a practical assessment of whether a significant number of the company's own shareholders view an issue as significant and therefore are an important tool for informing the corporation's materiality decision-making.

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How shareholder proposals promote corporate accountability

Shareholder proposals are a tool for investors to flag egregious mismanagement or misconduct that harms the American public and jeopardizes the company's reputation or finances. Sometimes these excesses allow companies to benefit in the short-term, but at the expense of long-term returns. A shareholder proposal can communicate investors' interest in preserving investment value both at the individual company and, for certain retirement savers, at the level of the national economy, which is critical to their typically diversified portfolios.

Child online safety

Social media companies have been linked to numerous child safety problems including a mental health crisis for young people, age verification failures, cyberbullying, self-harm and child sexual exploitation, and grooming and trafficking. Since 2016, a group of now more than 60 investors from multiple countries have engaged with tech companies concerning child online safety, collaborating with online safety experts, law enforcement, and policy makers such as the Senate Judiciary committee to prompt tech companies to remove harmful content and implement stronger protections. Shareholder proposals during 2022 and 2023 at Apple, Alphabet and Meta Platforms (Facebook) played a significant role in this investor engagement to improve child safety online.[58]

Drug Pricing

Polling has found that nearly 30% of Americans say they haven't taken their medication as prescribed due to high drug prices and research estimates that more than 1.1 million Medicare patients alone could die over the next decade because they cannot afford to pay for their prescribed medications.[59]

For decades, members of the Interfaith Center on Corporate Responsibility (ICCR) have pressed drug companies for greater disclosures on pricing structures as a way to promote greater access to medicines, including asking companies to disclose the rates of year-to-year price increases of their top-selling branded prescription drugs and to disclose the rationale and criteria used for these price increases.[60] Excessive drug company executive pay packages are a major contributing factor to prescription drug costs.[61] Since the 1990s, shareholders have used shareholder proposals to urge companies such as Warner-Lambert, Eli Lilly, Bristol-Myers Squibb and Celgene Corporation selling high-priced pharmaceuticals to reduce executive compensation and take other actions to bring prices down to benefit consumers and prevent excessively high prices.[62] Investors have also expressed concern about pharmaceutical companies' governance structures and their boards' ability to proactively mitigate risk related to high drug prices, such as the risks from unsustainable business models that rely on price increases for growth, or strategies to extend patents without any meaningful new science.[63]

Patent practices of pharmaceutical companies are also a corporate tool to artificially maintain high drug prices at the expense of consumers.[64] In 2022, a shareholder proposal filed at Gilead Sciences asked for an evaluation of how the company's patenting policies that extend exclusive

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rights and prevent generic competitors impact patient access and cause higher consumer drug prices. The proposal earned 39.6% voting support from investors. Similar proposals were also filed at nine other pharmaceutical companies, including proposals at Bristol Myers Squibb and Amgen that were withdrawn due to productive dialogue, and proposals that were voted on and received significant investor support at Pfizer (30.2% vote FOR) and at AbbVie (29.5% vote FOR).[65]

Subprime lending

Prior to the banking crisis of 2007-2008, shareholders of banks had attempted to elevate attention to the risks of predatory lending through shareholder proposals. Predatory lending in the subprime market was of growing concern to some investors as it became clear that borrowers were unable to repay these loans and were losing their homes.[66] In 2004, shareholders submitted a proposal at American International Group (AIG) requesting that the Board conduct a review to study ways of linking executive compensation to successfully addressing predatory lending practices.[67] Although the proposal only received 2.8% voting support,[68] it is a remarkable example of the prescience of shareholders as to material risks to their companies. In 2007, AIG was the world's largest insurance company with some $850 billion in assets and 76 million customers worldwide (30 million in the US alone).[69] By September 2008, it was on the brink of collapse. Over the course of the financial crisis, AIG received a total of $182 billion in government bailout funds.[70]

COVID Vaccines

During the COVID pandemic, pharmaceutical companies received tens of billions of US and global public funding to accelerate medical breakthroughs to respond to the pandemic. Amid press reports of "pandemic profiteering", shareholders called for financial prudence and a commitment to the public good.

