Ceres
Sustainability is the bottom line.

March 5, 2018

The Honorable Mike Crapo
Chairman
Committee on Banking, Housing and Urban Affairs
United States Senate
534 Dirksen Senate Building
Washington, D.C. 20510

The Honorable Sherrod Brown
Ranking Member
Committee on Banking, Housing and Urban Affairs
United States Senate
534 Dirksen Senate Building
Washington, D.C. 20510

Re: S. 2155, the "Economic Growth, Regulatory Relief and Consumer Protection Act"

Dear Chairman Crapo and Ranking Member Brown:

We understand that the U.S. Senate is scheduled to consider S. 2155 this week. **On behalf of Ceres, the Council of Institutional Investors (CII), the Interfaith Center on Corporate Responsibility (ICCR), and US SIF: The Forum for Sustainable and Responsible Investment, we write to respectfully urge exclusion of Section 844 of H.R. 10, the "Financial CHOICE Act" ("FCA") from S. 2155 and the final version of any other financial regulatory reform legislation under consideration.** Section 844 would revise the Securities and Exchange Commission ("SEC") rules and thresholds that govern the inclusion of shareholder proposals in company proxy statements. We believe that the current rules and thresholds work well for investors and issuers and should be maintained.

Background:

Under SEC Rule 14a-8, issuers are required to include shareholder proposals in their proxy materials unless the proposals do not comply with the Rule's eligibility and procedural requirements or are subject to exclusion under the Rule. Shareholders who rely on the Rule may submit only one proposal per corporate annual meeting and are required to have continuously owned at least $2,000 in market value, or one percent, of an issuer's outstanding voting securities for a year or more. In order to resubmit a proposal under current rules, it must have received at least 3 percent of the vote on its first submission, 6 percent on the second and 10 percent on the third.

Rule 14a-8 has long served as an effective way for investors to furnish corporate management and boards with insights into their priorities and concerns regarding corporate governance, policies, and practices. In 2016, shareholders filed fewer than 1,000 shareholder proposals with U.S. companies.[1] This included over 400 proposals focused on environmental and social issues, and more than 500 focused on pure corporate governance. Voting on these proposals is a critical component of the exercise of institutional investors' fiduciary duty on behalf of their clients and beneficiaries.

On June 8, 2017, the U.S. House of Representatives passed the FCA on a party-line vote of 233-186. Section 844 of the FCA would require the SEC to revise the eligibility requirements for submission of shareholder proposals under Rule 14a-8 from the existing requirement that shareholders own at least $2,000 of company's outstanding voting shares for at least one year to requiring shareholders to hold at

[1] ISS Voting Analytics database.

least 1 percent of the company's stock (or such higher threshold as determined by the SEC) for at least three years. **This filing threshold would disenfranchise virtually all investors.**

Section 844 would also require the SEC to increase the thresholds for resubmission of proposals under Rule 14a-8 from 3 percent to 6 percent of the vote on its first submission; 6 percent to 15 percent on the second; and 10 percent to 30 percent on the third. In addition, Section 844 would prohibit companies from including in their proxy materials "a shareholder proposal submitted by a person in such person's capacity as a proxy, representative, agent, or person otherwise acting on behalf of a shareholder."

We believe that the existing rules and thresholds for shareholder proposals are appropriate and do not warrant revision.

Benefits to Investors:

The current shareholder proposal process allows small institutional investors and individual shareholders alike to engage corporate boards and senior management on their need to address important environmental, social and governance ("ESG") issues and long-term risk management. Further, it allows these investors to communicate with boards, management, and other shareholders about the most effective way to proactively protect investor interests on corporate governance, risk and policy issues impacting companies prior to a crisis. In this regard, the current process represents a strong safeguard against problems that could diminish shareholder value, and enables all shareholders who hold voting stock (including relatively small ones) to urge boards and management to adequately address ESG issues that are significant to the company, its shareholders, and society as a whole. Although many of the world's largest asset managers often have the prominence and resources to address these risks with companies, few smaller investors enjoy this kind of clout and access to corporate boards. Shareholder proposals and proxy voting are critical tools for these investors to encourage companies to adopt good corporate governance practices and to deal with material ESG matters.

Moreover, the existing shareholder proposal process provides investors the chance to convey their concerns to corporate boards that are responsible for representing investor interests. Unfortunately, boards of directors sometimes fail to meet this responsibility for various reasons, including the use of insufficient or inaccurate information; "group think" and lack of diversity (which many observers note was one of the key drivers of the 2008 Financial Crisis); an overly deferential approach to the managers that they are charged with overseeing; or by acting in their own interests. Proxy voting is one useful tool for shareholders to express their views to corporate boards. Without the ability to put items on the proxy, however, most investors would lack the requisite influence and access to communicate their concerns and requests to the boards. Shareholder proposals give investors an additional avenue to make clear their expectations or displeasure concerning particular ESG issues, without having to resort to withholding their vote from directors. In short, the current shareholder proposal process is one of the most effective ways by which shareholders are able to engage the companies in which they invest.

Benefits to Companies:

The cost to companies of the existing shareholder proposal process is generally low, and the process often results in benefits to companies. It is important to note that most companies receive few, if any,

shareholder proposals.[2] The average Russell 3000 company can expect to receive a proposal every 7.7 years.[3] In addition, shareholders typically file proposals with larger companies (i.e., S&P 500) that have the resources to address such shareholder input. For companies that receive a proposal, the median number of proposals is one per year.[4] When proposals are filed, companies often agree to act on the request made in the proposal. In this respect, an average of 37.5 percent of shareholder proposals broadly related to climate change during the 2012-2016 proxy seasons were withdrawn by filers in response to the company agreeing to the request in some way.[5] The withdrawal rates for several other topics are much higher. This appears to suggest that many companies find benefits from committing to act on shareholder proposals prior to a vote.

