November 16, 2026

Vanessa A. Countryman, Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549-1090

Re: *Rescission of Rule 14a-8's Federal Regulation of Shareholder Proposals and Amendments to Rule 14a-4,* File No. S7-2026-32

Dear Secretary Countryman:

Ceres respectfully submits this letter in opposition to the SEC's proposed rule, *Rescission of Rule 14a-8's Federal Regulation of Shareholder Proposals and Amendments to Rule 14a-4* (the "Proposal" or "Proposing Release"), and we urge the Commission to withdraw it.

I. INTRODUCTION

A. Ceres Description:

Ceres is a sustainability non-profit advocacy organization with over 35 years of experience working to accelerate the transition to a cleaner, more just, and resilient economy. Our Investor Network, Company Network, and Policy Network include many large U.S. institutional investors (with combined assets under management of over $45 trillion) and many large companies. Drawing on our decades of expertise, we support investors and companies in integrating responsible investment and business strategies into decision-making and managing financial sustainability issues critical to protecting long-term portfolio value.[1]

In 2019, we established the Ceres Accelerator for Sustainable Capital Markets to expand our climate risk-related work to focus on the practices and policies that govern capital markets. The Ceres Accelerator, with expertise in securities and other financial regulatory areas, engages with federal and state financial regulators, including the SEC, as well as financial institutions, investors, and corporate boards, seeking greater recognition of climate change and related risks as a significant,

[1] The views expressed herein are those of Ceres and are not necessarily those of members of our Investor, Company, or Policy Networks.

systemic financial risk. The Accelerator builds on more than two decades of work supporting investors' engagements with companies and regulators about material sustainability risks.

B. Ceres' Interest:

Ceres supports investors who are concerned about sustainability-related financial risks and impacts to the companies they own. Investors' work in this area invariably includes proxy voting and typically includes work on sustainability-related shareholder proposals and proxy voting guidelines. In addition, investors and companies we work with have a strong, long-lasting interest in investor-company engagements. Ceres' programmatic work covers a range of financially significant sustainability risks, particularly climate change, nature and biodiversity loss, water scarcity, and pollution.

II. FOR NUMEROUS REASONS RESCISSION OF RULE 14a-8 WOULD BE ARBITRARY AND CAPRICIOUS

The SEC's proposal would undo the principal means by which investors can make known their views on important or material matters to the boards and management of companies where they have invested their money. If adopted, it would create extraordinary uncertainty about the path forward for shareholders to influence corporate decision-making (and also for companies that think it important to engage with their shareholders); would make it particularly difficult or impossible for retail or small shareholders to make proposals and for others to vote on those proposals; would greatly impede shareholders' ability to drive important good-governance and other goals; would inevitably lead to an increase in litigation regarding what can or cannot go into a company's proxy statement; would prompt investors to take other paths such as "vote no" campaigns or proxy fights; and would have other untoward results. In general, rescission would be contrary to the SEC's mission of protecting investors, maintaining fair, orderly and efficient markets, and facilitating capital formation. Rescission would be arbitrary and capricious under the Administrative Procedure Act.

With all of the damaging impact of a rescission, the question becomes: why would the SEC contemplate such a move? The 228-page Proposing Release tries to

provide answers, but they are unconvincing.[2] The foremost explanation seems to be that the SEC has recently discovered a statutory limitation on its rulemaking authority. But for more than 80 years, investors, companies, courts, Congress, legal scholars, and the SEC itself have either stated that such authority exists or assumed that it did. The three-person (now two-person), one-party Commission that issued the Proposal now concludes that all of these others were wrong, but it is mistaken.

Aside from the question of authority, the SEC offers various policy rationales, but these too are lacking. The argument is essentially that times have changed since the Rule was adopted – that costs to companies are "no longer small",[3] that most proposals do not receive majority support,[4] that the volume has increased,[5] and that State law is "unclear or silent as to what matters can be presented to shareholders" and "it is not the Commission's role to fill those gaps or impose uniformity through the Federal proxy rules".[6]

These policy conclusions can be briefly rebutted. As to costs increasing, much or most of this is due to companies seeking no-action relief to exclude proposals. While it is true that many proposals do not receive majority support, many of them do, as described in Appendix A and reported by Institutional Shareholder Services.[7] Others gain support over time and those that do not can be excluded under the Rule's provision disallowing the refiling of low-performing proposals. Proposals are important as a means for investors to signal their concerns to management, and the best-constructed proposals tend to be resolved without going to vote (a process of negotiation that we discuss further below in Appendix A).

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[2] Rescission of Rule 14a-8's Federal Regulation of Shareholder Proposals and Amendments to Rule 14a-4, Exchange Act Release No. 34-106383, File No. S7-2026-32, 91 Fed. Reg. 59,904 (Sept. 21, 2026). The 228 pages appear on the digital version of the Proposing Release posted by the Commission at https://www.sec.gov/files/rules/proposed/2026/34-106383.pdf. All page citations in this letter are to the Federal Register publication.

[3] Release, 91 Fed. Reg. at 59,913.

[4] Release, 91 Fed. Reg. at 59,914.

[5] Release, 91 Fed. Reg. at 59,914.

[6] Release, 91 Fed. Reg. at 59,914.

[7] For example, 37% of governance proposals that went to a vote received majority support in 2003. Kosmas Papadopoulos, ISS Analytics, The Long View: The Role of Shareholder Proposals in Shaping U.S. Corporate Governance (2000–2018), Harv. L. Sch. F. on Corp. Governance (Feb. 6, 2019), https://corpgov.law.harvard.edu/2019/02/06/the-long-view-the-role-of-shareholder-proposals-in-shaping-u-s-corporate-governance-2000-2018/.

With respect to the volume of proposals increasing, this is because they have been proven to be an effective means of shareholder action. And as to the applicable state law being unclear, this is not a new issue, unknown to the Commission when it adopted the Rule. Indeed, it is a primary reason why Congress enacted Section 14(a) of the Exchange Act.

Importantly, all of these policy rationales point in one direction: an attempt by the SEC to alleviate purported burdens on public companies. In the section of the Proposing Release headed "Policy Reasons for Rescinding Rule 14a-8", not a word is said about how important proposals have been in affecting corporate policies on governance, sustainability, and other financial or financially-related issues. The positive impact of the Rule on companies' financial and risk management is essential to any analysis of the Rule's merit, but the Commission has opted to don blinders.

The most puzzling aspect of what the SEC is doing is that, to our knowledge, there have not been any noteworthy demands from corporations for rescission of the Rule. There have been many suggestions for reform, and even shareholder advocates such as the Shareholder Rights Group suggested possible amendments in a petition submitted to the SEC,[8] but until now complete rescission has not been an objective of public companies whose burdens now trouble the Commission. In fact, public companies have often expressed support for a federal rule governing shareholder proposals. As recently as 2022 the Business Roundtable, while urging that some reforms be made to the Rule, explained the Rule's importance: "Rule 14a-8 has long provided shareholders with an inexpensive mechanism to put issues of concern before their fellow shareholders for consideration, including issues relating to significant policy issues" and it *"is an important component of good corporate governance in the United States"* (emphasis added).[9]

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[8] Sanford Lewis, Director, Shareholder Rights Group, Steven Rothstein, Chief Program Officer, Ceres, Dave Wallack, Executive Director, For the Long Term, Josh Zinner, Chief Executive Officer, Interfaith Center on Corporate Responsibility, Thomas P. DiNapoli, New York State Comptroller, Bryan McGannon, Managing Director, US SIF, Rulemaking petition to retain Rule 14a-8, specifically the no-action process and the underlying exclusion and procedural rules July 23, 2026, https://www.sec.gov/files/rules/petitions/2026/petn4-917.pdf.

[9] Comment Letter of Business Roundtable 1–2 (Sept. 12, 2022), File No. S7-20-22 (Substantial Implementation, Duplication, and Resubmission of Shareholder Proposals Under Exchange Act Rule 14a-8, Release No. 34-95267), https://www.sec.gov/comments/s7-20-22/s72022-20138936-308637.pdf.

It also cannot be that, by rescinding the rule, the SEC will save itself time and resources. The SEC has already determined it will no longer consider no-action letter requests regarding shareholder proposals, so merely maintaining Rule 14a-8 on the books costs the SEC almost nothing.

In addition to the defects in the Commission's assessment of the statutory and policy issues, the Proposing Release's cost-benefit analysis comes nowhere close to what is required for SEC rulemaking. Among other things, the analysis estimates cost savings from rescission at $39.6 million per year, but that ignores the benefits that have resulted from implementing many proposals and reducing companies' risks. That amount is also dwarfed by the costs that would be imposed on companies and investors from an unsettled, fragmented state-by-state handling of legal and other issues relating to the proposal process. Significant costs would also be incurred if shareholders need to use alternative methods of shareholder advocacy outside of the Rule, such as independent solicitations. In sum, the Proposing Release does not contain the "reasoned analysis" that is legally required for rescission of an agency rule, much less a rule that has been relied upon by investors and companies alike for more than eight decades and has accomplished much.[10] We discuss below certain of the most prominent shortcomings of the SEC's position.

A. THE SEC'S ANALYSIS OF ITS AUTHORITY IS UNSUPPORTABLE

The Proposing Release states that "we are proposing to rescind Rule 14a-8 because the rule exceeds the Commission's statutory authority."[11] The SEC's assessment of its authority is incorrect. The problems with it are well rebutted in a recent analysis by five of the most prominent securities law scholars in the country. In explaining why the Proposing Release lacks a "reasoned explanation", these scholars summarize their views as follows:

> "Rule 14a-8 does not create any substantive right enforceable under state corporate law, and it displaces nothing that state law otherwise governs.

[10] See generally, *Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 42–43, 46–51 (1983) (striking down an agency's rescission of a rule for failing to provide a "reasoned analysis"). In that case, the rule at issue, involving installation of passive restraints in automobiles, had not yet even taken effect, a far-cry from the status of the well-entrenched 80-plus year-old rule at issue here.

[11] Release, 91 Fed. Reg. at 59,907.

> Proposals included under the rule are precatory; they bind no one, alter no charter, and effect no corporate action that state law does not already fully control. What the rule actually regulates is the content of a federal disclosure document – the company's own proxy statement – a subject squarely within the Commission's Section 14(a) authority since 1934."[12]

The SEC does acknowledge its statutory powers under Section 14(a) of the Exchange Act, stating that "section 14(a) provides authority to facilitate shareholders' exercise of State law rights by regulating the proxy solicitation process".[13] But it contends that the Rule that was promulgated under the statute "has evolved to function as a Federal common law as to what constitutes a proper subject for shareholder action."[14] The gist of the SEC's position is described as follows: "[T]he rule has come to operate not as a procedural mechanism to facilitate shareholders' rights under State law through the proxy process, but as a substantive Federal overlay that improperly intrudes into matters of State law by dictating that companies include (or allowing them to exclude) certain shareholder proposals in the companies' proxy materials."[15] This determination of "intrusion" on state law animates the entirety of the SEC's analysis of the authority issue.

There are numerous problems with the SEC's analysis. First, it is based on a non sequitur. The Rule, on its face, does not intrude on state law. The Rule sets forth grounds for a company's exclusion of a proposal, and the very first ground for a company to exclude a proposal is where it is "not a proper subject for action by shareholders under the laws of the jurisdiction of the company's organization." What the SEC has done over many decades is to adopt rules for exclusion in order to protect companies from inappropriate or improper resolutions because, in almost all cases, state law is lacking. As Professor Jill Fisch wrote in a law review article quoted and cited in the Proposing Release, "Many of the restrictions imposed by the proxy rules can be attributed to a pragmatic effort by the SEC to limit the number of shareholder proposals and to restrict use of the proxy statement to issues of general importance to shareholders."[16] It does not follow that the Commission's

[12] John Coates, John C. Coffee, Jr., James D. Cox, Merritt B. Fox & Joel Seligman, Shadow SEC Statement No. 16: Retain Rule 14a-8 (Oct. 13, 2026), https://clsbluesky.law.columbia.edu/2026/10/13/shadow-sec-statement-no-16-retain-rule-14a-8/.
[13] Release, 91 Fed. Reg. at 59,907.
[14] Release, 91 Fed. Reg. at 59,906.
[15] Release, 91 Fed. Reg. at 59,907.
[16] Jill E. Fisch, *From Legitimacy to Logic: Reconstructing Proxy Regulation*, 46 Vand. L. Rev. 1129, 1149 (1993),

efforts to limit shareholder resolutions to what is "proper" under state law through the imposition of pragmatic limitations on the shareholder resolution process (all to the benefit of companies seeking to exclude resolutions) should now be used as a basis for abandoning the Rule wholesale.

Second, describing what the Rule does as an "intrusion" into state law is inaccurate. The word "intrude," according to the Merriam-Webster dictionary, "means to enter a place, situation, or person's life uninvited, unwelcome, or without the right to be there." The Black's Law Dictionary defines an intrusion as "an [a]ct of wrongfully entering upon or taking possession of property of another." No such act is taking place here, where the SEC has imposed certain "pragmatic" limits on what shareholder proposals can be included in the proxy statement based on a concern about possible misuse or overuse of the resolution process by shareholders.

Third, the overall premise of the SEC's analysis is askew. The first sentence of the Proposing Release is the statement that "[c]orporations are creatures of state law,"[17] as if to suggest that failure to abide by that principle leads to unsuitable results. But the Securities Act and the Exchange Act, the Williams Act, the Sarbanes-Oxley Act, the Dodd-Frank Act, and other laws and SEC regulations all contain federal overlays over state corporate law – for example, audited financial statements, CEO and CFO certifications, and independent audit committees are just a few of the many federal corporate legal requirements. Unlike some of these laws and regulations, the proxy rules have been around for generations and, it has consistently been thought, their statutory legitimacy at this point is beyond question. As one scholar wrote in discussing the interplay of federal and state corporate law, "[Rule 14a-8] is well entrenched as an accepted facilitator of shareholder activism and of dialogue between management and institutional shareholders."[18]

Fourth, the Proposing Release notes that states have not acted in this area and suggests that this is because the existence of the Rule "has inhibited and may

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https://scholarship.law.vanderbilt.edu/cgi/viewcontent.cgi?article=2339&context=vlr; *see* Release, 91 Fed. Reg. at 59,911 n.80 (quoting this passage).

