

July 27, 2020

TO THE MEMBERS OF THE U.S. HOUSE OF REPRESENTATIVES:

The undersigned associations support Amendment #18, offered by Rep. Bryan Steil, to H.R. 7617, the “Defense, Commerce, Justice, Science, Energy and Water Development, Financial Services and General Government, Homeland Security, Labor, Health and Human Services, Education, Transportation, Housing and Urban Development Appropriations Act, 2021.” The Amendment would permit a commonsense rulemaking by the Securities and Exchange Commission (SEC) to move forward by striking the language in Sec. 541 of Division D – Financial Services and General Government Appropriations Act, 2021, that would defund the SEC’s rulemaking on Rule 14a-8. The SEC’s rulemaking is intended to increase shareholder value by updating decades-old rules under Rule 14a-8 that determine if an activist proposal is eligible to be included in a company’s proxy materials.

Rule 14a-8 establishes the eligibility requirements a shareholder must satisfy to submit a proposal for inclusion in a company’s proxy statement. Under the current rules, shareholders may make a short-term, nominal investment in a company and thereby have free reign to push a proposal unrelated to the company’s bottom line performance. Currently, in order to be eligible to submit a novel proposal under Rule 14a-8, a shareholder must hold at least \$2,000 *or* one percent of the company’s stock continuously for at least one year. The proposal may be resubmitted if it receives 3%, 6%, or 10% of the vote if voted on once, twice, or three, respectively, or more times in the last five years.

The SEC has long recognized that the current shareholder proposal system harms investors. Shareholder ownership thresholds have not been updated since 1998 and resubmission thresholds have not been updated since 1954. For example, in 1997—under the leadership of Chairman Arthur Levitt — the SEC proposed raising the resubmission thresholds under Rule 14a-8 so that proposals would have to elicit meaningful support before being proposed again. As the SEC stated then: “... we believe that a proposal that has not achieved these [proposed] levels of support has been fairly tested and stands no significant chance of obtaining the level of voting support required for approval.” While this rulemaking was never finalized, we believe that reform is needed even more today. The SEC is currently in the process of updating the eligibility and resubmission thresholds under Rule 14a-8.

The SEC has proposed commonsense reforms to 14a-8 that protect shareholder value without stifling the voices of serious investors. The proposed amendments would update the criteria, including the ownership requirements, that a shareholder must satisfy to be eligible to have a shareholder proposal included in a company’s proxy statement and modernize the levels of shareholder support a proposal must receive to be eligible for resubmission.¹

¹ Securities and Exchange Commission Press Release, “SEC Proposes Amendments to Modernize Shareholder Proposal Rule,” (November 5, 2019), available at <https://www.sec.gov/news/press-release/2019-232>.

The undersigned associations support Amendment #18, offered by Rep. Bryan Steil, to H.R. 7617. Striking language from the bill that would defund the SEC's rulemaking is in the best interest of creating value for shareholders.

Signed,

American Securities Association
American Property Casualty Insurance Association
Energy Infrastructure Council
Nareit
National Association of Manufacturers
National Investor Relations Institute
U.S. Chamber of Commerce