Investor members of ICCR were part of a group of 59 investors representing US$2.5 trillion in assets under management who sent letters to 17 pharmaceutical companies strongly urging financial prudence and a commitment to strategies to ensure widespread access to treatments and vaccines for COVID-19, including affordable pricing and the sharing of technology to scale-up manufacturing. The letters urged the companies to show restraint in terms of pricing, tax avoidance, stock option awards, etc., and to demonstrate a willingness to share their intellectual property to ensure the necessary scale-up, manufacturing and mass distribution at prices low enough to ensure equitable access.[71]

Excessive drug company executive pay packages are a major contributing factor to prescription drug costs.[72] Since the 1990s, shareholders have used shareholder proposals to urge companies such as Warner-Lambert, Eli Lilly, Bristol-Myers Squibb and Celgene Corporation selling high-priced pharmaceuticals to reduce executive compensation and take other actions to bring prices down to benefit consumers and prevent price gouging.[73]

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Artificial Intelligence

Labor strikes in the entertainment industry in 2023 demonstrated that intellectual property infringement by artificial intelligence (AI) can have a material financial impact on a company's operations. The growing public distrust in the indiscriminate use of AI and increased government regulation were also deemed to pose material financial and reputational risks to tech and media companies. Shareholder proposals during the 2024 proxy season filed at Netflix and Apple requesting greater clarity on the use of AI and its board oversight, and the ethical principles guiding AI use, received 43% and 37.5% of shareowner votes, respectively, thus indicating widespread investor concern on the issue.[74]

Investors have also focused on the financial and legal risks of ineffective content moderation at large social media platforms as serious threats to society. With Meta and Alphabet now deploying Generative Artificial Intelligence (gAI) tools, investors were concerned that critical human rights and democratic processes could be further compromised. Proposals filed on managing gAI-related risks received 16.7% of votes from all shares at Meta (53.6% of non-insider votes) and 17.6% support at Alphabet (82.4% of independent investor votes).[75]

Patent practices of pharmaceutical companies are also a corporate tool to artificially maintain high drug prices at the expense of consumers.[76] In 2022, a shareholder proposal filed at Gilead Sciences asked for an evaluation of how the company's patenting policies that extend exclusive rights and prevent generic competitors impact patient access and cause higher consumer drug prices.

Opioids crisis

According to the CDC, opioids were involved in nearly 75,000 overdose deaths in 2023,[77] a crisis that continues to ravage communities across the country. The sale and distribution of opioid medications carries significant legal and reputational risks for companies with long-term and systemic societal and economic impacts.

The Investors for Opioid and Pharmaceutical Accountability (IOPA) was a diverse coalition of global institutional investors with 67 members representing over $4.2T in AUM that was established from 2017-2023 to engage opioid manufacturers, distributors and retail pharmacies. IOPA members filed more than a hundred shareholder proposals and took on the most important governance reforms within major pharmaceutical companies to better manage societal and enterprise risks. Central to the IOPA's strategy was to involve the board in opioid risk management by asking independent directors to investigate and report on how the board is assessing and managing legal, financial and reputational risks related to its opioid business. Fourteen of these companies agreed to conduct board-level risk assessments of opioid-related business practices including governance, compliance, compensation, and political lobbying, and to report these findings publicly. Two companies created a board-level committee dedicated to opioid oversight.[78]

Rail safety

Shareholder engagement on railroad safety has been an important force in pushing rail transport corporations to prioritize long-term risk management and community well-being. Following the financial and human costs of disasters like the East Palestine derailment to the local community and

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surrounding states,[79] the rail industry was resistant to safety measures, blocking regulations such as two-person crew requirements.[80] In response, in 2024, investors filed shareholder proposals at major rail companies such as CSX[81] and Union Pacific[82] aimed at creating safety-focused board oversight of reforms to prevent derailments, protect workers, and safeguard communities. This underscores the importance of shareholder advocacy to hold companies accountable for ethical behavior, address material financial and reputational risks, and preserve shareholder value.