Additionally, there is a mechanism in place that allows companies to challenge shareholder proposals. In particular, the SEC oversees a robust "no-action letter" process that allows companies to exclude proposals from the proxy ballot that do not meet certain procedural or substantive hurdles. This process provides companies a means by which to know whether the SEC staff would recommend no enforcement action if a company excludes the proposal from the proxy. Companies have been actively utilizing this system. In fact, during the 2013-2015 proxy seasons, companies challenged nearly one-third of the shareholder proposals that were submitted, and approximately half of those challenged proposals were omitted from the proxy with SEC approval.

Importantly, the SEC has issued guidance that allows companies to exclude from the proxy any resolutions pertaining to a company's ordinary business, stating that resolutions need to pertain to "significant policy issues" faced by companies.[6] This approach strikes the needed balance between respecting the board's role on corporate governance and management's discretion to make routine business decisions, while at the same time recognizing the existence of policy issues significant enough to necessitate a shareholder vote.[7]

Maintain the Current Shareholder Proposal Rules:

The current shareholder proposal process is flexible, thus enabling investors to tailor their requests to address company-specific issues as they emerge. Consequently, the proposals filed each year generally reflect market conditions and evolving best practices. These benefits are closely related to the specific thresholds and criteria in Rule 14a-8, which we strongly believe should be maintained.

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[2] According to the ISS Voting Analytics database of Russell 3000 companies, shareholders submitted an average of 836 proposals at 386 companies per year between 2004 and 2017. The number of submitted proposals fluctuated between approximately 800-900 proposals per year, except for a dip to 603 proposals in 2011 and 673 proposals in 2012 after the SEC's adoption of say-on-pay vote requirements.
[3] ISS Voting Analytics database.
[4] *Id*.
[5] Data compiled by Ceres.
[6] SEC Release No. 34-40018 (May 21, 1998), and Staff Legal Bulletin No. 14E: https://www.sec.gov/interps/legal/cfslb14e.htm.
[7] https://www.sec.gov/interps/legal/cfslb14h.htm and Medical Committee for Human Rights v. SEC, 432 F. 2d. 659, 680-681 (1970),
vacated and dismissed as moot, 404 U.S. 402 (1972).

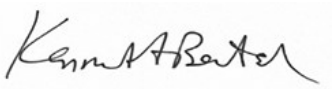
Under Rule 14a-8, the one-year holding requirement ensures that the use of shareholder proposals is appropriately limited to longer-term shareholders. It also harnesses the power of a marketplace of ideas. Barring small investors from participating in this marketplace would be as unwise as it is unfair. Prior to the SEC's adoption in 1983 of a $1,000 requirement, there was no dollar threshold for submitting a proposal. The SEC increased the threshold in 1998 to $2,000.[8] However, the SEC declined to increase the threshold further "out of concern that a more significant increase would restrict access to companies' proxy materials by smaller shareholders, who equally with other holders have a strong interest in maintaining channels of communication with management and fellow shareholders."[9] If the amount were adjusted for inflation since 1998, the current threshold would increase to about $2,946. As such, the existing filing threshold is close to what the SEC maintained in 1998 was necessary to avoid excluding smaller shareholders.

Further, the existing resubmission thresholds for shareholder proposals are also appropriate. Experience indicates that it often takes several years for a proposal regarding an emerging issue to gain enough traction with investors to achieve double-digit votes. In many cases, these proposals eventually receive substantial support, leading to widespread adoption by companies. The current thresholds provide a reasonable amount of time for emerging issues to gain support among investors while ensuring that only those proposals that garner meaningful support remain on the ballot for multiple years. Resubmission of proposals receiving less than 20% support for a third or fourth time is very rare. According to ISS data, since 2010, shareholders resubmitted environmental and social issue proposals only 35 times after receiving votes under 20% for two or more years. This affected only 26 companies.

Taken together with SEC rules that preclude proposals relating to ordinary business and the SEC no-action system that prevents abuses by special interests, the SEC's existing rules and thresholds related to shareholder proposals have and continue to benefit both investors and publicly traded companies and should not be changed. Accordingly, we urge exclusion of Section 844 from S. 2155 and the final version of any other financial regulatory reform bill.

Thank you for considering these views. We welcome the opportunity to work with you further as this legislation proceeds through the legislative process.

Sincerely,



Ken Bertsch
Executive Director
Council of Institutional Investors

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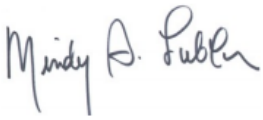
[8] https://www.sec.gov/rules/final/34-40018.htm.
[9] https://www.sec.gov/rules/proposed/34-39093.htm



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About the Signatories:

Ceres is a non-profit organization that coordinates the Ceres Investor Network on Climate Risk and Sustainability, which consists of 146 institutional investors that collectively manage more than $23 trillion. The Ceres Investor Network advances leading investment practices, corporate engagement strategies and policy solutions to build an equitable, sustainable global economy and planet.

The Council of Institutional Investors (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.

The Interfaith Center on Corporate Responsibility (ICCR) is a 46-year-old coalition of over 300 organizational investors representing faith-based communities, socially responsible asset managers, labor unions, and others who engage corporations on the environmental and social impacts of their operations.

US SIF: The Forum for Sustainable and Responsible Investment is a leading voice for advancing sustainable, responsible and impact investing across all asset classes. The mission of US SIF is to rapidly shift investment practices towards sustainability, focusing on long-term investment and the generation of positive social and environmental impacts. Additionally, the organization is comprised of over 300 members that collectively represent more than $3 trillion in assets under management or advisement.

cc: Members, Committee on Banking, Housing and Urban Affairs