US SIF
The Forum for Sustainable and Responsible Investment

By Electronic Mail
May 16, 2014

Ms. Mary Jo White, Chair
Mr. Luis A. Aguilar, Commissioner
Mr. Daniel M. Gallagher, Commissioner
Ms. Kara M. Stein, Commissioner
Mr. Michael S. Piwowar, Commissioner
US Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Dear Chair White and Commissioners:

We are writing to express our strong concerns as investors about Commissioner Gallagher's March 27th comments on the shareholder proposal process, which were presented in a speech in New Orleans at Tulane University Law School. The undersigned represent more than 65 investment organizations in the U.S. and abroad, many of whom are active proponents of shareholder proposals. After decades of experience with Rule 14a-8, it is clear to us that shareholder proposals are very often a positive, if not crucial, element of the U.S. system of corporate governance, building greater accountability into our capital markets and fostering improvements in corporate performance and long-term risk management.

For this and many other reasons, we are strongly opposed to any revisions to Rule 14a-8 that would make it more difficult for investors to file proposals addressing environmental, social and governance (ESG) issues.[1] In the weeks to come, a number of signatories to this letter look forward to providing the Commission with a detailed analysis of the strengths and benefits of the Rule 14a-8 process and the factual and interpretive flaws found in the Commissioner's and similar critiques of the shareowner resolution process.

In this letter, however, we will focus on a few specific issues grounding our opposition to efforts to weaken the Rule.

Many shareholders are committed to active engagement with the corporate holdings in their portfolios, through conscientious proxy voting, letter writing, direct dialogue and the filing of shareholder proposals (often used as a last resort). Over the last 50 plus years, these efforts have resulted in numerous policy changes, expanded public reporting and a greater awareness by corporations of a

[1] We also observe that the U.S. Chamber of Commerce has petitioned the Commission, seeking a change in the resubmission thresholds for proposals. We view this petition as an effort to weaken shareowner rights and find much of its reasoning to be deeply flawed.

910 17th Street, NW Suite 1000 Washington, DC 20006 p (202) 872-5361 f (202) 775-8686 www.ussif.org

range of critical issues from executive compensation and governance reforms, to sweatshop labor and climate change.

Shareholder proposals addressed predatory lending and off-balance sheet derivatives exposure long before the financial crisis. Shareholder proposals, a form of private ordering, have had a clear transformative impact on corporate governance and corporate approaches to many issues.

We engage companies on behalf of our clients and shareholders because we are fiduciaries. Fiduciary duty compels us to raise questions about long-term risks and opportunities that are often ignored. The shareholder proposal has been an essential tool in these efforts, allowing investors to present critical issues to all shareholders when corporate management is unwilling to address an issue or engage. Engaged investors also help the market regulate itself, with owners raising legitimate concerns that their fellow owners may vote to support or oppose. The insights that investors bring to companies often help them lower risk, save resources and costs, and promote innovation that can contribute to revenue growth. Many highly productive long-term dialogues with corporate management began with a shareholder proposal. Some of these dialogues began after filing proposals for several years.

Shareholder engagement on ESG issues has grown as investors increasingly understand that these issues have a great deal to do with decreasing risk, promoting shareholder value and enhancing business success. Indeed thousands of businesses are also addressing these issues because of the connection they see between ESG issues and their financial success.

There are also scores of academic studies showing positive and statistically significant links between corporate performance on ESG issues and financial performance. We are aware of more than 250 such studies that have been written since 2000 that demonstrate such linkages. A recent report[2] by Deutsche Bank that closely examined 56 such papers, as well as 2 literature reviews and 4 meta studies, concluded that ESG factors "are correlated with superior risk-adjusted returns at a securities level."

While the environmental performance of companies increasingly has become a mainstream investor issue for investors, there are still many companies that refuse to engage with investors on the issue. The Carbon Disclosure Project (CDP), working on behalf of investors managing more than $90 trillion, surveys global companies about their impact on climate change, water scarcity and deforestation. While corporate response rates to the annual CDP are steadily rising, there are still corporations that ignore it; in 2013, the response rate among the S&P 500 was only 68 percent. That so many investors, acting together, cannot elicit a response from almost a third of the companies in the S&P 500, speaks to the need for a process that companies cannot brush aside, such as the shareholder proposal process.

Another crucial point is that the quality of one's ideas has no relation to the size of one's investment. Small shareholders have virtually no ability to communicate with senior management and may, in fact, have far more to lose than a large investor when one considers their financial stake as a percentage of their overall portfolio. Any effort to diminish their voice is inconsistent with the SEC's investor

---

[2] **Sustainable Investing: Establishing Long-Term Value and Performance**, Mark Fulton (Deutsche Bank AG - New York), Bruce Kahn (Columbia University, The Earth Institute, School of Continuing Education) and Camilla Sharples (Deutsche Bank AG - New York), June 12, 2012. See http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2222740.