[17] Release, 91 Fed. Reg. at 59,905.

[18] Marc Steinberg, "The Federalization of Corporate Governance," Harvard L.S. Forum on Corp. Gov. (June 21, 2018), https://corpgov.law.harvard.edu/2018/06/21/the-federalization-of-corporate-governance/.

continue to inhibit the development of State law by State legislatures and courts."[19] Assuming this is accurate, rescinding the Rule in its entirety – a rule that governs the content of a *federal* disclosure document – is not an appropriate means of responding to the lack of action by state legislators and courts. The SEC might instead ask, or encourage, state policymakers to legislate or provide guidance in this area, perhaps utilizing the mechanism currently provided in Delaware for referrals of legal issues to the Delaware Supreme Court.[20]

Moreover, even if Rule 14a-8 could be viewed as intruding on state law, this seems a strained rationale for the Commission's Proposal. The SEC seems to find no impediments to intrusion when it wants to *diminish* shareholders' rights. Thus, the SEC last year issued a no-action letter authorizing the Exxon Mobil Corporation to implement its auto-voting program whereby the company's retail shareholders authorize the perpetual voting of their shares in favor of management's recommendations. The no-action letter permitted the program based on the company's agreement to impose a number of conditions such as requiring the ability to opt-in, cancel, or override any standing voting instruction at no cost to shareholders[21]. These conditions are not found in any state law. The SEC was creating rules for a voting program, rules that do not otherwise exist in the laws of any state, just as Rule 14a-8 does.

Fifth, and fundamentally, a conclusion that the Rule is statutorily invalid contradicts the rationale for having federal regulation in this area in the first place. Congress passed Section 14(a) precisely because the states had *not* adequately protected shareholder voting rights. As stated in a leading law review article written in 1940 by SEC staff members: "Prior to the adoption of Section 14 of the Securities Exchange Act of 1934, the solicitation of proxies was controlled, or it might be better described as uncontrolled, by appropriate state law. State statutes and decisions with regard to the furnishing of adequate information and the

[19] Release, 91 Fed. Reg. at 59,912.
[20] Del. Const. art. IV, § 11(h); Del. Supr. Ct. R. 41.
[21] Other conditions were that shareholders who opt into the voting program must receive annual reminders of their opt-in status and of their ability to cancel or override their standing voting instructions, and shareholders must continue to receive all proxy materials for shareholder meetings and may vote at any time using the proxy material they received for each meeting, regardless of their opt-in status.

limitation of authorizations requested in such solicitation, where not completely absent, were vague and doubtful."[22]

On this point, we acknowledge that there is now an effort in Delaware to fix the "vague" and "doubtful" legal status of proxy proposals in that state, an effort that is contingent on repeal of Rule 14a-8. But the appropriate statutory interpretation of the SEC's rulemaking authority under Section 14(a) rests on what Congress sought to remedy in 1934, not on what might be happening in states today. If a rationale for rulemaking in this area has changed, then Congress might act by repealing or amending the statute. But it hasn't done so.

Finally, if the relevant policy issues and legislative history are not sufficient to seal the Proposal's fate, the applicable case law should do so. The Third Circuit gave its explicit answer in *SEC v. Transamerica Corp,* 163 F. 2d 511 (3d Cir. 1947). There, the court stated that "[w]e entertain no doubt that [Rule 14a-8] represents a proper exercise of the authority conferred by Congress on the Commission under Section 14(a)."[23] As recently as 2023 the SEC quoted that language with approval.[24]

The Proposing Release seeks to sidestep the *Transamerica* decision and the SEC's own recent ratification of that decision by saying two things – that the authority question "was not squarely presented or addressed" in *Transamerica* and, in any event, "the Commission disagrees" with the decision. We take issue with both of these points.

It is correct that the authority issue was not "squarely presented" in that case; we have reviewed the briefs from 1947 and the SEC's brief did indeed state that, with respect to the validity of a requirement under the Rule, "[n]either Transamerica nor the District Court question the validity."[25] But we think that fact by itself is meaningful. The Transamerica company was represented by a prominent lawyer at

[22] Sheldon E. Bernstein & Henry G. Fischer, The Regulation of the Solicitation of Proxies: Some Reflections on Corporate Democracy, 7 U. Chi. L. Rev. 226, 226 (1940), https://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=1776&context=uclrev.
[23] *SEC v. Transamerica Corp*., 163 F.2d 511, 518 (3d Cir. 1947).
[24] *National Ctr. For Pub. Policy Research v. Securities and Exchange Commission,* Brief of Respondent Securities and Exchange Commission, No. 23-60230 (Fifth Circuit) (Brief filed September 13, 2023).
[25] Brief of the Securities and Exchange Commission at 9, *SEC v. Transamerica Corp*., 163 F.2d 511 (3d Cir. 1947) (Nos. 9240, 9259) available at https://www.sechistorical.org/collection/papers/1940/1946_1201_SEC_v_TransAm_brief.pdf.

the leading Delaware law firm then known as Morris, Steel, Nichols & Arsht.[26] Transamerica argued numerous issues in its brief. If there were any doubt – any doubt whatsoever – about the SEC's authority it would presumably have been raised then, close in time to the actual adoption of the Rule. Such a challenge was not raised because it was surely perceived then, and should be perceived now, as unsupportable.

And, as to the SEC's statement that it "disagrees" with the *Transamerica* court's statement about the Rule, under the Supreme Court's recent decision in *Loper Bright v. Raimondo* courts, not agencies, have the final say on the scope of the agency's power. Just as the SEC cannot say that what Congress sought to do in 1934 is no longer relevant, it also cannot simply say that it "disagrees" with an opinion from the Third Circuit and leave it at that.

B. THE RELEASE FAILS TO ACKNOWLEDGE HOW SHAREHOLDER PROPOSALS CREATE ECONOMIC VALUE

1. Shareholder Proposals Strengthen Corporate Governance and Company Value

A striking aspect of the policy analysis portion of the Proposing Release is its failure to discuss, or even acknowledge the existence of, the thoroughly documented benefits that have been achieved through the shareholder resolution process. Reams of reports, articles, and other materials have made this case. We have in this regard attached at Appendix B a report issued in 2020 by the SEC's own Investor Advisory Committee making the case that shareholder proposals provide important social and capital markets benefits.[27] None of this relevant information gives rise to so much as a footnote in the Release's policy discussion.[28]

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[26] The lawyer, Edwin D. Steel, Jr., was a name partner in the firm and later president of the Delaware state bar. He was also later appointed to the federal district court.

[27] See Recommendation of the SEC Investor Advisory Committee Relating to SEC Guidance and Rule Proposals on Proxy Advisors and Shareholder Proposals 16 (Jan. 24, 2020), https://www.sec.gov/spotlight/investor-advisory-committee-2012/sec-guidance-and-rule-proposals-on-proxy-advisors-and-shareholder-proposals.pdf.

[28] The existence of possible benefits is mentioned in the Economic Analysis portion of the Release, although only briefly. Release, 91 Fed. Reg. at 59,943 (discussing forgone benefits of shareholder proposals and the loss of a preference-expression mechanism).

The fact is that shareholder proposals often flag significant financial risks for companies before they are widely priced and lead companies to manage the risks and strengthen company value. The actions requested in proposals regularly become mainstream practices, demonstrating their value. Majority voting for directors, independent chairs and proxy access all became common corporate practice in large part because of Rule 14a-8 proposals. Investor-company agreements led to broad adoption of practices first raised by the proposals.

For example, proposals addressed the prevalence of classified boards, under which only about one-third of directors stand for re-election each year, thereby insulating incumbent directors from shareholders. These have been associated with lower firm value.[29] Institutional investors have often opposed them.[30] At the beginning of 1999, 303 S&P 500 companies, roughly 60% of the index, had classified boards. By 2014 only 10.5% did.[31]

Rule 14a-8 shareholder proposals helped drive this change. Shareholders filed 655 declassification proposals at S&P 500 companies between 2005 and 2017.[32] In 2012 and 2013 alone, public pension funds reached agreements with 100 S&P 500 and Fortune 500 companies to declassify, won 58 votes averaging 81% support, and saw 81 companies with more than $1 trillion in market value declassify.[33]

[29] Lucian Bebchuk, Scott Hirst & June Rhee, Towards the Declassification of S&P 500 Boards, 3 Harv. Bus. L. Rev. 157, 164 (2013), https://journals.law.harvard.edu/hblr/wp-content/uploads/sites/87/2013/08/HLB101_crop.pdf; Re-Jin Guo, Timothy A. Kruse & Tom Nohel, Undoing the Powerful Anti-Takeover Force of Staggered Boards, 14 J. Corp. Fin. 274 (2008), https://ideas.repec.org/a/eee/corfin/v14y2008i3p274-288.html.

[30] Bebchuk, Hirst & Rhee, *supra* note 29, at 163–64 ("[t]here is a clear and widespread opposition to classified boards among institutional investors," and giving examples of asset managers, asset owners and an investor trade association).

[31] *Id.* at 165–66; Equilar, *Board De-Classification May Lead to More Diversity* (Jan. 8, 2016), https://www.equilar.com/blogs/60-board-de-classify.html.

[32] Emiliano M. Catan & Marcel Kahan, The Never-Ending Quest for Shareholder Rights: Special Meetings and Written Consent, 99 B.U. L. Rev. 743, 758–59 (2019), https://www.bu.edu/bulawreview/files/2019/06/CATAN-KAHAN.pdf.

[33] Lucian Bebchuk, Scott Hirst & June Rhee, *Toward Board Declassification in 100 S&P 500 and Fortune 500 Companies: The SRP's Report for the 2012 and 2013 Proxy Seasons*, Harv. L. Sch. F. on Corp. Governance (Feb. 25, 2014), https://corpgov.law.harvard.edu/2014/02/25/toward-board-declassification-in-100-sp-500-and-fortune-500-companies-the-srps-report-for-the-2012-and-2013-proxy-seasons.

Proposals were concentrated at the largest companies, and that is where most of the declassification occurred.[34] Rule 14a-8 gave investors an efficient process for raising board accountability issues with companies,[35] and when shareholders voted they chose annual elections by overwhelming margins.[36]

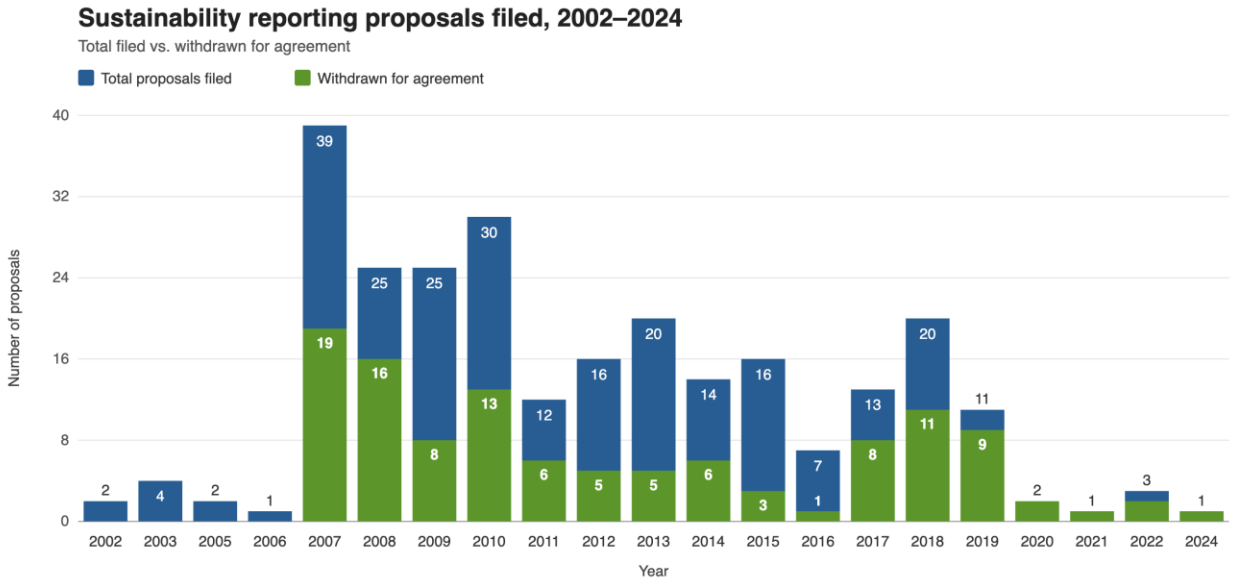
Another achievement of shareholder proposals was the adoption of the practice of issuing annual corporate sustainability reports. These reports can provide important information about financial risks and can prompt companies to manage and reduce those risks. The Interfaith Center on Corporate Responsibility (ICCR) tracked these proposals from 2002 to 2024. From 2007 to 2009, proposals were widely filed, and investor-company dialogues led to agreements and the withdrawal of the many proposals (See Table 1). In the next decade, many companies agreed to publish sustainability reports, and by 2017 to 2022 most proposals tracked by ICCR led to agreements to withdraw the proposal in exchange for commitments in this area.

[34] Miroslava Straska & H. Gregory Waller, Board Declassification and Bargaining Power 30 (Jan. 2017) (unpublished conference paper, Eur. Fin. Mgmt. Ass'n 2017 Annual Meeting), https://web.archive.org/web/20170826045236/http://www.efmaefm.org/0EFMAMEETINGS/EFMA%20ANNUAL%20MEETINGS/2017-Athens/papers/EFMA2017_0568_fullpaper.pdf.

[35] Scott B. Guernsey, Feng Guo, Tingting Liu & Matthew Serfling, Thirty Years of Change: The Evolution of Classified Boards, 80 J. Fin. 2971 (2025), working paper at 30, https://www.ecgi.global/sites/default/files/2026-10/fin-929-2023_thirty_years_of_change_the_evolution_of_classified_boards.pdf.

