Via Hand Delivery

August 21, 2017

Brent J. Fields
Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Dear Mr. Secretary:

The purpose of this letter is to express our opposition to the July 17, 2017, “Request for rulemaking to amend Rule 14a-8 under the Securities Exchange Act of 1934 regarding resubmission of Shareholder Proposals” submitted by the Corporate Governance Coalition for Investor Value (Petition).

The Council of Institutional Investors (CII) is a non-profit, nonpartisan association of public, corporate, and union pension funds, and other employee benefit plans, foundations and endowments with combined assets that exceed $3 trillion. Our member funds are major, long-term investors committed to protecting the retirement savings of millions of American workers. CII also has associate members, including asset managers with more than $20 trillion in assets under management.\(^1\)

CII and its members have a deep interest in ensuring that Rule 14a-8\(^2\) is a fair and workable standard for shareowners and companies.\(^3\) We believe the current rule provides institutional and retail investors an orderly and cost-effective means to communicate important policy issues to their fellow shareowners, boards of directors, and corporate management.

We are mindful that many positive advances in U.S. corporate governance practices simply would not have occurred without a robust shareowner proposal process in place. For example:

- Shareholder proposals were the impetus behind the practice—currently mandated by major U.S. stock exchanges’ listing standards—that independent directors

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\(^1\) For more information about the Council of Institutional Investors (“CII”), please visit CII’s website at [http://www.cii.org/about_us](http://www.cii.org/about_us).


constitute at least a majority of the board, and that all the members of the following
board committees are independent: audit, compensation, nominating and corporate
governance.⁴

- In 1987, an average of 16% of shareholders voted in favor of shareholder proposals
to declassify boards of directors so that directors stand for election each year. In
2012, these proposals enjoyed an 81% level of support on average. Ten years ago,
less than 40% of S&P 500 companies held annual director elections compared to
more than two thirds of those companies today.⁵

- Shareholder proposals were critical in demonstrating investor support for
expensing of stock compensation in financial reports. For example, many
companies voluntarily adopted employee stock option expensing before it was
required as a result of more than 150 proposals to expense stock options submitted
during the 2003 and 2004 proxy seasons.⁶

- Electing directors in uncontested elections by majority (rather than plurality) vote
was considered a radical idea a decade ago when shareholders pressed for it in
proposals they filed with numerous companies. Today, 90% of large-cap U.S.
companies elect directors by majority vote, largely as a result of robust shareholder
support for majority voting proposals.⁷

- A proposal that built momentum even more rapidly and influenced the practices of
hundreds of companies in the last few years is the request for proxy access.
Resolutions filed by the New York City Comptroller to allow shareholders meeting
certain eligibility requirements to nominate directors on the company’s proxy ballot
achieved majority votes at numerous companies. As a result, since 2015, more than
400 public companies have adopted proxy access bylaws.⁸

- Shareholder proposals over 25 years have built support for more diversity on boards
of directors. For example, during the current proxy season a proposal at Cognex
Corp. requesting that the company's board adopt a policy for improving board
diversity received 62.8% of votes cast.⁹

- Shareholder proposals were critical in building support over many years for better
disclosures on environmental risk in corporate reporting. For example, during the
current proxy season proposals requesting disclosure of how climate change could

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⁴ See Kenneth Bertsch, Executive Director, CII et al., Joint Statement on Defending Fundamental Shareholder
Rights 2 (June 2, 2016),
ights%206_2%2017%20FINAL.pdf; Ceres et al., The Business Case for the Current SEC Shareholder Proposal
Process 6 (Apr. 2017),
⁵ Id.
⁶ See, e.g., Fabrizio Ferri, Harvard University et al., The Impact of Shareholder Activism on Financial Reporting and
Compensation: The Case of Employee Stock Options Expiring, 84 Acct. Rev. 433, 434 (Mar. 2009) (“We find
that firms targeted by ESO expensing proposals were more likely to subsequently adopt ESO expensing relative to a
control sample of S&P 500 firms.”), available at
⁷ Joint Statement on Defending Fundamental Shareholder Rights at 2; Ceres et al. at 6.
⁸ Joint Statement on Defending Fundamental Shareholder Rights at 2-3; Ceres et al. at 6.
⁹ See, e.g., Ronald Mueller et al., Shareholder Proposal Trends In 2017 Proxy Season: Part 2, Law360, July 20,
2017, at 4 (subscription required),
affect their businesses were approved by shareowners at ExxonMobil, Occidental Petroleum, and PPL.\textsuperscript{10}

The Petition ignores these and many other improvements to corporate governance and corporate disclosure that have resulted from the current rule. Instead, the Petition alleges, without any supporting evidence, that Rule 14a-8 is a “contributing factor” in the recent decline in the number of public companies.

We understand that some groups representing managerial interests do not agree with some of these developments. But it does not make sense for the U.S. Securities and Exchange Commission (SEC or Commission) to constrict a well-working tool for communication of shareowner views just because lobbying organizations for managerial interests request such action. As such, we do not believe the Petition is worthy of the Commission’s limited resources. If, however, the Commission decides to consider a new rulemaking in response to the Petition, we would respectfully request that as an initial step the SEC staff consider broadly soliciting input from investors, management and board representatives, and other market participants about their experiences with Rule 14a-8. For example, the solicitation could request information or include a questionnaire about the perceived costs \textit{and benefits} of the current rule and whether the rule can be improved to better meet the needs of investors.\textsuperscript{11}

As a second step, the Commission could consider holding public roundtables to have an open exchange among investors, management and board representatives, and other market participants on the input received. Combined, these steps could provide a sound basis for a determination of whether Commission rulemaking should be pursued on this issue of great importance to investors.

We appreciate the consideration of our views on this matter. Please feel free to contact me with any questions.

Sincerely,

Jeffrey P. Mahoney
General Counsel


CC: The Honorable Jay Clayton
    The Honorable Michael Piwowar
    The Honorable Kara Stein
    William Hinman, Director, Division of Corporation Finance