Workplace health and safety

Amazon has been in the news concerning its unsafe working conditions, including rates of safety incidents far above those of its competitors such as Walmart and Costco.[83] State labor regulators have alleged working at Amazon exposes employees to increased risk of ergonomic injury and musculoskeletal disorders as they awkwardly bend and twist to move goods through the warehouse.[84] According to a December 2024 report of the Senate Committee on Health, Education, Labor, and Pensions, at least two internal Amazon studies found a link between how quickly its warehouse workers perform tasks and workplace injuries, but the company rejected many safety recommendations out of concern the proposed changes might reduce productivity.[85] Shareholder resolutions at Amazon in 2022[86], 2023[87] and 2024[88] focused on this potentially harmful conduct, asking the company to report on worker health and safety and the treatment of its warehouse workers.

Toxic products

Johnson & Johnson knew its baby powder contained asbestos, an undisputed carcinogen, at least as early as the 1970s,[89] yet allegedly misled consumers into believing its talc products, which it sold for more than a century before stopping, were safe. The misconduct led to a class action lawsuit, tens of thousands of individual lawsuits and an investigation by 42 US states and Washington, D.C. into its marketing of baby powder and other talc-based products.[90] Some of the lawsuits included accusations that Johnson & Johnson marketed baby powder to Black and overweight women despite knowing about possible asbestos contamination for decades.[91] While the company stopped the sale of baby powder products in the United States and Canada in 2020, the product was still on the market for many consumers worldwide by 2022, when investors filed a shareholder proposal asking the company to report on the public health risks from continued worldwide sales of its talc products.[92]

Toxic chemicals in water

Poly and perfluoroalkyl substances (PFOA and PFAS) are a class of chemicals that has been under scrutiny and has been linked to hormone disruptions, liver and kidney disease, and cancer in addition to other human health harms.[93] In 2023, Mount Sinai researchers concluded that higher blood concentrations of certain PFAS were associated with a significant reduction in the likelihood of pregnancy and live births. Other studies have shown that certain PFAS can disrupt reproductive hormones and delay puberty and have been linked with increased risks for polycystic ovary syndrome and endometriosis.[94]

In 2023, Sisters of St. Francis of Philadelphia filed a proposal at Essential Utilities, requesting that the company report on PFAS levels at all Essential water sources along with the potential public health and/or environmental impacts of toxic materials in the water it provides to the public. The proponents withdrew the proposal after the company agreed to make public test results for its wells and water systems and to report the results to its one million customers.[95]

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Appendix: Shareholder proposal regulation

Origins

During the United States' first century, corporations had small numbers of investors and were largely controlled by shareholders through deliberations and voting that took place at in-person shareholder meetings. As the US economy grew, and corporations had to bring in large amounts of capital from thousands of investors, shareholder meetings went from in-person affairs to being conducted by proxy, and management solicited blanket voting authority based on little or no information. Ownership and control were largely divorced, and corporate abuse of the proxy, which frustrated the free exercise of the voting rights of stockholders, was rampant. Section 14 of the Securities Exchange Act of 1934 addressed this concern by authorizing the SEC to regulate proxy solicitation.[96]

The SEC adopted the predecessor to SEC Rule 14a-8 in 1942, recognizing that shareholders need notice of proposals to be made by fellow shareholders.[97] One court explained that, "the rationale underlying this development was the Commission's belief that the corporate practice of circulating proxy materials which failed to make reference to the fact that a shareholder intended to present a proposal at the annual meeting rendered the solicitation inherently misleading."[98] SEC Staff reiterated this purpose, explaining that "[t]he Senate Banking and Currency Committee recognized the need to provide not only for disclosure of matters management planned to present, but also for shareholders to be given 'reasonable opportunity to present their own proposals and views to fellow security holders."[99]

Thus, SEC Rule 14a-8 advances the overall Securities Exchange Act's goal of shareholder democracy—a central purpose of the 1934 Act in reaction to weakening shareholder control and increasingly concentration of corporate power in professional managers. Shareholder democracy stands for the principle that in return for access to the securities exchanges, the law provides that corporations would incur a corresponding duty to provide shareholders with fair suffrage. Referring to 14a-8, one recent decision noted that "[t]he Commission enshrined this edict in its regulations, believing that "fair corporate suffrage" required that all shareholders receive notice of such matters when their proxies are solicited."[100]