[36] Bebchuk, Hirst & Rhee, *Towards the Declassification*, *supra* note 29, at 164 (declassification proposals that went to a vote in 2012 "overwhelmingly passed, generally by large majorities"); Guernsey et al., *supra* note 35, at 25–27.

Table 1



Thus, sustainability reporting has become the norm for the largest companies, and increasingly for medium and large companies as well. Today, according to the Governance and Accountability Institute, 94% of S&P 500 companies and 86% of Russell 1000 companies produce sustainability reports.[37]

Investors have greatly benefitted. Sustainability reports have been used to address new risks as they develop. In recent years this has included risks relating to cybersecurity and artificial intelligence, and many companies have described artificial intelligence as being a material financial risk.[38]

We are providing, in Appendix C, additional information about the benefits that have accrued to both companies and investors through the submission of shareholder proposals on sustainability-related issues.

2. The Rule's Value is Often Realized Through Investor-Company Engagement

[37] Governance & Accountability Inst., 2026 Sustainability Reporting in Focus (Sept. 16, 2026), https://ga-institute.com/research/reporting-trends/2026-sustainability-reporting-in-focus/.
[38] Andrew Jones, *AI Risk Disclosures in the S&P 500: Reputation, Cybersecurity, and Regulation*, Harv. L. Sch. F. on Corp. Governance (Oct. 15, 2025), https://corpgov.law.harvard.edu/2025/10/15/ai-risk-disclosures-in-the-sp-500-reputation-cybersecurity-and-regulation/.

The Proposing Release describes how "many shareholder proposals today are resolved without a shareholder vote, suggesting that the Rule 14a-8 process has deviated from its original purpose."[39] This means, according to the SEC, that the Rule is improperly enabling shareholder proponents to "utilize the existence of the rule as leverage for private negotiations."[40]

It is unfortunate that the SEC believes that a mechanism that facilitates private ordering, avoids a potentially time-consuming (and expensive) no-action process, eliminates the possibility of litigation, and leads to constructive company-shareholder dialogue is a development that should now be disparaged as a "deviat[ion]" from the Rule's purpose.[41] We (and many others, both management and shareholders) have precisely the opposite view: shareholder engagement is a hugely constructive result of having the Rule in place.

Stating a negative view of the Rule's role in catalyzing shareholder engagement is one of many U-turns the SEC is taking in the Proposing Release. As recently as 2020 the SEC amended the Rule to encourage precisely such dialogue. The Commission added a new procedural requirement to Rule 14a-8(b) requiring proponents to provide a written statement with specific calendar dates and times they are available to meet and discuss their proposal with the company within 10 to 30 days of submission. The Commission explained that "encouraging company-shareholder engagement through this new requirement will be beneficial to shareholders and to companies."[42] This change was broadly endorsed by both companies and shareholders. For example, the U.S. Chamber of Commerce said in its 2020 comment letter on the rule proposal that the amendment would work "to the benefit of Main Street investors" because "constructive dialogue with shareholders has often led to significant changes in corporate governance."[43]

The SEC may believe that this type of engagement was not part of the Rule's original purpose, but the recognition in 2020 (under then SEC Chair Jay Clayton)

[39] Release, 91 Fed. Reg. at 59,915.
[40] Release, 91 Fed. Reg. at 59,916.
[41] Release, 91 Fed. Reg. at 59,915.
[42] Procedural Requirements and Resubmission Thresholds Under Exchange Act Rule 14a-8, Exchange Act Release No. 34-89964, 85 Fed. Reg. 70,240, 70,252–53 (Nov. 4, 2020), https://www.govinfo.gov/content/pkg/FR-2020-11-04/html/2020-21580.htm.
[43] Letter from Tom Quaadman, Exec. Vice President, Ctr. for Capital Mkts. Competitiveness, U.S. Chamber of Commerce, to Vanessa A. Countryman, Sec'y, SEC, at 11 (Jan. 31, 2020) (File No. S7-23-19), https://www.sec.gov/comments/s7-23-19/s72319-6730870-207447.pdf.

that the practice is salutary and should be encouraged should outweigh any concerns about what the SEC might have had in mind in 1942. Why the SEC would today want to dismantle a broadly-supported process resulting in "constructive dialogue" between shareholders and management is an enormous head-scratcher.

In Appendix A, we provide a more detailed description of the benefits of company-investor engagements following a shareholder proposal, particularly the value of a company agreement or commitment when a proposal is withdrawn.

3. Rescission would impact small shareholders the hardest

The proposal would have a particularly negative impact on small and retail investors, who are generally not in the position to initiate an independent solicitation or engage with a company on an issue the investor and others deem financially material. This development would be at odds with the Commission's traditional concern for the interests of small and retail investors; as former Chair Mary Jo White said, "The retail investor must be a constant focus of the SEC – if we fail to serve and safeguard the retail investor, we have not fulfilled our mission."[44]

What needles the SEC is, it asserts, that "a significant proportion of shareholder proposals are submitted by a small number of proponents who advance substantially similar proposals across numerous companies" and their views "may not be shared by a company's shareholders at large." But this is inaccurate. The evidence is that in 2025 two well-known retail investors (John Chevedden and Jim McRitchie) filed nearly one-third of all of the proposals that year *but their proposals received 36% average support, which was nearly 20 percentage points higher than the average support for other proposals that went to a vote.*[45]

The fact is that "[s]ince the 1940s, a small dedicated group of individual investors have played a leading role in driving many corporate governance reforms through shareholder proposals, made possible by regulatory ownership requirements

[44] Mary Jo White, Chair, U.S. Sec. & Exch. Comm'n, *Protecting the Retail Investor*, Remarks at the Consumer Federation of America 2014 Consumer Assembly (Mar. 21, 2014), https://www.sec.gov/newsroom/speeches-statements/mjw-speech-032114-protecting-retail-investor.

[45] Council of Institutional Invs., *Frequently Asked Questions About Shareholder Proposals*, https://www.cii.org/shareholderproposals (last visited Nov. 12, 2026).

reasonable for the smaller investor."[46] These smaller investors have made governance proposals that have been widely supported over the years. Cutting off this avenue for corporate reform would damage the capital markets.

C. THE RELEASE'S ASSESSMENT OF BOTH COSTS AND BENEFITS IS WOEFULLY INADEQUATE

A Commission rule will be struck down as arbitrary and capricious if it fails adequately to consider the economic impact of the rule. *See, e.g.*, *Business Roundtable v. SEC,* 647 F.3d 1144 (D.C. Cir. 2011) (criticizing the SEC for having "inconsistently and opportunistically framed the costs and benefits of the rule"). The upshot of the SEC's policy discussion in the Proposing Release is that shareholder proposals are a costly and unnecessary burden imposed on public companies. Thus, the Commission states, "the cost to companies of addressing and including shareholder proposals in proxy materials is no longer small," with estimates mostly in the six digits[47] and "[i]f a company excludes or attempts to exclude a proposal, it may be exposed to litigation risk."[48] The analysis in the Proposing Release fails to meet the requirements established by the relevant case law.

The Commission's economic analysis overlooks many issues. As the Proposing Release itself makes clear, shareholder proposals will not go away if the Rule is rescinded – proposals will instead be governed by state laws or corporate bylaws. The transition to this new set of requirements will itself likely cost many millions of dollars spent both by companies and shareholders on lawyers, lobbyists, legislators, and others in developing alternative regimes for governance of shareholder proposals and in the efforts to iron out their meanings through litigation. The SEC briefly acknowledges these sorts of transition costs[49] but does not make any effort to quantify them.

Nor does the Proposing Release attempt to assess the potential recurring costs attributable to persistent state- and company-level fragmentation. Having multiple regulatory compliance activities across states, corporations, and investors will

[46] Cynthia Simon & Sanford Lewis, Shareholder Rts. Grp., *Shareholder Proposals: An Essential Investor Right* 10 (Feb. 2025), https://www.iccr.org/wp-content/uploads/2025/02/Shareholder-Rights-Group-Report-V20.1_Final.pdf.
[47] Release, 91 Fed. Reg. at 59,913.
[48] Release, 91 Fed. Reg. at 59,915.
[49] Release, 91 Fed. Reg. at 59,944.

create foreseeable, identifiable, and potentially material incremental economic costs. In Appendix D, we discuss how the SEC could, and should, have assessed the costs of state and company-level fragmentation.

Figure 1 in Appendix D illustrates some possible outcomes after rescission. The resulting divergence could require: 1) states to undertake legislative and regulatory rulemaking activities; 2) issuers to undertake compliance review and bylaw updates; 3) proponents to undertake legal reviews, establish or navigate different shareholder proposal procedures, and continually monitor changing requirements; and 4) companies and shareholders frequently to litigate issues relating to the validity or scope of state and company requirements. The SEC should separately evaluate the incremental transition and recurring costs attributable to regulatory fragmentation, using available data, scenario analysis, and sensitivity testing.

Many other costs will fall almost entirely on shareholders who will be required to rely on methods such as independent solicitations to advance their interests. The Proposing Release does report cost estimates from past independent solicitations but fails to estimate the aggregate costs that would be incurred if shareholders are forced to rely upon independent solicitations and other means of urging their positions.

Another important shortcoming is that the SEC does not quantify the economic benefits that would be lost. Our case studies (Appendix C) involving water, carbon assets, deforestation, and methane illustrate how shareholder proposals can identify financial risks, improve corporate oversight, and potentially prevent financial losses. And the SEC does not sufficiently assess the broader market benefits attributed to shareholder proposals, which can reduce information asymmetries, address conflicts between management and shareholders, and communicate risks to the broader market. These benefits extend beyond the proponents to other investors, including smaller shareholders who may lack the resources to engage management directly. The SEC discusses some of these effects but does not adequately evaluate their economic significance.

We also note that, contrary to the SEC's views, voting outcomes are an insufficient measure of economic value. Proposals can generate value without winning a vote by encouraging negotiations, corporate commitments, and changes in company practices. The SEC states that only about 7% of shareholder proposals receive majority support, but as discussed in Appendix A there have been more than 1,000 withdrawn proposals associated with climate-related commitments. Ceres studies

focusing on three proxy seasons found more than 70% of commitments were implemented. Low voting support alone therefore cannot establish that proposals lack economic value.

In sum, the SEC estimates only the costs companies would avoid by rescinding Rule 14a-8 but does not adequately quantify the benefits that would be lost, the costs of alternative shareholder activities, or the consequences of regulatory fragmentation. By failing to sufficiently assess these predictable effects the SEC has not established that rescission would generate net economic benefits.

III. CLOSING OBSERVATIONS AND CONCLUSION

Given the insurmountable holes in the SEC's attempt to limit its own authority, the defects in its policy concerns, and the inadequacy of the economic analysis, the Proposal falls far short of what is required under the Administrative Procedure Act. The Proposing Release bulldozes through these analytical shortcomings in an attempt to relieve burdens purportedly imposed on public companies by the shareholder resolution process, pushing aside shareholder rights as it goes. A reviewing court would not permit this.

This sort of approach to shareholder rights has occurred frequently at the SEC in recent months. For example, the Commission's Chair questioned whether precatory shareholder proposals are permissible under Delaware law (no public company in Delaware took up his prompting to pursue that issue because, it would seem, no one believes it has any merit).[50] He has also criticized Delaware's legal framework and praised corporate migration to other states such as Texas, where huge roadblocks to shareholder proposals are available to companies that elect them.[51] And the Commission has taken such actions as allowing companies to bar shareholder lawsuits in state or federal court through mandatory pre-dispute

[50] Paul S. Atkins, Chairman, SEC, October 9, 2025 Weinberg Center keynote address, https://www.sec.gov/newsroom/speeches-statements/atkins-10092025-keynote-address-john-l-weinberg-center-corporate-governances-25th-anniversary-gala.
[51] Paul S. Atkins, Chairman, SEC, Remarks at the Texas A&M School of Law Corporate Law Symposium (Feb. 17, 2026), https://www.sec.gov/newsroom/speeches-statements/atkins-02-17-2026-remarks-texas-am-school-law-corporate-law-symposium;

arbitration clauses;[52] proposing to make quarterly reporting optional;[53] proposing to eliminate rules requiring disclosures of material climate-related risks;[54] proposing to scale back executive compensation disclosures;[55] proposing to exempt most public companies from internal control auditor attestations;[56] making investors' informal engagements with companies more legally precarious (resulting from new staff guidance on Schedule 13G eligibility);[57] giving no-action relief to auto-voting setups that act as a blank check for board recommendations;[58] and other actions. Also, we have not separately addressed in this letter the Commission's proposed amendments to Rule 14a-4(c) discussed in the Proposing Release, but we believe those amendments are subject to the same concerns stated above with respect to rescission of Rule 14a-8.

These various steps constitute a departure from the Commission's storied role as "the investor's advocate" – in the words of its chairman William O. Douglas in 1937. Indeed, today's SEC might more properly be called the Secession and Excision Commission to reflect its withdrawal from a statutorily-mandated federal

[52] Acceleration of Effectiveness of Registration Statements of Issuers with Certain Mandatory Arbitration Provisions, Securities Act Release No. 33-11389, Exchange Act Release No. 34-103988, 90 Fed. Reg. 45,125 (Sept. 19, 2025), https://www.sec.gov/files/rules/policy/33-11389.pdf.

[53] Semiannual Reporting, Securities Act Release No. 33-11414, Exchange Act Release No. 34-105368, 91 Fed. Reg. 24,968 (May 7, 2026), https://www.sec.gov/files/rules/proposed/2026/33-11414.pdf.

[54] Rescission of Climate-Related Disclosure Rules, Securities Act Release No. 33-11421, Exchange Act Release No. 34-105572, 91 Fed. Reg. 33,296 (June 3, 2026), https://www.sec.gov/files/rules/proposed/2026/33-11421.pdf.

