



# Council of Institutional Investors®

The voice of corporate governance

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**Contact:**  
Rosemary Lally  
Editor  
[rosemary@cii.org](mailto:rosemary@cii.org)

## SEC Muzzles the Voice of Investors by Raising the Bar on Shareholder Proposals

**Washington, D.C., September 23, 2020** — The Council of Institutional Investors (CII) is deeply disappointed that the Securities and Exchange Commission (SEC) today took steps that will muzzle the voice of small investors and shield many CEOs from accountability to shareholders.

In a 3-2 vote, the agency with a stated mission to be the investor's advocate, approved fundamental changes that will deprive many shareholders of the right to submit proposals to be voted on at U.S. public companies. Specifically, the SEC amended Rule 14a-8, also known as "the shareholder proposal rule," to significantly raise the ownership thresholds\* required to file and to resubmit proposals.

"The amendments weaken the voice of investors and jeopardize faith in the fairness of U.S. public capital markets by making the filing process more complicated, constricting and costly,"

said Amy Borrus, CII's executive director. "The result will be fewer shareholder proposals—and that is precisely the goal of the business lobby that pressed the SEC to make these changes. Simply put, CEOs and corporate directors do not like being second-guessed by shareholders on environmental, social and governance matters."

What's more, she added, raising thresholds to file and refile shareholder proposals is unnecessary interference in the free market. For decades, the shareholder proposal process has been a well-functioning pillar of corporate governance in U.S. capital markets. It is a cost-effective way for shareholder to communicate with each other and for shareholders as a group to communicate with management through votes on proposals. Some of the benefits derived from this process include:

- Shareholder proposals permit investors to express their voice collectively on issues of concern to them, without the cost and disruption of waging proxy fights.
- Shareholder proposals have encouraged many companies to adopt governance policies that today are viewed widely as best practice. Electing directors by majority vote, rather than by plurality, a radical idea a decade ago when shareholders pressed for it in proposals, is now the norm at 90% of large-cap U.S. companies.
- Similarly, norms such as independent directors constituting a majority of the board, independent board leadership, board diversity, sustainability reporting, non-discrimination policies and annual elections for all directors all were advocated early through shareholder proposals.
- Most public companies do not receive shareholder resolutions and therefore will not receive any portion of the savings that the Commission estimates, which may explain why most companies did not submit comments advocating for the change. From 2014-

2017, only 13% of Russell 3000 companies received a shareholder proposal, on average. In other words, the average Russell 3000 company can expect to receive a proposal once every 7.7 years. For companies that receive a proposal, the median number of proposals is one per year.

- Shareholder proposals are almost always non-binding. The board generally does not have to act in response to a proposal.

The SEC breached its own stated procedures for using economic analysis in rulemaking and failed to grapple with the damaging impacts investors cited or to justify the changes. (See [joint investor letter](#) here.)

CII [research](#) found that the SEC's new thresholds for resubmitting shareowner resolutions would have more than doubled the number of excluded governance proposals in 2011-2019. In particular, the new thresholds would have reduced the number of proposals for independent chairs and to improve disclosure on political contributions and lobbying. This is a conservative estimate based on retroactive application of the changes. Companies have substantial opportunity to influence votes at the margins of a threshold. Therefore, it is likely that companies will take extra steps to depress votes that are marginally more than 15% in the second year that they come to a vote, or 25% in the subsequent year.

Many important 2020 governance proposals that would have been eligible for resubmission in 2021 will be blocked by the new resubmission thresholds:

- Require independent board chairs (Facebook, Southwest Airlines, Tenet Healthcare)
- Report on incentive-based compensation and risks of material losses (Wells Fargo)
- Consider employee pay in setting CEO pay (3M, Mondelez International)
- Institute a majority vote standard for election of directors (Sinclair Broadcast Group)
- Provide shareholders the right to act by written consent (Cognizant Technology Solutions Group, Kohl's, Norfolk Southern, Pfizer)
- Reduce threshold for shareholders to call special meeting (Howmet Aerospace, Lincoln National)
- Take steps to consolidate share classes to have one vote per share (Coca-Cola Consolidated, Tyson Foods)

Proposals related to environmental and social matters will also be sharply curtailed, at a time when significant threats to shareholder value stemming from such issues have emerged, including risks related to the Covid-19 pandemic, diversity and inclusion, human capital management and climate change. Shareholder proposals play a critical role in focusing corporate boards' attention on the need to develop new expertise, new oversight models and new strategies to protect and drive shareholder value.

*\* Under existing rules, any shareholder who has held \$2,000 or more in a company's stock for at least one year can file a proposal. The amendments the SEC approved impose steep additional ownership and duration hurdles that will prevent most retail shareholders from filing proposals unless they hold the following amounts of company stock for specific lengths of times:*

- 3 years: Proof of continuous ownership for \$2,000
- 2 years: Proof of continuous ownership for \$15,000
- 1 year: Proof of continuous ownership for \$25,000

**About CII:** *The Council of Institutional Investors (CII) is a nonprofit, nonpartisan association of U.S. asset owners, primarily pension funds, state and local entities charged with investing public assets, endowments and foundations, with combined global assets that exceed \$4 trillion. CII's associate members include non-U.S. asset owners with more than \$4 trillion in global assets, and a range of asset managers with more than \$40 trillion in global assets under management. CII is a leading voice for effective corporate governance, strong shareholder rights and sensible financial rules that foster fair, transparent and vibrant capital markets.*