SEC Rule 14a-8

SEC Rule 14a-8 provides a framework for allowing a public company shareholder to request that a proposal be included in the company's proxy statement, to be voted upon by all shareholders at a company's shareholder meeting. Shareholders cannot simply make any proposal they want. They must meet several hurdles to ensure that the proposal is relevant to the company and to other shareholders, and that the proposal is meaningful and is not outside the scope of normal shareholder interest (i.e. "ordinary business"). These limits protect the rule from abuse so that shareholders are able to vote on meaningful proposals.

These rules, developed over more than half a century, allow the company to exclude proposals on one of thirteen different bases: improper under state law, violation of law, violation of proxy rules, personal grievance/special interest, economic relevance, absence of power/authority, ordinary business, director elections, conflict with company's proposal, substantial implementation, duplication, resubmissions, and specific amount of dividends.[101]

The table on the next page sets for the thirteen bases which companies may rely on in excluding proposals from the proxy statement under Rule 14a-8.

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Issue	Language of the Rule and the SEC
Specificity *Assessing whether the proposal requests specific action from the company*	14a-8(a): The proposal "should state as clearly as possible the course of action you believe the company should follow" 14a-8(i)(3) with 14a-9: Excludes a proposal that is misleading as vague or indefinite
Violation of Law *Assessing whether the proposal would cause a violation of law by the company*	14a-8(i)(2): Excludes a proposal if it would, if implemented, cause the company to violate any state, federal or foreign law to which it is subject
Violation of Proxy Rules *Assessing whether the proposal is contrary to SEC proxy rules*	14a-8(i)(3): Excludes a proposal if the proposal or its supporting statement is contrary to any SEC proxy rules, including the rule which prohibits materially false or misleading statements in proxy soliciting materials
Personal Grievance or Special Interest *Assessing whether the proposal relates to edress of a personal grievance or to an interest not shared by other shareholders*	14a-8(i)(4): Excludes a proposal if it relates to the redress of a personal claim or grievance against the company or any person, or if it is designed to benefit the proponent or further a personal interest not shared by other shareholders
Relevance *Assessing the significance of the proposal to the company*	14a-8(i)(5): Excludes a proposal if it is not economically relevant (at least 5% of net earnings and gross sales) or not otherwise significantly related to the company's business
Absence of Power/Authority *Assessing the company's power or authority to implement the proposal*	14a-8(i)(6): Excludes a proposal if the company would lack the power or authority to implement the proposal
Management Functions *Assessing the relationship of the proposal to a company's day-to-day activities*	14a-8(i)(7): Excludes a proposal dealing with a matter relating to the company's ordinary business operations
Director Elections *Assessing the proposal's impact on director elections*	14a-8(i)(8): Excludes a proposal if it would interfere with a director's or nominee's ability to stand for or continue board service, questions the competence, business judgment or character of a nominee or director, seeks to include a specific person in the proxy statement for board election, or otherwise impact the outcome of the upcoming director elections.
Conflict *Assessing whether the proposal conflicts with a company proposal*	14a-8(i)(9): Excludes a proposal if it directly conflicts with a company's proposal at the same meeting
Implementation *Assessing existing company activities against the proposal*	14a-8(i)(10): Excludes a proposal if it is substantially implemented by existing company actions
Duplication *Assessing similarity to proposals already received by the company*	14a-8 (i)(11): Excludes a proposal if it duplicates a proposal submitted by the company or another proponent
Resubmission *Assessing the objective of the proposal against similar proposals from prior years*	14a-8(i)(12): Excludes a proposal addressing substantially the same subject matter as a proposal previously included in the proxy during the last 5 years if during the previous 3 years the proposal failed to receive at least 5% support if voted on once, 15% support if voted on twice, or 25% support if voted on 3 times
Dividends *Assessing whether the proposal relates to dividends*	14a-8(i)(13): Excludes a proposal if it relates to specific amounts of cash or stock dividends
Holdings *Assessing the amount and period of shareholdings against required minimums*	14a-8(b): Excludes a proposal if the proponent has not held a market value of votable shares of at least $25,000 for 1 year, $15,000 for 2 years or $2,000 for 3 years