[55] Executive Compensation Disclosure Reform, Securities Act Release No. 33-11455, Exchange Act Release No. 34-106873 (Nov. 13, 2026), https://www.sec.gov/files/rules/proposed/2026/33-11455.pdf.

[56] Enhancement of Emerging Growth Company Accommodations and Simplification of Filer Status for Reporting Companies, Securities Act Release No. 33-11419, Exchange Act Release No. 34-105515, 91 Fed. Reg. 30,086, 30,089, 30,098 (May 21, 2026), https://www.sec.gov/files/rules/proposed/2026/33-11419.pdf.

[57] Div. of Corp. Fin., SEC, Exchange Act Sections 13(d) and 13(g) and Regulation 13D-G Beneficial Ownership Reporting, Compliance and Disclosure Interpretations, Questions 103.11, 103.12 (Feb. 11, 2025), https://www.sec.gov/rules-regulations/staff-guidance/corporation-finance-interpretations/exchange-act-sections-13d-13g-regulation-13d-g-beneficial-ownership-reporting.

[58] Exxon Mobil Corp., SEC Staff No-Action Letter (Sept. 15, 2025), https://www.sec.gov/rules-regulations/no-action-interpretive-exemptive-letters/division-corporation-finance-no-action/exxon-mobile-091525.

investor protection role and its deletion of hard-earned and longstanding regulatory measures that maintain shareholder rights.

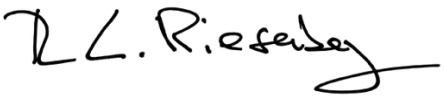
We respectfully urge the Commission not to continue on this path. We respectfully ask the Commission to rethink the wisdom of the Proposal to rescind Rule 14a-8.

Thank you in advance for your consideration of our views.

Sincerely,



Steven Rothstein
Chief Program Officer



Thomas L. Riesenberg
Senior Regulatory Advisor, Accelerator for Sustainable Capital Markets



Jim Coburn
Senior Manager, Disclosure and Regulation



Holly Li
Program Director, Accelerator for Sustainable Capital Markets



Robert Berridge
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APPENDIX A: WITHDRAWALS OF PROPOSALS BECAUSE OF COMMITMENTS MADE BY COMPANIES ARE A STRENGTH OF RULE 14A-8

Many shareholder proposals are withdrawn before they go to a vote because the filer and the company reach a negotiated agreement. The Proposing Release raises concerns about these negotiated withdrawals but does not consider the evidence and arguments demonstrating their value.[59]

Ceres is uniquely positioned to comment on negotiated withdrawals due to our work for over two decades with a wide variety of proponents and our tracking of shareholder proposals. From 2009-2025, Ceres maintained a public database (www.engagements.ceres.org) of over 2,800 shareholder proposals related to climate change, water, and biodiversity. More than 1,000 of these proposals were withdrawn when investor-company engagement led to a company commitment.

Ceres has conducted two studies analyzing withdrawals due to company commitments—for the 2014 and 2015 proxy seasons,[60] and the 2021 season[61]—providing summaries of each commitment, an assessment of company implementation, and links to evidence of implementation. We found that the commitments concerned substantive business topics that relate to all shareholders (as demonstrated by the commitment summaries),[62] and that the commitments were generally implemented by the company. The first study found 73% of 101 commitments were "met" and 13% were "mostly met."[63] The second study found

[59] Proposing Release, supra note 2. The criticisms of withdrawals appear principally at 91 Fed. Reg. 59,915–16, 59,942, and 59,954.
[60] Ceres & Investor Network on Climate Risk, *Shareholders Spur Action on Climate Change: Company Commitments from the 2014 & 2015 Proxy Seasons* (Oct. 2015).
[61] Ceres, Rob Berridge & Gabriel Gerson, *From Commitment to Implementation – An Analysis of Corporate Climate Actions*, Harv. L. Sch. F. on Corp. Governance (Aug. 14, 2024), https://corpgov.law.harvard.edu/2024/08/14/from-commitment-to-implementation-an-analysis-of-corporate-climate-actions/.
[62] Ceres & Investor Network on Climate Risk, *Shareholders Spur Action on Climate Change: Company Commitments from the 2014 & 2015 Proxy Seasons*, at 7–21; Ceres, Rob Berridge & Gabriel Gerson, *From Commitment to Implementation – An Analysis of Corporate Climate Actions*, at 12–15.
[63] *Id.* at 4.

65% of 66 commitments were "fully" implemented and 8% were "mostly" implemented.[64]

1. Withdrawals serve a valuable purpose

A withdrawal because of a commitment typically takes the form of a letter or email to the filer stating that the company will take certain actions if the proposal is withdrawn. In our experience, filers view these commitments as a positive culmination of the Rule 14a-8 process. The goal of filing a proposal is typically to encourage the company to take action that manages or reduces financial risks. If the company and investor agree, then the process has been effective, and a vote is not needed. Researchers studying withdrawals have cautioned that the effectiveness of shareholder proposals cannot be judged without accounting for withdrawn proposals,[65] and commentators have noted that pass/fail rates on voted proposals alone understate what proposals accomplish.[66] Treating withdrawals as a shortfall in shareholder democracy is an inaccurate view of the Rule's function.

Studies confirm that commitments due to withdrawals create value rather than transfer or extract it.[67] One study focused on U.S. companies found that successful engagements, in which the company agreed to act, generated a cumulative abnormal return of 7.1 percent over the following year, rising to 8.6 percent for governance themes and 10.3 percent for climate change.[68] Unsuccessful engagements produced no market reaction at all, and companies that agreed showed later gains in operating performance, profitability, efficiency, and governance.[69] A second study found abnormal returns of roughly 0.9 to 1.2 percent

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[64] Ceres & Investor Network on Climate Risk, *Shareholders Spur Action on Climate Change: Company Commitments from the 2014 & 2015 Proxy Seasons*, at 5.
[65] Rob Bauer, Frank Moers & Michael Viehs, Who Withdraws Shareholder Proposals and Does It Matter? An Analysis of Sponsor Identity and Pay Practices, 23 Corp. Governance: An Int'l Rev. 472 (2015), https://onlinelibrary.wiley.com/doi/10.1111/corg.12109.
[66] ValueEdge Advisors, What Does It Mean When Shareholder Proposals Are Withdrawn? – Corporate Governance (Jan. 21, 2016), https://valueedgeadvisors.com/2016/01/21/what-does-it-mean-when-shareholder-proposals-are-withdrawn-corporate-governance/.
[67] Cf. Proposing Release, 91 Fed. Reg. at 59,954 (suggesting that some concessions may "merely transfer value" from the company and its other shareholders to the proponent).
[68] Elroy Dimson, Oğuzhan Karakaş & Xi Li, *Active Ownership*, 28 Rev. Fin. Stud. 3225, 3228–29 (2015), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2154724.
[69] *Id.* at 3229.

for companies that answered proposals by disclosing climate risk exposure.[70] If a commitment extracted value from the company and its other shareholders, the market would be likely to price it as a loss.

The Proposing Release concedes that where proposals are value-enhancing, their withdrawals because of commitments "may represent improvements achieved without an actual vote."[71] If the commitments are valuable to companies, we can expect that companies would implement them. Two Ceres studies, mentioned earlier, do in fact reveal high implementation rates, with the second study showing a 73 percent implementation rate for withdrawals compared to a 61 percent implementation rate for majority votes.[72] In addition, a filer who is concerned about implementation can submit the proposal again in a subsequent year assuming they still meet the filing requirements.

Shareholder proposals played an important role in helping to establish several widely adopted corporate governance reforms and withdrawals because of commitments played a key role.[73] Proxy access is one strong example.

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[70] Caroline Flammer, Michael W. Toffel & Kala Viswanathan, Shareholder Activism and Firms' Voluntary Disclosure of Climate Change Risks, 42 Strategic Mgmt. J. 1850, 1871 tbl.7, 1872–73 (2021) (cumulative abnormal returns over a [−10, +10] trading-day window, with no pre-trend and no reversal), https://www.hbs.edu/ris/Publication%20Files/Flammer_Toffel_Viswanathan_2021_SMJ_6877b647-c999-43e3-88f7-7db4751ca209.pdf.

[71] Proposing Release, 91 Fed. Reg. at 59,942.

[72] Ceres, Rob Berridge & Gabriel Gerson, *From Commitment to Implementation – An Analysis of Corporate Climate Actions*, Harv. L. Sch. F. on Corp. Governance (Aug. 14, 2024), at 5–6. https://corpgov.law.harvard.edu/2024/08/14/from-commitment-to-implementation-an-analysis-of-corporate-climate-actions/.

[73] See Cynthia Simon & Sanford Lewis, Shareholder Rights Group, *Shareholder Proposals: An Essential Investor Right* 11 (Feb. 2025) (governance reforms including declassified boards, majority voting, independent chairs, and proxy access were "initially driven by shareholder proposals and then expanded to common adoption by companies and markets"); United Brotherhood of Carpenters, *Issue Report: Carpenter Funds' Majority Vote Election Standard Advocacy*, https://www.carpenters.org/issue-report-carpenter-funds-majority-vote-election-standard-advocacy/ (majority-vote proposals settled at more than 300 companies from 2006 to 2012 as companies agreed to adopt the standard, while S&P 500 adoption rose to 90% by 2014); Lucian Bebchuk, Scott Hirst & June Rhee, *75% of 2014 Engagements Have Already Produced Agreements to Declassify*, Harv. L. Sch. F. on Corp. Governance (Mar. 18, 2014), https://corpgov.law.harvard.edu/2014/03/18/75-of-2014-engagements-have-already-produced-agreements-to-declassify/ (100 S&P 500 and Fortune 500 companies agreed to move toward declassification after 2012–2013 proposals, plus 23 more in 2014).

Shareholders established it company-by-company through Rule 14a-8 proposals. In 2016, the New York City Comptroller filed proxy access proposals at 72 companies, and 52 of them, or 72 percent, were withdrawn after the company adopted or agreed to propose a substantially similar bylaw. By December 2016 at least 322 companies had proxy access bylaws, up from six in late 2014.[74] Proxy access helps to protect investor interests by giving qualifying long-term shareholders a cost-effective way to nominate corporate directors, which helps keep boards accountable.[75]

Withdrawals can also be evaluated against three core elements of the original purpose of Rule 14a-8, as defined by the governing statute and congressional record: public interest, investor protection, and fair corporate suffrage. The corporate governance reforms widely attributed to shareholder proposals (which benefit shareholders broadly) depended in large part on commitments made by hundreds of companies through withdrawal agreements (as noted earlier). And investors of all sizes and types contributed to withdrawals because Rule 14a-8 gave them fair access to the shareholder proposal process. In fact, small shareholders depend on Rule 14a-8 to even enter in dialogue with many companies who otherwise tend not to engage with them as readily as large investors, as the Release acknowledges.[76]

2. Withdrawals do not primarily benefit proponents at other shareholders' expense

One of the SEC's criticisms of withdrawals is that proponents "gain leverage in negotiations with company management or to secure private benefits from such

[74] N.Y.C. Comptroller, New York City Pension Funds 2016 Shareowner Initiatives: Postseason Report 6–7, 8–10, 18–20 (2016), https://a860-gpp.nyc.gov/downloads/bn9997544?locale=en.
[75] *See* Bo Becker, Daniel Bergstresser & Guhan Subramanian, *Does Shareholder Proxy Access Improve Firm Value? Evidence from the Business Roundtable's Challenge*, 56 J.L. & Econ. 127, 127 (2013) (finding that firms most exposed to proxy access lost value when the Commission delayed Rule 14a-11 and again when the D.C. Circuit vacated it); Jonathan B. Cohn, Stuart L. Gillan & Jay C. Hartzell, *On Enhancing Shareholder Control: A (Dodd-)Frank Assessment of Proxy Access*, 71 J. Fin. 1623, 1623 (2016) (finding that firm values rose with events that increased expected shareholder control under the Commission's 2010 proxy access rule and fell with events that decreased it).
[76] Proposing Release at 45, 104 n.301, 115, 137, 139, Fed Reg at 59915, 59931 n.301, 59935, 59941 (acknowledging that proponents use Rule 14a-8 to start dialogue with companies, that direct engagement with management is used mostly by large institutional investors, and that the alternatives "are not perfect substitutes" for smaller individual shareholders).

negotiations," which it calls a departure from the Rule's original purpose.[77] Its economic analysis frames the same concern as rent-seeking, in which concessions "merely transfer value from the company or its other shareholders to the proponent."[78] As shown below, the concern is unproven and is contradicted by what commitments typically contain as documented in Ceres studies of withdrawals.

The Proposing Release concedes that the available evidence "does not allow us to assess what proportion of negotiated outcomes represents rent extraction as opposed to genuine governance improvement."[79] Its principal academic authority says that proponents "may extract private benefits from settlements" but does not say how often they think this occurs.[80] Its one empirical citation is to a study finding that labor unions file more proposals in years when collective bargaining agreements expire, and that withdrawn proposals are associated with more favorable wage outcomes for union members.[81] However, a different study of proposals filed by labor unions finds positive financial impacts for companies associated with majority votes on the proposals and does "not find that labor proposals subsequently result in pecuniary benefits accruing to unions or their constituents at target firms."[82] In addition, the SEC concern addresses one category of proponent. It does not show that proposals on governance, disclosure, and risk, filed by pension funds, asset managers, faith-based investors, and individual shareholders, are used in the same way.

