

Via Email

February 22, 2018

Ann Fritz Hackett
Lead Independent Director and Chair, Nominating and Corporate Governance Committee
c/o Corporate Secretary's Office
Capital One Financial Corporation
1680 Capital One Drive
McLean, Virginia 22102

Dear Ms. Hackett:

I am writing on behalf of the Council of Institutional Investors (CII) to request that the company withdraw a management proposal to ratify existing bylaw language on shareholder right to call special meetings, and instead let a vote proceed on a non-binding shareholder proposal asking the board to reduce the threshold to 10% of shares, from the present 25%.

CII is a nonprofit, nonpartisan association of public, corporate and union employee benefit funds, other employee benefit plans, state and local entities charged with investing public assets, and foundations and endowments with combined assets under management exceeding \$3.5 trillion. Our member funds include major long-term shareowners with a duty to protect the retirement savings of millions of workers and their families. Our associate members include a range of asset managers with more than \$25 trillion in assets under management.¹

Capital One on February 21 received a response from the SEC staff to a letter from counsel to Capital One asking the SEC staff to concur that it will take no action if the company excludes the shareholder proposal. As with some other companies, Capital One sought to exclude the shareholder proposal on the basis that the company would submit a management proposal, purportedly in conflict with the shareholder proposal, asking shareholders to ratify the current bylaw.

The SEC staff said it would concur with omission of the shareholder proposal (and not recommend enforcement action should that take place) IF Capital One discloses in its proxy statement:

- That the company has omitted a shareholder proposal to lower the ownership threshold for calling a special meeting
- That the company believes a vote in favor of ratification is tantamount to a vote against a proposal lowering the threshold
- The impact on the special meeting threshold, if any, if ratification is not received, and
- The company's expected course of action, if ratification is not received.

In a [January letter to the SEC](#), CII objected to an SEC no-action response to AES that simply concurred with omission of a similar proposal, where that company also used a management "ratification" proposal

¹ For more information about the Council of Institutional Investors ("CII"), including its members, please visit CII's website at <http://www.cii.org/members>.

to block consideration of the shareholder proposal. We viewed AES as playing games in order to prevent a straightforward vote on a shareholder proposal that typically gets strong shareholder support, and sometimes passes.²

We were gratified that the SEC staff apparently has adjusted its guidance for this type of situation. However, we believe it would have been better for the SEC simply to have declined to agree with the company, encouraging a vote on the shareholder proposal. A vote on the shareholder proposal would be a more straightforward and useful expression of views on whether the company should reduce the special meeting threshold to 10%.

We do believe that if both proposals appear in the proxy statement and are approved, it would be clear that shareholders support special meeting rights, and that they prefer that the threshold be reduced to 10%.

However, the management proposal could muddy the waters, even with the stipulations as described by the SEC staff. We believe the board sought ratification of the existing bylaw at this time only to block a clear shareholder vote on a proposal to reduce the threshold. We suspect that some shareholders may not be clear that a vote for the management proposal is a vote against a reduced threshold, even if this is stated in the proxy statement as stipulated by the SEC staff. Thus, we do not believe that one could reasonably conclude that the results of such a vote would reflect shareowner intent that a vote in favor of ratification "was a vote against a proposal lowering the threshold."

We believe it would be more straightforward if the board withdraws its proposal, and permits a vote to go forward on the non-binding shareholder proposal.

I would be glad to discuss this with you, another board member or a member of management. Thank you for your consideration.

Sincerely,



Ken Bertsch
Executive Director

Cc via email:

John G. Finneran, Jr., Chief Risk Officer and Corporate Secretary, Capital One Financial Corp.
Matt Cooper, General Counsel, Capital One Financial Corp.
John Chevedden

² In 2016 to 2017, 34 shareholder proposals to U.S. companies requested boards to take action to reduce the threshold for calling special meetings, and the proposals received average support of 41.6% of shares voted for or against, and median support of 42.1%.² Two of the proposals were approved by shareholders.