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The no action process

In order to help companies decide whether a proposal passes these tests, the SEC has developed a process to allow companies to ask the SEC in advance whether a proposal must be included in the meeting materials. The "no action" process is an informal review process through which the SEC staff advises companies and their investors on whether the SEC staff would likely recommend enforcement action if a company fails to include a submitted shareholder proposal on its annual proxy statement. The staff grants the company's request if it finds some basis to agree with the company's arguments that the proposal is excludable under one of the elements of SEC Rule 14a-8. It denies the request if it is unable to concur with the company's arguments.

SEC Rule 14a8 is intended to exclude trivial, irrelevant and inappropriate shareholder proposals, thus minimizing the burden on companies. The no action process is a structured, time-tested process that adds an additional layer of objective scrutiny to company decisions regarding whether to include or exclude proposals, which serves to protect investors' interests. If an investor disagrees with the no action decision by the SEC, the investor can submit a letter in opposition, but it does not have legal recourse against the SEC. Without Rule 14a-8 and the no action process, an investor only has the option to sue the company under federal law if it disagrees with a company's decision to not place a proposal on the proxy, which would add delays, and significant costs for both parties.

The SEC staff periodically recalibrates its interpretation of the rules of the no action process to reflect current issues of concern to investors and companies. For example, in 2021, the SEC staff issued an interpretive bulletin, Staff Legal Bulletin 14L, which clarified ordinary business and micromanagement rules in a manner that allowed some environmental and social proposals to reach the proxy which might not have qualified in a prior interpretation. Following market response and criticisms, the staff once again tightened up its interpretations of micromanagement and excluded many proposals on social and environmental issues that had previously been allowed. From November 1, 2023 to May 1, 2024 the SEC staff supported company requests for exclusion of proposals roughly 68% of the time, similar to the average exclusion rate during the first Trump administration, from 2017-2020, which was 69%.[102] In the 2025 proxy season to date, the staff has again tightened its interpretation of the micromanagement rule, excluding, for example, proposals on lobbying disclosure that had previously been permissible since at least 2011.[103]

On February 12, 2025, the SEC staff also signified that it is taking a more restrictive posture on proposals that request specific forms of disclosure or actions by companies. SLB 14M issued on that day revoked SLB 14L and altered staff interpretations of the micromanagement, ordinary business and relevance exclusions.[104] The new interpretation is anticipated to lead to an increase in the exclusion of environmental and social proposals, and fewer such proposals appearing on proxy statements.

Of particular note in SLB 14M is a shift in interpretation of micromanagement from SLB 14L's focus on the interest and capacities of shareholders to understand and vote on an advisory proposal on the issue, and toward an evaluation as to whether the proposal seeks a specific method, strategy or outcome that the staff views as more appropriately determined by the board or management. In addition, SLB 14M applies to all proposals currently in the no action process (i.e., retroactively), which some shareholders have objected to.[105]

Significant judicial developments

Exxon

In January 2024, Exxon sued two investors who filed a shareholder proposal for the 2024 annual meeting asking the company to go beyond current plans to further accelerate the pace of emission reductions in the medium-term for its greenhouse gas emissions across Scope 1, 2, and 3, and to summarize new plans, targets, and timetables. The suit was ultimately dismissed by the US District Court in Fort Worth Texas as moot after the proponents agreed to withdraw and not re-file the proposal.[106]

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Exxon asserted in the lawsuit that the proponents' efforts to encourage the company to transform itself into a clean energy company violated the resubmission and ordinary business rules. Until the Exxon lawsuit, the focus of lawyers and clients under Rule 14a-8 has been principally ensuring that a proposal would comply with current SEC interpretations of the 14a-8 exclusions. In the event of a difference of opinion between investors and issuers, the routine course of action is for the company to file a no action request with the SEC staff, with resolution of the disagreement by SEC staff. Filing a lawsuit against its own shareholders and seeking resolution of the issue in a court that is less familiar with the rules was a dramatic and harsh deviation from routine practice, though it was within the company's rights to do so.