The Proposing Release also recognizes the possibility that withdrawals and commitments may enhance corporate value. It acknowledges that management "may be more committed to implementing a negotiated outcome than the outcome of a majority vote" (which a Ceres study found to be true as noted earlier[83]) and

[77] Proposing Release, 91 Fed. Reg. at 59,915.
[78] Proposing Release, 91 Fed. Reg. at 59,954.
[79] Release, 91 Fed. Reg. at 59,954.
[80] Release, 91 Fed. Reg. at 59,915 n.139 (quoting Sarah C. Haan, Shareholder Proposal Settlements and the Private Ordering of Public Elections, 126 Yale L.J. 262, 298–99 (2016)).
[81] Release, 91 Fed. Reg. at 59,954 n.431 (describing Matsusaka et al. (2019), cited in the Release as supra note 390).
[82] Andrew K. Prevost, Ramesh P. Rao & Melissa A. Williams, *Labor Unions as Shareholder Activists: Champions or Detractors?* 47 Fin. Rev. 327, 329 (2012), https://doi.org/10.1111/j.1540-6288.2012.00331.x.
[83] Ceres, Rob Berridge & Gabriel Gerson, *From Commitment to Implementation – An Analysis of Corporate Climate Actions*, Harv. L. Sch. F. on Corp. Governance (Aug. 2024), at 5-6;

that the value of negotiated withdrawals "may exceed what the voting data alone capture."[84] It states that withdrawn proposals that were value-enhancing "may represent improvements achieved without an actual vote."[85] An analysis that identifies both possibilities but cannot weigh them has not shown that withdrawals transfer value away from shareholders.

Moreover, Rule 14a-8(i)(4) lets a company exclude a proposal that relates to the redress of a personal claim or grievance, or that is designed to result in a benefit to the proponent or to further a personal interest not shared by the other shareholders at large.[86] The Commission has maintained this exclusion since 1948, and the Proposing Release itself describes its history.[87] The Proposing Release does not explain why this exclusion is inadequate to the problem of private benefits that it describes. A company that believed a proposal was a bargaining chip for private gain could invoke the exclusion or could let the proposal go to a vote. Restoring staff review of exclusion requests would strengthen that screen.

3. Filing a proposal to open a dialogue is a legitimate activity under the Rule

Several of the SEC's concerns depend on perceived leverage the proponent has in negotiations. But this overlooks the strong negotiating position of a company under Rule 14a-8. Companies have two alternatives to negotiated agreement -- they can exclude proposals or let proposals go to a vote. Most proposals are advisory and non-binding, so they do not commit the company to act even if a majority votes in favor.

The Proposing Release's own analysis establishes that negotiated withdrawal is the least costly outcome available. It states that a withdrawal, with any concessions, "could be lower cost for the company than proceeding to proposal inclusion (or else it would not likely decide to engage in negotiation in the first place)," and may lower costs for non-proponent shareholders who then need not review the proposal. Withdrawal also avoids a dispute over whether a company may exclude a proposal;

https://corpgov.law.harvard.edu/2024/08/14/from-commitment-to-implementation-an-analysis-of-corporate-climate-actions/

[84] Release, 91 Fed. Reg. at 59,948.
[85] Release, 91 Fed. Reg. at 59,942.
[86] 17 C.F.R. § 240.14a-8(i)(4).
[87] Proposing Release, 91 Fed. Reg. at 59,909–10 (describing the 1948 addition of the personal grievance exclusion and its later revision in 1983).

companies submitted 1,073 no-action requests and notices of intent to exclude between 2022 and 2025, equal to 33 percent of proposals received.[88]

When explaining why companies and proponents settle privately, the Proposing Release lists a perceived benefit for companies is "mitigating litigation risk related to statements made in opposition or in connection with exclusion".[89] The Proposing Release gives no empirical basis for treating opposition-statement litigation as a driver of withdrawals or as a cost of Rule 14a-8 (beyond one of its sources, footnote 143, noting in an academic paper a single, dismissed lawsuit under Rule 14a-9 in 2013), and we invite the Commission to supply data.

If the Commission is concerned that negotiated outcomes are opaque, possibly leaving room for benefits not shared by all shareholders, it could enforce Rule 14a-8(i)(4) (which allows for exclusion of proposals based personal grievance or interest) and encourage or require companies to publicly disclose the commitments they make in exchange for a withdrawal. Public disclosure would let all shareholders see what was agreed, and would also allow the Commission, researchers and investors to test whether commitments are implemented.[90]

[88] Proposing Release, 91 Fed. Reg. at 59,938–39; id. at 59,938 & n.359 (1,073 notices and no-action requests, 2022–2025).
[89] Proposing Release, 91 Fed. Reg. at 59,916.
[90] Proposing Release, 91 Fed. Reg. at 59,938 (describing the empirical evidence on the economic impact of shareholder proposals as mixed), 59,944 (value of forgone proposals cannot be quantified with the available data), 59,954 (unable to assess what proportion of negotiated outcomes represents rent extraction).

Appendix B: *Excerpt from* Recommendation of the SEC Investor Advisory Committee (IAC) Relating to SEC Guidance and Rule Proposals on Proxy Advisors and Shareholder Proposals (January 24, 2020)[91] (footnotes omitted)

Value of shareholder proposals

Shareholder proposals provide a number of important social benefits. Despite the vast majority being legally non-binding, they commonly are implemented by managers, despite initial opposition or resistance by boards, suggesting that they can persuade managers to review and revise their beliefs about topics covered by proposals. In particular, they can address potential agency costs – reduction in value caused by managerial entrenchment – and a broad stream of academic research shows that shareholder proposals have demonstrably done so over the past twenty years. Indeed, a peer-reviewed article on shareholder proposals in the leading finance journal concludes: "Shareholder activism and improved democracy inside firms can have **large positive effects on shareholder value**." (emphasis in original)

Even when shareholder proposals do not result in a majority-approved vote, they facilitate "closer scrutiny of important substantive issues" such as takeover defenses and executive compensation." In contrast to the relatively low-information environment of the 1990s as regards takeover defenses and executive compensation, for example, shareholder proposals have increasingly led institutional investors – informed by proxy advisors – to become much more sophisticated and focused in their analysis of these topics. The routinized discipline of companies and shareholders being required to engage in debates over shareholder proposals reduces uncertainty and information asymmetries, increasing market efficiency.

As an example, in the 1990s, it was common for shareholder proposals to focus on "poison pills," despite the fact that the redemption of a pill could be reversed quickly without a shareholder vote, and generally could be undercut by a determined bidder capable of launching a proxy contest – in effect, shareholder proposals led to a non-solution to a non-problem. Over time, however, the debate over takeover defenses became more serious, in large part due to shareholder proposals, and the focus in the 2000s of most defense-

[91] SEC Inv. Advisory Comm., Recommendation of the SEC Investor Advisory Committee (IAC) Relating to SEC Guidance and Rule Proposals on Proxy Advisors and Shareholder Proposals, Annex A, § b (Value of Shareholder Proposals) at 15-17 (Jan. 24, 2020), https://www.sec.gov/spotlight/investor-advisory-committee-2012/sec-guidance-and-rule-proposals-on-proxy-advisors-and-shareholder-proposals.pdf.

specific proposals shifted to classified boards, which cannot be added by boards without a shareholder vote, and which do have meaningful effects on takeover outcomes. "As a result of shareholder proposals, a substantial number of companies dismantled their takeover defenses."

The effect over time has been similar with respect to executive compensation. Initial focus on simply increasing incentive compensation in the late 1980s and 1990s shifted – due to shareholder proposals and subsequently "say on pay" votes – to much more detailed and informed analysis of total pay packages, longterm compensation, hold-backs, and other important elements of how executives are paid and incentivized. Without shareholder proposals, or with fewer of them, the public debate and firm-specific analysis of pay would have either not occurred, or taken longer to occur. Moreover, votes on shareholder proposals on pay have effects not simply because they achieve majority votes, but when they simply achieve higher votes than expected. "Boards reduce the rate of executive pay increases if a proposal targeting CEO compensation receives unexpectedly high shareholder support." In sum, "Rule 14a-8 is serving a more valuable function today than in the past because it may be more greatly reducing agency costs of the separation of ownership and control than has previously been reported."

Shareholder proposals can also matter because they can lead to situations where shareholders learn about how shareholder-oriented managers in fact are, without the need for an expensive and rare proxy fight. Thus, "the impact of shareholder proposals is not restricted to their actual content." This "signaling" effect is significant enough to generate stock market reactions that are measurable and material. In addition, shareholder proposals are an important vehicle for communication of views among shareholders – not just from the proponent, but also between non-proponent shareholders who can see what issues, in the collective view of shareholders, may have particular merit. In a market where communication between shareholders is sharply constrained, in large part by SEC rules, the value of an unambiguous signal from a vote on a specific proposal (as opposed to, for example, registering concern by withholding support from a director) has an important value not currently considered in the SEC's rule proposal or the accompanying economic analysis.

APPENDIX C: EVIDENCE OF SHAREHOLDER PROPOSALS' ROLE IN MANAGING FINANCIAL RISKS

Following are examples of the many situations in which investors filed Rule 14a-8 proposals to surface financial exposures a company has not adequately considered or quantified. They demonstrate the significant, proven value of Rule 14a-8 to investors and companies.

Each of the examples demonstrates the positive impacts of investors' shareholder proposals about the financial risks/impacts of sustainability issues companies face. The examples include discussions of the financial risk to companies, proposals that investors have filed, and agreements that investors and companies reached intended to reduce financial risks.

A. Water Risks

Water poses major financial risks to institutional investors and financial institutions worldwide. It is a unique resource that underpins many drivers of economic growth – food production, energy generation, industrial activities, human health, and political stability. Yet water is chronically undervalued in much of the world, and the accelerating impacts of climate change are making water supplies increasingly unstable. Institutional investors that have exposure across industries and regions face potentially large, and often unaccounted, financial risks.

Specifically, declining water availability and water quality degradation, as well as climate change impacts such as increased flooding and drought, create profound financial risks that companies must recognize and respond to. For example, a Barclays research note warned that the consumer staple sector alone, including agriculture, food, and beverage companies, is facing a potential $200 billion impact from water scarcity risks – roughly three times higher than carbon-related risks.[92] A 2020 CDP report, based on data from nearly 3,000 companies, warned of even larger business losses, potentially eclipsing $300 billion if water risks were not mitigated.[93]

[92] Sam Meredith, Why Some of the World's Biggest Companies Are Increasingly Worried About Water Scarcity, CNBC (June 29, 2021), https://www.cnbc.com/2021/06/29/water-scarcity-why-some-of-the-worlds-biggest-companies-are-worried.html.

[93] CDP, A Wave of Change: The Role of Companies in Building a Water-Secure World 9, 12 (CDP Global Water Report 2020) (2021),

Investors have used Rule 14a-8 to request that companies identify and manage water risk exposure. According to Ceres data, investors have filed 103 water-related shareholder proposals from 2009 to 2025. Since 2022, Ceres' investor-led Valuing Water Finance Initiative has provided support to over 110 investors managing $18 trillion in assets, who use water risk data as active owners to build the resilience of over 70 large companies in the apparel, beverage, food, and high-tech industries. Common requests in these proposals include reporting on water use risks, supply chain water risks, water impacts and policy, and water pollution.

In 2024, Restaurant Brands International shareholders asked the company to report on the water risk exposure of its agricultural supply chain, using quantitative indicators where appropriate, and on its policies and practices to reduce that risk. The proposal received 28.7% of votes.[94] In 2025, Yum! Brands, Inc. shareholders asked the company to evaluate the feasibility of establishing targets and actions to reduce water quality-related risks in its supply chain focusing on agricultural protein production.[95] In 2026, investors asked Digital Realty to disclose annual region-level metrics on its water risk exposure and operational water intensity. The proposal received 22.46% of votes.[96]

Water-related shareholder proposals regularly result in company commitments that reduce the financial risks these companies face. Examples include water-related commitments by a mining company, semiconductor manufacturer, utility, and meat processor.[97] Some of these company commitments have led to changes in how

https://downloads.ctfassets.net/v7uy4j80khf8/27PlKUbYANuNmNWz4ac6td/4bc499549b813200a8b162aac92a217f/a-wave-of-change.pdf.

[94] Restaurant Brands International Inc. Proxy Statement (Schedule 14A) (Apr. 25, 2024) (proposal of The Province of Saint Joseph of the Capuchin Order), https://d18rn0p25nwr6d.cloudfront.net/CIK-0001618755/e97cf73d-c5df-4a9e-a195-00d0f0da14a6.pdf

[95] Ceres, Shareholder Proposal Database, "Yum! Brands: 2025 Resolution Report on water pollution", Accessed November 3, 2026.

[96] Digital Realty Trust, Inc., Current Report (Form 8-K) item 5.07 (May 29, 2026), https://www.sec.gov/Archives/edgar/data/1297996/000110465926068907/dlr-20260529x8k.htm.

[97] Mary Landers, Chemours Pledges to Avoid Mining Near Okefenokee, Ga. Pub. Broad. (Feb. 4, 2022), https://www.gpb.org/news/2022/02/04/chemours-pledges-avoid-mining-near-okefenokee; Water, in Proxy Preview 2020 (As You Sow & Proxy Impact 2020), https://www.proxypreview.org/2020/report/environmental-management/water; Environmental Management, in Proxy Preview 2023 (As You Sow & Proxy Impact 2023), https://www.proxypreview.org/2023/report-blog/environmental-issues/environmental-

companies manage financial water risks. In a 2025 resolution which was withdrawn for a commitment, Adobe shareholders filed a proposal requesting that the Board disclose the organization's exposure to water availability related risks, water considerations in siting, and risk mitigation plans for potential disruptions.[98]

Recognizing the heavy reliance on water in its agricultural supply chain, McDonald's investors filed a resolution requesting that the company assess the feasibility of developing time-bound commitments to reduce supply chain water risks. The resolution was withdrawn in 2024 after McDonald's committed to additional water-related disclosures and shared a timeline for developing a strategy to address its impact on water scarcity in water-stressed areas across its value chain.[99]

Water-related shareholder proposals are often a starting point for productive dialogue. Shareholders filed a resolution in 2024 requesting that Monster Beverage explore the feasibility of implementing time-bound, quantitative goals to reduce water reliance in both its operations and supply chain footprints in areas of high water scarcity. It was withdrawn after Monster made a commitment to do so.[100]

B. Carbon Asset Risks and Financial Reporting

The value of an oil and gas company's balance sheet depends on what management assumes about the future: long-term oil and gas prices, how long wells, fields, and refineries will operate, and when they will have to be retired. Those assumptions determine whether assets are impaired, how quickly they are depreciated, and how large the company's asset retirement obligations appear. Carbon asset risk refers to the risk that these assumptions prove too optimistic, and is also related to the risk of stranded assets: the possibility that reserves and facilities lose value before the

management; Rod Addy, Perdue Farms Responds to Water Pollution Call, FoodNavigator (Nov. 21, 2016), https://www.foodnavigator.com/Article/2016/11/21/Meat-industry-responds-to-water-pollution-call/.