910 17th Street, NW Suite 1000 Washington, DC 20006 p (202) 872-5361 f (202) 775-8686 www.ussif.org

protection mandate. In practice, we have found that, with the notable exception of several of the largest public pension funds, many of the largest institutional investors generally do not submit shareholder proposals, presumably because they already have access to top management and boards of directors. Smaller investors – including mid-size asset managers with several billion under management – do not have such access. The Commissioner's proposal that the SEC make it more difficult for small investors to submit proposals is unsound and should not be pursued.

Commissioner Gallagher also criticizes the costs for companies of including shareholder resolutions in their proxies, but fails to acknowledge that, on average, a third of the resolutions are withdrawn in light of positive constructive dialogues leading to win/win agreements. His cost-benefit analysis ignores these successes and long-term benefits. In addition, many companies oppose a resolution in its first year but in its second or third year reassess their position, perhaps observing trends with other companies, and ultimately agree to change the policy or make the disclosure requested. In our view, many companies, through frivolous no-action challenges, have transformed an extremely cost-effective means of communication with shareholders into a more expensive process.

We note that both Commissioner Gallagher and the Chamber of Commerce have challenged resubmission thresholds. The established resubmission thresholds for shareholder proposals have proved to be practical and effective, while allowing emerging issues to take time to gain support from investors. This is critically important, as shareholder proposals often focus on novel issues that may be unfamiliar to many investors. Their frequent focus on long-term risk mitigation and value creation can also dampen their reception in a market dominated by short-term thinking. The Commission's relatively low resubmission thresholds, however, wisely allow such issues to remain on the proxy and build support over time. The historical and contemporary records are filled with examples of shareholder proposals that initially exceed the thresholds by modest amounts but lead to positive outcomes for the company and its shareholders. We believe that such examples provide evidence that many corporate managers view the shareholder proposal process as a gauge of investor sentiment, and find it imprudent to wait for a majority vote to take action.

We would encourage the Commission to view shareholder proposals as a laboratory for new ideas – as many corporate managers do -- while helping to identify new categories of information that may merit routine disclosure. Despite protestations to the contrary, the facts demonstrate that the shareholder proposal process has led to many positive improvements at hundreds of companies and is in fact a necessary and effective component of an efficient market.

Sincerely,

US SIF: The Forum for Sustainable and Responsible Investment
Appleseed Fund
As You Sow
Boston Common Asset Management
Calvert Investments
Catholic Health Partners
Center for Effective Government
Ceres
Christian Brothers Investment Services, Inc.
Christopher Reynolds Foundation

910 17th Street, NW Suite 1000 Washington, DC 20006 p (202) 872-5361 f (202) 775-8686 www.ussif.org

Colorado Sustainable Financial Planning
Communitas Financial Planning
Corporate Governance
Daughters of Charity, Province of St. Louise
Diocese of Springfield, IL
Domini Social Investments
Ethos Foundation, Switzerland
Dominican Sisters of Springfield, IL
Effective Assets™
Everence & the Praxis Mutual Funds
First Affirmative Financial Network
Fulcrum Capital
Gary R. Matthews, PhD CPA/PFS AIF®, First Affirmative Financial Network (FAFN)
Green America
Green Century Capital Management
Horizons Sustainable Financial Services
Impax Asset Management
Interfaith Center on Corporate Responsibility
Investor Environmental Health Network
Investors Against Genocide
JSA Financial Group
Krull & Company
Mercy Investment Services
Miller/Howard Investments, Inc.
Missionary Oblates USP
Natural Investments
New Amsterdam Partners
New Outlook Financial
New York Quarterly Meeting Religious Society of Friends (Quakers)
North East Scotland Pension Fund
Northfolk Financial
NorthStar Asset Management, Inc.
Northwest Coalition for Responsible Investment
Oxfam America
Pax World Management
Principled Investing
Progressive Asset Management
Proxy Impact
Responsible Endowments Coalition
Servants of the Paraclete
Sisters of St. Francis of Philadelphia
Sisters of the Presentation
Springwater Asset Management
St. Joseph Health
The Sustainability Group of Loring, Wolcott & Coolidge
Sustainable Investing 4 All
Sustainalytics

910 17th Street, NW Suite 1000 Washington, DC 20006 p (202) 872-5361 f (202) 775-8686 www.ussif.org

Trillium Asset Management
Unitarian Universalist Association
United Church Funds
Veris Wealth Partners
Very Rev William Antone OMI
Walden Asset Management
WHEB Listed Securities
Zevin Asset Management

910 17th Street, NW Suite 1000 Washington, DC 20006 p (202) 872-5361 f (202) 775-8686 www.ussif.org