Exxon's CEO, Darren Woods, also asserted that the proposals filed by the proponents represented inappropriate use of the shareholder proposal process as out of line with what "real" investors in the company would seek.[107] Yet according to a 2024 survey conducted by FT Longitude of investment firm chief investment officers worldwide, including in the US[108], less than one percent of respondents believe that oil exploration and production will offer the best returns over the next 10 years. Instead, a full 62% of the investors currently believe that the best returns over the next 10 years will come from renewables including wind and solar. The vast majority of the respondents believe that their institution will have stopped investing in oil exploration and production by 2035. Based on this survey, it is reasonable to expect that Exxon's shareholders may believe oil and gas development is at risk due to the economic transition required by climate change and that their investee companies will need to shift their business models to survive.

Kroger

In May 2023, the National Association of Manufacturers (NAM) successfully filed a motion with the US Court of Appeals in the Fifth District to intervene in a case brought by the National Center for Public Policy Research (NCPPR) against the SEC, challenging a shareholder resolution no action determination The no action determination involved a shareholder proposal filed by NCPRR with The Kroger Co. regarding the omission of consideration of "viewpoint" and "ideology" from its equal employment opportunity policy. Kroger sought to exclude the proposal as "ordinary business" under Rule 14a-8(i)(7). The NAM motion opened a broader challenge to the SEC's authority to provide guidance regarding whether shareholder resolutions could be allowed on a company's proxy for a vote, claiming that this process violates principles of corporate First Amendment rights enshrined in the Citizens United ruling. NAM pursued the case even as Kroger, the target of the NCPPR resolution, mooted the case by allowing the resolution on the proxy. A three-judge panel of the Fifth Circuit dismissed the case for lack of jurisdiction.[109] As of this publication, an appeal is pending.

Significant legislative developments

House

On September 18, 2024, the US House of Representatives passed H.R. 4790, the *Prioritizing Economic Growth Over Woke Policies Act*.[110] The legislation is an umbrella bill incorporating a number of other bills that, among other things, significantly increase the ability of companies to exclude shareholder proposals from the proxy statement, including:

- amending the Securities Exchange Act of 1934 to prohibit the SEC from compelling an issuer to include in the proxy statement any shareholder proposal or any discussion related to a shareholder proposal. The bill also expressly states the SEC may not preempt state regulation of proxy materials or shareholder proposals. (Section 2002)
- increasing requirements for resubmission of proposals to require 10% voting support for a first-year proposal, 20% for a second year proposal and 40% for third year proposal, compared to current requirements of 5% voting support the first year, 15% for the second year and 25% for the third year. (Section 3101)

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- allowing companies to exclude shareholder proposals where the company already has policies, practices, or procedures that compare favorably with the guidelines of the proposal and address the proposal's underlying concerns. (Section 3201)
- allowing companies to exclude any proposal relating to environmental, social or political issues from proxy or consent solicitation material. (Section 3301)
- allowing companies to exclude a shareholder proposal under Rule 14a-8(i) without regard to whether the proposal relates to a significant social policy issue. (Section 3401)
- requiring the SEC to conduct a "wasteful and unnecessary" study every 5 years on shareholder proposals, proxy advisory firms, and the proxy process, covering a variety of topics, including the purported costs incurred by the shareholder proposal process and the "risk that shareholder proposals may contribute to the balkanization of the US economy over time." (Section 3501)
- providing that an institutional investor may not outsource voting decisions to any person other than an investment adviser or a broker or dealer that is registered with the Commission and has a fiduciary or best interest duty to the institutional investor. (Section 3901)

Senate

On September 23, 2024, S. 5139, the *Empowering Main Street in America Act of 2024*, was introduced. Among other things, the bill would allow a company to exclude a shareholder proposal from its proxy statement without regard to whether that shareholder proposal relates to a significant policy issue. (Section 305)

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