[98] Ceres, Shareholder Proposal Database, "Adobe: Resolution Report on risks related to human right to water", Accessed November 3, 2026.

[99] Eloisa Menguzzo and Luuk Tupker, "PGGM and McDonald's Sign a Resolution Withdrawal Agreement," *PGGM*, April 25, 2024, https://www.pggm.nl/en/blogs/pggm-and-mcdonald-s-sign-a-resolution-withdrawal-agreement.

[100] Ceres, Shareholder Proposal Database, "Monster Beverage Corporation: Ceres 2024 Resolution Report on water use risks", Accessed November 3, 2026.

end of their expected lives. In many cases, investors have not had access to that information, hampering their ability to assess a company's risk exposure.

When Carbon Tracker and the Climate Accounting Project reviewed the 2020 financial statements of 107 carbon-intensive companies, they found that over 70% gave no indication they had considered climate-related matters, and only 25% disclosed even some of the quantitative assumptions they had used.[101] U.S. companies lagged their non-U.S. peers: only 5% of companies reporting under U.S. GAAP showed they considered climate matters, compared with 41% of companies reporting under international standards.[102] ExxonMobil, for example, recorded nearly $25.9 billion in impairments to property, plant, and equipment in 2020, but did not disclose the commodity prices it used to test the affected projects.[103]

When companies did revise their assumptions, the financial consequences were large. Oil and gas companies in North America and Europe wrote down roughly $145 billion in assets in the first three quarters of 2020, the most for that period since at least 2010 and equal to about 10% of their combined market value.[104] These write-downs had several causes and not all of them were climate-related.[105] However, this did underscore how vulnerable company asset valuation is to changes in future demand and commodity prices.[106]

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[101] Barbara Davidson & Rob Schuwerk, Carbon Tracker Initiative & Climate Accounting Project, *Flying Blind: The Glaring Absence of Climate Risks in Financial Reporting* 1 (Sept. 2021), https://carbontracker.org/reports/flying-blind-the-glaring-absence-of-climate-risks-in-financial-reporting/.
[102] *Id.* at 20.
[103] *Id.* at 24.
[104] *2020 Was One of the Worst-Ever Years for Oil Write-Downs*, Wall St. J. (Dec. 27, 2020), https://www.wsj.com/articles/2020-was-one-of-the-worst-ever-years-for-oil-write-downs-11609077600; *see also* Press Release, Ceres, Ceres Releases Investor Expectations for Paris-aligned Financial Reporting in U.S. Oil and Gas Sector (June 17, 2021), https://www.3blmedia.com/news/ceres-releases-investor-expectations-paris-aligned-financial-reporting-us-oil-and-gas-sector.
[105] The COVID-19 pandemic collapsed fuel demand, and in March 2020 the OPEC+ production agreement broke apart when Russia rejected a Saudi-led proposal to deepen production cuts, sending Brent crude down more than 30% in six trading days. See Fiona Boal, *Oil Prices Plunge in Response to the Collapse of the OPEC+ Alliance*, S&P Global (Mar. 10, 2020), https://www.spglobal.com/en/research-insights/market-insights/oil-prices-plunge-in-response-to-the-collapse-of-the-opec-alliance; *see also 2020 Was One of the Worst-Ever Years for Oil Write-Downs*, *supra* note 104.
[106] Boal, *supra* note 105.

Oil producers routinely write down assets when oil prices crash. But the 2020 write-downs also reflected longer-term doubts about demand. Bp lowered the oil and gas price assumptions it uses in impairment testing by roughly 27% and 31% on average through 2050 and estimated $13 billion to $17.5 billion in charges, explaining that it had "reset our price outlook to reflect that impact and the likelihood of greater efforts to 'build back better' towards a Paris-aligned world."[107] Whatever the trigger, the write-downs showed how much reported asset values depend on price and demand assumptions that most investors could not see.

Investors responded by asking companies to disclose those assumptions and to test them against a low carbon economy, and by filing shareholder proposals and engaging with companies, as discussed below. In September 2020, investor groups representing more than $103 trillion in assets released an open letter calling on companies to show "the key assumptions that have been made with regard to climate-related risks".[108]

In June 2021, a Ceres analysis discussed how the U.S. oil and gas industry should address climate change in its financial reporting under existing U.S. standards.[109] It called on companies to disclose their long-term pricing assumptions and the full amount of their obligations to plug wells, decommission infrastructure, and reclaim land, because,"[i]f companies don't disclose the assumptions they use to set and test asset values, it is very difficult for investors to understand the extent of the value at risk of future stranding."[110]

Investors filed shareholder proposals at ExxonMobil, Chevron, Valero Energy, and Marathon Oil asking for audited reports on how applying the assumptions of the

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[107] BP p.l.c., Report of Foreign Private Issuer (Form 6-K), Press Release, *Progressing Strategy Development, bp Revises Long-Term Price Assumptions, Reviews Intangible Assets and, as a Result, Expects Non-Cash Impairments and Write-Offs* & n.6 (June 15, 2020), https://www.sec.gov/Archives/edgar/data/313807/000162828020009389/a15062020pressrelease6k.htm.

[108] Principles for Responsible Inv. et al., *Open Letter: Investor Groups Call on Companies to Reflect Climate-Related Risks in Financial Reporting* 1 (Sept. 16, 2020), https://www.unpri.org/download?ac=11558.

[109] Samantha Ross, Ceres, Lifting the Veil: Investor Expectations for Paris-aligned Financial Reporting at Oil and Gas Companies 2 (May 2021), https://www.ceres.org/resources/reports/lifting-veil-investor-expectations-paris-aligned-financial-reporting-oil-and-gas.

[110] Ross, *supra* note 109; Press Release, Ceres, *supra* note 104.

International Energy Agency's Net Zero by 2050 pathway would affect the assumptions and estimates underlying the company's financial statements, including long-term commodity and carbon prices, remaining asset lives, asset retirement obligations, capital expenditures, and impairments.[111] ExxonMobil[112] argued to SEC staff that its existing climate reports already satisfied the request,[113] but staff disagreed and the proposal went to a vote,[114] receiving 49.4% support in 2021.[115] A revised version won majority support, 51.0% of votes cast, at the 2022 annual meeting.[116] At Chevron, a similar proposal received 47.8% support in 2021.[117]

At other companies, similar proposals produced agreements without a vote. Investors withdrew their proposals at Valero and Marathon Oil after each company agreed to provide a quantitative analysis of the IEA Net Zero by 2050 pathway and its impact on the company's financials.[118] Valero then published a climate report containing an independent scenario analysis of its refining portfolio under the IEA's net zero assumptions, and later told the SEC that it "published its 2022

[111] Christian Bros. Inv. Servs., Inc., Notice of Exempt Solicitation, Exxon Mobil Corp. (Form PX14A6G) 1 (Apr. 15, 2022), https://www.sec.gov/Archives/edgar/data/34088/000121465922005292/o414225px14a6g.htm.
[112] Press Release, Interfaith Ctr. on Corp. Responsibility, Groundbreaking Climate Accounting Resolution Heads for Shareholder Vote at Oil Giants Chevron and Exxon 1 (May 24, 2021), https://www.iccr.org/wp-content/uploads/2023/07/exxon_chevron_pre_agm_press_release_5-24-21.pdf; Christian Bros. Inv. Servs., Inc., *supra* note 111, at 7 n.1; Press Release, Legal & Gen. Inv. Mgmt., LGIM and CBIS Co-File Exxon Shareholder Resolution over Lack of Disclosure 2 (Apr. 17, 2023), https://group.legalandgeneral.com/media/jnoldnhz/press-release-lgim-and-cbis-co-file-exxon-shareholder-resolution-over-lack-of-disclosure-17-april-2023-55.pdf.
[113] Christian Bros. Inv. Servs., Inc., Notice of Exempt Solicitation, Exxon Mobil Corp. (Form PX14A6G) 1 (Apr. 22, 2021), https://www.sec.gov/Archives/edgar/data/34088/000121465921004380/cg421210px14a6g.htm.
[114] Lasallian Region of N. Am., *Christian Brothers Investment Services Leads Climate Change Initiative* (Mar. 23, 2021), https://lasallian.info/christian-brothers-investment-services-leads-climate-change-initiative/.
[115] Christian Bros. Inv. Servs., Inc., *supra* note 111, at 4.
[116] Exxon Mobil Corp., Current Report (Form 8-K) 4 (June 1, 2022), https://investor.exxonmobil.com/sec-filings/all-sec-filings/content/0000034088-22-000034/xom-20220525.htm.
[117] Press Release, As You Sow, 48% of Shareholders Push Chevron to Account for Net Zero Climate Transition Risk (May 26, 2021), https://www.asyousow.org/press-releases/2021/5/26/shareholders-push-chevron-account-net-zero-climate-transition-risk.
[118] Christian Bros. Inv. Servs., Inc., *supra* note 111, at 4.

TCFD Report in response to its negotiation of the withdrawal of a proposal" requesting that analysis.[119]

In later proxy seasons, investors focused on asset retirement obligations, such as the costs of plugging, dismantling, and cleaning up wells, refineries, and other facilities at the end of their lives. A 2023 proposal asked Marathon Petroleum for a report on the undiscounted costs to settle asset retirement obligations that the company had not recorded because it treated the underlying assets as having indeterminate lives.[120] It received 22.8% of the votes cast.[121] A 2023 proposal asked ExxonMobil to quantify how the IEA's net zero scenario would affect all of its asset retirement obligations.[122]

The assumption these proposals questioned has since proved consequential. In 2025, after deciding to cease refining operations at its Benicia, California refinery, Valero recognized a combined $1.1 billion impairment on its Benicia and Wilmington refineries, including $337 million in newly recognized asset retirement obligations.[123] As a later proposal pointed out, Valero's prior annual report had stated that it could not reasonably estimate those obligations for its California refineries because their lives were "indeterminate."[124]

The result of these proposals and engagements was information that lets investors see, test, and price risks that had not been part of previous disclosures. Practices at peer companies show both what this disclosure looks like and that it is feasible. Bp and Shell, as foreign issuers, are not subject to Rule 14a-8, so their practices are

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[119] Letter from Valero Energy Corp. to Office of Chief Counsel, Div. of Corp. Fin., SEC 5 (Jan. 4, 2024), *in* Valero Energy Corp., SEC Staff No-Action Letter (Mar. 22, 2024), https://www.sec.gov/files/corpfin/no-action/14a-8/wwcvalero032224-14a8.pdf.

[120] Memorandum from KBI Global Invs., Marathon Petroleum Corporation (MPC), Proposal No. 10 – Shareholder Proposal Seeking an Audited Report on Asset Retirement Obligations 1 (Apr. 2023), https://collaborate.unpri.org/system/files/supporting-materials/2023-04/2023-Marathon-Petroleum-ARO-exempt-solicitation-final.pdf; *id.* at 3.

[121] Marathon Petroleum Corp., Current Report (Form 8-K) item 5.07 (Apr. 27, 2023), https://www.sec.gov/Archives/edgar/data/1510295/000151029523000042/mpc-20230426.htm.

[122] Press Release, Legal & Gen. Inv. Mgmt., *supra* note 112, at 1.

[123] Valero Energy Corp., Quarterly Report (Form 10-Q) 7 (Apr. 24, 2025), https://www.sec.gov/Archives/edgar/data/1035002/000103500225000017/vlo-20250331.htm.

[124] Vt. Pension Inv. Comm'n, Stockholder Proposal: Disclosure of Off-Balance Sheet Asset Retirement Obligations (Nov. 13, 2025), *reprinted in* Letter from Jude A. Dworaczyk, Corp. Sec'y & SEC Counsel, Valero Energy Corp., to Office of Chief Counsel, SEC Div. of Corp. Fin., exh. A (Dec. 23, 2025), https://www.sec.gov/files/corpfin/no-action/14a-8/vipcvalero1226.pdf.

offered as benchmarks of feasibility and not outcomes of Rule 14a-8 proposals. Bp's auditor compared bp's price assumptions against third-party forecasts that included 2°C scenarios, and Shell's auditor, which in its 2020 audit report had treated that kind of assessment as outside its remit, compared Shell's oil and gas prices with those in the IEA's net zero scenario the following year.[125] Among U.S. companies, Devon Energy disclosed the oil and gas price assumptions it used in impairment testing, and Occidental Petroleum and ConocoPhillips disclosed the commodity price information they used for the same purpose.[126]

Once a company's price and asset-life assumptions are visible, investors can better judge whether its balance sheet would hold up in a lower-demand future, instead of learning the answer through sudden write-downs. Shareholder proposals are an important tool that moved some of this information out of management's internal models and toward the financial statements on which investors rely.

These examples illustrate a concrete benefit of Rule 14a-8 that should be considered alongside companies' compliance costs. They show that shareholder proposals can help investors obtain decision-useful information which would otherwise remain difficult to evaluate, such as asset valuations, impairment assumptions, and retirement obligations.

C. Deforestation in Supply Chains

Companies that buy, trade, and process forest-risk commodities depend on the continued productivity of the landscapes that supply them, and research shows that productivity is declining where deforestation is concentrated. Clearing forests to make room for expanding agriculture sets off a vicious cycle, disrupting local water cycles and exposing soils to degradation. In Brazil, widespread deforestation in the southern Amazon region has reduced rainfall and lowered agricultural productivity at a regional scale, resulting in productivity losses worth up to US$1 billion annually.[127] Across the Amazon and Cerrado, this deforestation-climate

[125] Davidson & Schuwerk, *supra* note 101, at 41–42; Christian Bros. Inv. Servs., Inc., *supra* note 111, at 5.
[126] Christian Bros. Inv. Servs., Inc., *supra* note 111, at 5.
[127] Argemiro Teixeira Leite-Filho et al., Deforestation Reduces Rainfall and Agricultural Revenues in the Brazilian Amazon, 12 Nature Commc'ns 2591 (2021), https://www.nature.com/articles/s41467-021-22840-7.

phenomena has decreased soybean yields 6.6% per year from 2011–2020.[128] In West Africa, after altered weather patterns — unseasonally wet weather and rainy season drought — led to cocoa crop failures in 2024, cocoa prices increased more than 400%.[129] Deforestation in Indonesia has similarly been linked to decreased rainfall and stronger El Niño impacts[130] — which is currently playing out in increased production and transportation risks as months of drought threaten crop yields and disrupt river shipments.[131] These losses fall first on producers, but may also affect U.S. companies that rely on these supply systems.

Investors have used Rule 14a-8 to ask companies to identify and manage this financial risk exposure. Ceres research shows that between 2011 and 2017, investors filed 51 shareholder proposals seeking corporate policies to address risks tied to palm oil and other deforestation-linked commodities.[132] These proposals sought assessment and disclosure; for example, a 2022 proposal at The Home Depot asked for a report assessing if and how it could improve its efforts to eliminate deforestation and the degradation of primary forests in its supply chains.[133] When such proposals reached a vote, significant investor support was common: 67.68% of votes cast at Procter & Gamble (2020), 98.88% at Bunge—

[128] Fabiana de Souza Batista, Confidence Duku & Lars Hein, Deforestation-Induced Changes in Rainfall Decrease Soybean-Maize Yields in Brazil, 486 Ecological Modelling 110533 (2023), https://doi.org/10.1016/j.ecolmodel.2023.110533.

[129] Joanne Bentley-McKune, Congo Basin Deforestation Threatens Regional Rainfall and Global Cocoa Supply, Zero Carbon Analytics (Nov. 18, 2025), https://zerocarbon-analytics.org/insights/briefings/congo-basin-deforestation-threatens-regional-rainfall-and-global-cocoa-supply/.

[130] Clive A. McAlpine et al., Forest Loss and Borneo's Climate, 13 Env't Rsch. Letters 044009 (2018), https://doi.org/10.1088/1748-9326/aaa4ff; Sarah Chapman et al., Compounding Impact of Deforestation on Borneo's Climate During El Niño Events, 15 Env't Rsch. Letters 084006 (2020), https://doi.org/10.1088/1748-9326/ab86f5.

[131] Emily Trask, El Niño Threatens Indonesia's Palm Oil Output as Drought Worsens in 2027, AgroLatam (Oct. 23, 2026), https://www.agrolatam.com/usa/news/el-nino-indonesia-palm-oil-production-drought-2027/.

[132] Ceres, Envtl. Def. Fund & KKS Advisors, *The Role of Investors in Supporting Better Corporate ESG Performance: Influence Strategies for Sustainable and Long-Term Value Creation* 2 (2019), https://www.ceres.org/resources/reports/role-investors-supporting-better-corporate-esg-performance.

[133] The Home Depot, Inc., Proxy Statement (Schedule 14A) 44 (Apr. 4, 2022) (proposal of Green Century Capital Management), https://www.sec.gov/Archives/edgar/data/354950/000035495022000116/hd-2022proxystatement.htm.

where the board recommended a vote in favor (2021), and 64.66% at The Home Depot (2022).[134]

More often, these proposals produce an agreement and never reach a vote. Of the 51 deforestation-related proposals mentioned above, 23 companies responded by making commitments.[135] In 2023, Archer-Daniels-Midland agreed with investors to conduct a feasibility study determining when it could eliminate native vegetation conversion from its South American soy and corn supply chains and issue a corresponding commitment.[136] In 2024, Bunge agreed to report on deforestation and conversion risks in its supply chain, take corrective action to protect tropical ecosystems, and commit to 100% geospatial monitoring for soy and enhanced disclosure of traceability for indirect suppliers.[137] Lowe's, facing a similar proposal, agreed to issue a report on plans to mitigate deforestation and forest degradation risks in its supply chain when a similar proposal was withdrawn.[138]

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[134] Procter & Gamble Co., Current Report (Form 8-K), Item 5.07 (Oct. 15, 2020), https://www.sec.gov/Archives/edgar/data/80424/000008042420000076/annual2020sharemtgvote.htm; Bunge Ltd., Current Report (Form 8-K), Item 5.07 (May 7, 2021), https://www.sec.gov/Archives/edgar/data/1144519/000114451921000079/bg-20210505.htm (reporting the vote on "Proposal 5: Shareholder proposal regarding a report on the soy supply chain"); for the deforestation subject matter of that proposal *see* Green Century Capital Mgmt., Notice of Exempt Solicitation (Form PX14A6G) (Apr. 2021), https://www.sec.gov/Archives/edgar/data/1144519/000121465921004028/p47214px14a6g.htm, asking Bunge "to issue a report assessing if and how it could increase the scale, pace, and rigor of its efforts to eliminate native vegetation conversion in its soy supply chain"); The Home Depot, Inc., Current Report (Form 8-K), Item 5.07 (May 24, 2022), https://www.sec.gov/Archives/edgar/data/354950/000035495022000166/hd-20220518.htm. Bunge's board recommended a vote in favor of the proposal, which accounts for the unusually high margin.

[135] Ceres, *supra* note 132, at 2.

[136] John Lohman, *ADM Takes Steps to Protect South American Ecosystems*, Corridor Bus. J. (Feb. 10, 2023), https://corridorbusiness.com/adm-takes-steps-to-protect-south-american-ecosystems/.

[137] Green Century Capital Mgmt., *Bunge to Strengthen No-Deforestation Efforts in the Amazon, Cerrado* (Apr. 29, 2024), https://www.greencentury.com/bunge-to-strengthen-no-deforestation-efforts-in-the-amazon-cerrado/ ("Bunge . . . has agreed to report on deforestation and conversion risks in its supply chain and take immediate corrective action to protect tropical ecosystems."; "In exchange for withdrawal of the proposal, Bunge also committed to 100% geospatial monitoring for soy and enhanced disclosure of traceability for indirect suppliers").

[138] Green Century Capital Mgmt. et al., Notice of Exempt Solicitation (Form PX14A6G) 1 (May 16, 2023), https://www.sec.gov/Archives/edgar/data/354950/000121465923007326/e516231px14a6g.htm ("Lowe's, was subject to a similar proposal that Green Century Capital Management ultimately

These agreements have produced measurable changes in how companies monitor and control this exposure to financial risks. Bunge reported monitoring approximately 30% of indirect soy purchases in its priority Cerrado regions in 2022, and now reports 100% farm level traceability and monitoring for both direct and indirect soy sourcing in all priority regions of South America as of July 2026.[139] ADM completed its feasibility study in November 2023 and subsequently committed to eliminate primary native vegetation conversion from its South American supply chains.[140] In February 2024, The Home Depot issued a sustainable forestry report announcing strengthened sourcing standards for high-risk regions including Brazil's Cerrado.[141]

withdrew in exchange for the company issuing its own report outlining its plans to mitigate deforestation and forest degradation risks in its supply chain.").

[139] Bunge, Bunge Launches Unprecedented Program to Monitor Soybean Crops from its Indirect Supply Chain in the Brazilian Cerrado (Mar. 3, 2021), https://businesswire.com/news/home/20210303005821/en/ ("Bunge currently traces and monitors approximately 30% of its indirect purchases."); Bunge, Bunge Announces Increased Monitoring of Soybeans From its Indirect Supply Chain in Brazil (Feb. 7, 2023), https://www.businesswire.com/news/home/20230207006159/en/ ("Bunge today announced it has achieved 80% traceability and monitoring of soybeans from its indirect supply chain in the Brazilian Cerrado."); Bunge, Bunge Reaches 100% Monitoring of its Indirect Soy Value Chain in Brazil's Priority Regions (Nov. 21, 2024), https://bunge.com/press-releases/Bunge-Reaches-100-Monitoring-of-its-Indirect-Soy-Value-Chain ("the first global commodity exporter to achieve 100% traceability and monitoring of its direct and indirect soy purchases in priority regions of the Cerrado biome in Brazil"). These figures cover designated priority regions rather than Bunge's full Brazilian origination, and traceability is not the same as verified deforestation-free sourcing. Bunge's indirect-monitoring program launched in March 2021, before the May 2021 vote, so the sequence reflects parallel development rather than a single causal chain.

[140] Green Century Capital Mgmt., *New Study from ADM Leads to Protections for Wild Lands in South America* (Apr. 22, 2024), archived at https://web.archive.org/web/20250121005802/https://www.greencentury.com/new-study-from-adm-leads-to-protections-for-wild-lands-in-south-america/; *see also* Agrosatélite, *Potential Expansion of Agriculture With and Without Conversion of Native Vegetation to Mitigate GHG Emissions* (Nov. 2023) (study prepared for ADM), https://www.adm.com/v2bf39ab0/globalassets/sustainability/sustainability-reports/pdfs/potential-expansion-of-agriculture-nov23.pdf.

[141] Green Century Capital Mgmt., *Home Depot Issues New Sustainable Forestry Report in Response to Green Century Shareholder Proposal* (Feb. 5, 2024), https://www.greencentury.com/home-depot-issues-new-sustainable-forestry-report-in-response-to-green-century-shareholder-proposal/ ("The report covers an in-depth assessment of the company's wood sourcing policies and announces a set of strengthened standards that will protect high-risk regions such as the Cerrado in Brazil").

Deforestation risks remain, and Rule 14a-8 is an important mechanism through which companies have moved from general commitments into traceability systems, monitoring coverage, and verified volumes. Those are the controls that protect the long-term value of companies whose supply chains depend on functioning forest ecosystems, and rescinding the rule would remove the least costly, most efficient means that shareholders have to ask for them.

D. Methane Emissions and Operational Efficiency

Within the oil and gas sector, methane emissions represent financial risks – wasted resources and inefficient operations – and also pose safety hazards. One study in six U.S. regions, accounting for 52% of onshore oil and 29% of gas production, found that the methane emitted there represents "an annual loss of roughly US$1 billion in commercial gas value."[142] The IEA estimates that about half of methane emissions from oil and gas operations could be avoided at no net cost, because the cost of abatement is less than the market value of the gas captured and sold.[143]

Investors filed 82 Rule 14a-8 proposals related to methane from 2013-2025,[144] mainly asking oil and gas producers to measure their methane emissions, set quantitative reduction targets, and reduce flaring and venting. When these proposals went to a vote, support was often strong. In 2022, a proposal at Chevron about the reliability of its methane disclosures, including the results of any direct measurement, received 98% support, with the board's backing.[145] A similar proposal at Coterra Energy received 74.4% support in 2023.[146]

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[142] Evan D. Sherwin et al., *US Oil and Gas System Emissions from Nearly One Million Aerial Site Measurements*, 627 Nature 328, 328 (2024), https://www.nature.com/articles/s41586-024-07117-5.
[143] Int'l Energy Agency, *Global Methane Tracker 2024: Key Findings* (2024), https://www.iea.org/reports/global-methane-tracker-2024/key-findings.
[144] Ceres, Shareholder Proposal Database, accessed October 22, 2026.
[145] Principles for Responsible Inv., Direct Methane Measurement at Chevron Corp., PRI Collaboration Platform (last visited Nov. 8, 2026), https://collaborate.unpri.org/group/10256/home; Chevron Corp., 2022 Methane Report 3 (2022), https://www.chevron.com/-/media/shared-media/documents/chevron-methane-report.pdf.
[146] Principles for Responsible Inv., Report on Reliability of Methane Emission Disclosures at Coterra Energy, PRI Collaboration Platform (last visited Nov. 8, 2026), https://collaborate.unpri.org/group/17651/home.

Other proposals produced agreements. In 2019, after methane-target proposals had received 28% and 31.5% support in earlier years, EOG Resources agreed to set methane reduction targets, and the proposal was withdrawn.[147] EOG now reports an estimated methane emissions percentage of 0.04% for 2024, below its 2025 target of 0.06%, along with a 99.9% wellhead gas capture rate and zero routine flaring in 2023 and 2024.[148] At Hess, investors withdrew a 2021 flaring proposal after the company agreed to add a Bakken flaring reduction metric to its annual incentive plan. The company then committed to eliminate routine flaring by 2025, and it reported a routine flaring rate of 3% at the end of 2022, better than its original 5% goal.[149] After its 2022 vote, Chevron published a methane report that responded to each element of the proposal.[150]

Company experience provides examples why these commitments make financial sense. For example, Unocal spent about $60,000 converting gas-powered instruments at one Louisiana facility to compressed air, cutting gas losses by 69.4 million cubic feet a year and saving more than $208,000 annually.[151] Not every reduction pays for itself: a 2025 survey of the research by Harvard economists found that cutting methane emissions in half appears relatively inexpensive, but that costs may rise sharply once reductions exceed 60 to 80 percent.[152] The bottom line is these proposals moved companies to measure, target, and disclose losses that had been poorly measured and understood and thus inconsistently reported, the necessary first step toward recovering that value and managing these financial risks. Rule 14a-8 provided investors with a low-cost way to initiate that process,

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[147] Trillium Asset Mgmt., *EOG Resources – Methane Emission Reduction Targets (2019)*, https://archive.trilliuminvest.com/?p=19016; *see also* Amy Harder, *Scoop: Oil Producer EOG Resources Commits to Methane Target*, Axios (Mar. 12, 2019), https://www.axios.com/2019/03/12/scoop-oil-producer-eog-resources-methane-target.

[148] EOG Resources, Inc., *Fact Sheet: Sustainability, Innovation & Technology, and Stewardship* 2 (Mar. 2025), https://www.eogresources.com/documents/EOG_Fact_Sheet_2025.pdf.

[149] Ceres, *From Commitment to Implementation: An Analysis of Corporate Climate Actions from the 2021 Proxy Season* 23 (July 2024), https://www.ceres.org/resources/reports/from-commitment-to-implementation-an-analysis-of-corporate-climate-actions-from-the-2021-proxy-season.

[150] Chevron Corp., *supra* note 145, at 23.

[151] U.S. Env't Prot. Agency, Unocal Gulf Region USA, Natural Gas STAR Case Study Series, EPA430-F-01-012, at 4 (Feb. 2001), https://nepis.epa.gov/Exe/ZyPURL.cgi?Dockey=P1004FKW.TXT.

[152] Joseph E. Aldy, Forest L. Reinhardt & Robert N. Stavins, *Methane Abatement Costs in the Oil and Gas Industry: Survey and Synthesis* (Nat'l Bureau of Econ. Rsch., Working Paper No. 33564, rev. Aug. 2025) (abstract), https://www.nber.org/papers/w33564.

and rescission threatens to make the next such effort more difficult and expensive, if not impossible.

APPENDIX D: THE SEC's ECONOMIC ANALYSIS

Rescission of the Rule would result in the imposition of substantial costs and the loss of significant benefits. We discuss these issues below.

I. Impact of Fragmentation

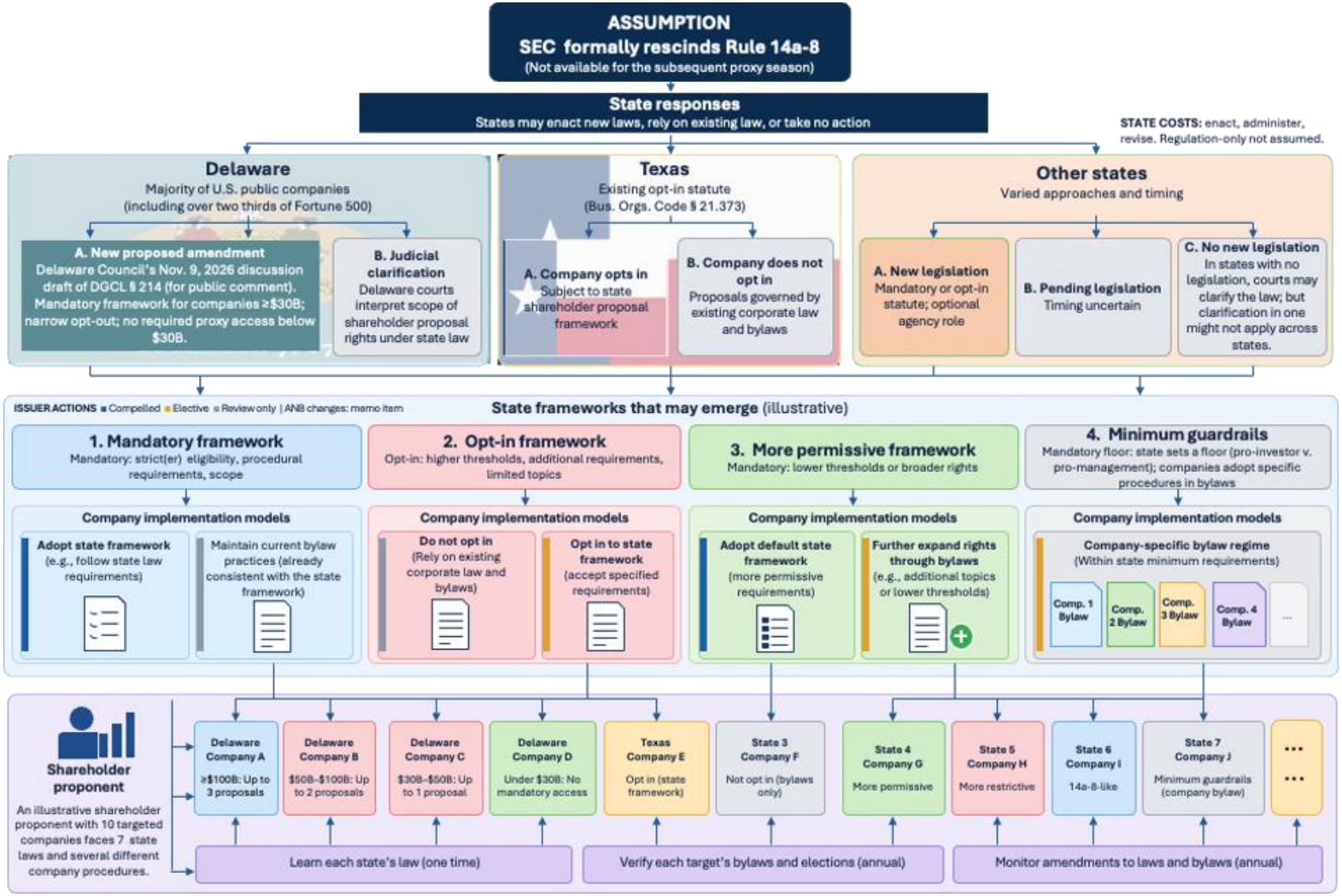
Removing 14a-8 does not eliminate shareholder proposals. But without uniform, standardized federal requirements, the authority to set shareholder proposal compliance requirements will be assumed by states and companies, resulting in multiplied regulatory compliance activities across states, issuers, and shareholder proponents. The SEC acknowledges transition costs but does not quantify them or separately assess the potential recurring costs attributable to persistent state- and company-level fragmentation. See Figure 1 for an illustration of some possible state fragmentation outcomes that could result from the Rule14a-8 rescission.

Figure 1 illustrates how states may respond differently following rescission. Two states are highlighted, showing various ways in which states could act and have acted, including a pending Delaware proposal, and an existing statute (Texas).

A proposed change in Delaware law would have a significant impact countrywide since over half of all U.S. publicly traded companies are incorporated in Delaware, including over two-thirds of Fortune 500 companies in 2025.[153] On November 9, 2026, the Delaware State Bar Association's Corporation Law Council released a discussion draft of a new section 214 of the Delaware General Corporation Law that would take effect only if the rescission of Rule 14a-8 takes effect.[154] The draft is open for comment for 60 days. As drafted, it would be mandatory for companies with a market capitalization of at least $30 billion; cap precatory proposals at one to three per annual meeting; require ownership of $250,000 (or $1 million with up to nine co-filers) held for 365 days, compared with $2,000 to $25,000 under Rule 14a-8; and bar charter and bylaw provisions that add to or alter its requirements. If

[153] Del. Dep't of State, Facts and Myths, Delaware Corporate Law, https://corplaw.delaware.gov/facts-and-myths/ (last visited Nov. 13, 2026).
[154] Corporation Law Council, Delaware State Bar Association, White Paper and Discussion Draft for Revisions to the Delaware Law on Stockholder Proposals (Nov. 9, 2026) ("White Paper"), https://sos.delaware.gov/wp-content/uploads/sites/14/2026/11/White-Paper-on-Stockholder-Proposals.pdf.

Figure 1: Illustration of State Fragmentation Resulting from 14a-8 Rescission



enacted as drafted, the Delaware proposal would limit bylaw-based variation among Delaware companies on precatory proposals, but it would not eliminate fragmentation. Its rules would differ from Rule 14a-8, from the Texas opt-in statute, and possibly from whatever other states adopt. Delaware companies below $30 billion would have no statutory route for precatory proposals, and binding proposals and advance-notice bylaws would remain governed by existing law and company-specific provisions. Additionally, the proposal also sends disputes to the Court of Chancery on a 30-day clock, a source of litigation cost that should be part of any assessment of fragmentation.

As of now, Texas is the only state to have enacted a specific shareholder proposal law since Rule 14a-8 was adopted in 1942.[155] Under Texas Business Organizations Code §21.373, qualifying nationally listed corporations may affirmatively elect to apply specified shareholder proposal requirements.[156] The Texas opt-in structure demonstrates that variation can arise not only between states but also among corporations in the same state. Also, if states do not adopt new procedures for proposals, company-level fragmentation, and the associated costs, would be greater still.

Where states establish new frameworks, they could differ in several dimensions:

- Shareholder ownership and holding-period thresholds.
- Submission deadlines and documentation requirements.
- Types of proposals eligible for consideration.
- Rights to present proposals at meetings versus rights to inclusion in company proxy materials.
- Degree of company discretion to establish additional procedures.

State laws could also differ in whether their provisions are mandatory or elective.

Moreover, as illustrated in Figure 1, investors seeking to submit shareholder proposals after a Rule 14a-8 rescission could face vastly different requirements across portfolio companies, potentially including those incorporated in the same

[155] Release, 91 Fed. Reg. at 59,905 (the Commission adopted the predecessor of Rule 14a-8 in 1942); id. at 59,917 (with the exception of Texas, no State has adopted legislation governing shareholder proposals in more than 80 years).
[156] Tex. Bus. Orgs. Code § 21.373 (added by S.B. 1057, 89th Leg., R.S. (2025), effective Sept. 1, 2025).

state. The proponents would need to determine the applicable requirements for each relevant company and adapt its engagement and submission practices accordingly. This would be particularly significant for institutional proponents holding many securities across numerous states.

Regulatory variation could generate additional costs through:

- Researching and interpreting different state laws and corporate governing documents.
- Tracking company-specific eligibility requirements and deadlines.
- Developing and maintaining different submission procedures and documentation.
- Coordinating legal, governance, and investment teams across multiple frameworks.
- Monitoring amendments to state laws and company governing documents.

As a result, shareholder proponents are likely to lose the economies of scale associated with the standardized Rule 14a-8 compliance process. The proponent may be required to maintain several distinct procedures rather than applying common procedures across its relevant holdings. The magnitude of the costs would depend on the proponent's engagement strategy, portfolio composition, and ability to reuse legal research and procedures.

As a caveat, the number of portfolio companies should not be equated with the number of independent compliance reviews. Proponents may group issuers with similar requirements, reuse legal analysis, or rely on external service providers. Also, these costs may be incurred even when the proponent ultimately decides not to submit a proposal.

We believe that the economic costs of regulatory fragmentation can be assessed through a bottom-up methodology that identifies the affected parties, the additional activities required to navigate divergent state and company requirements, and the resources associated with those activities. This analysis would focus on incremental costs attributable to the fragmentation in the regulatory frameworks.

In brief, the analysis could be as follows:

States: The SEC could estimate the additional legislative, regulatory, and administrative resources required to create shareholder proposal frameworks. Potential inputs include:

- Number of states adopting or revising relevant frameworks.
- Incremental staff hours devoted specifically to analyzing or coordinating differing requirements.
- Applicable legislative, regulatory, and legal staff costs.
- Frequency of subsequent statutory or regulatory revisions.

Issuers: The SEC could estimate the incremental costs of adapting corporate governing documents and administrative procedures, including in response to applicable state requirements. Potential inputs include:

- Number of affected public companies, by state of incorporation.
- Proportion adopting or revising shareholder proposal bylaws.
- Incremental legal, governance, and administrative hours required due to different procedural requirements.
- Recurring costs associated with monitoring and updating those requirements.

Proponents: The SEC could estimate the incremental costs incurred by investors navigating different requirements across portfolio companies. This excludes the actual cost of preparing and sending the shareholder proposals or independent solicitations. Potential inputs include:

- Number of institutional investors and other active shareholder proponents.
- Number of distinct frameworks encountered across relevant holdings.
- Incremental hours for legal analysis, eligibility verification, submission preparation, and compliance monitoring.
- Applicable internal staff and external advisory costs.

The unit of analysis should reflect the activity being measured. A diversified investor holding hundreds of companies may not need hundreds of independent legal reviews if several companies follow substantially similar requirements. Likewise, expenses shared among investors, companies, or third-party service providers should not be counted multiple times.

II. Impact of Loss of Benefits from Proposals

More generally, the number of shareholder proposals would likely decline substantially if Rule 14a-8 is rescinded. This is for at least two reasons. First, the most readily available direct alternative to proposals under Rule 14a-8, namely independent solicitations (also known as 'zero slate' campaigns) under Rule 14a-4, would be out of reach for most shareholders because of the cost and because of the new impediments being proposed elsewhere in the SEC's Proposal. Second, turning the proposal process over to the states seems likely to lead to the imposition of additional impediments. That can be seen from what Texas has done and most significantly, what is now being proposed in Delaware.[157] Delaware's proposal would, among other things, limit precatory proposals to companies of at least $30 billion in market capitalization, cap them at one to three per meeting, raise the ownership threshold to $250,000 (or $1 million with up to nine co-filers), and bar precatory proposals brought through a proponent's own solicitation. Smaller shareholders would likely be excluded. This means that the enormous financial benefits that have resulted from proposals, as described in Appendix A, will largely be lost since a large number of these proposals were filed by small shareholders.

A reduction in the number of proposals could have an economic impact through weakened corporate governance practices and lessened corporate management of financial risks posed by sustainability issues. A 2012 GAO report on SEC Regulation A illustrates how differing state regulations may reduce actions taken by issuers and investors.[158]

The GAO report documents cases in which issuers avoided registering securities in particular states because of differing merit-review requirements and associated costs. It records the mechanism: issuers, securities attorneys, and small-business advocates told GAO that researching individual states' requirements and registering in multiple states significantly increased legal and accounting costs, and some states' requirements deterred registration altogether. That is the same activity

[157] Council of the Corp. L. Section of the Del. State Bar Ass'n, White Paper and Discussion Draft for Revisions to the Delaware Law on Stockholder Proposals (Nov. 9, 2026), https://sos.delaware.gov/wp-content/uploads/sites/14/2026/11/White-Paper-on-Stockholder-Proposals.pdf.

[158] U.S. Gov't Accountability Off., GAO-12-839, Securities Regulation: Factors That May Affect Trends in Regulation A Offerings (July 2012), https://www.gao.gov/products/gao-12-839.

of identifying, interpreting, and complying with differing requirements that companies and shareholders would face here.

Divergent state and company requirements may also increase litigation, including disputes over the validity or scope of state and company requirements and actions brought against states, companies, and investors. These costs are not estimated here, and the SEC should consider them as an additional, unquantified effect.