



February 3, 2020
Vanessa A. Countryman
Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

RE: Amendments to Exemptions From the Proxy Rules for Proxy Voting Advice (Release No. 34-87457; File No. S7-22-19), and Procedural Requirements and Resubmission Thresholds Under Exchange Act Rule 14a-8 (Release No. 34-87458; File No. S7-23-19).

To Whom It May Concern:

The Americans for Financial Reform Education Fund (AFREF) appreciates the opportunity to comment on the above referenced proposed rules (the “Proposals”) concerning proxy voting advice and Rule 14a-8 shareholder proposals by the Securities and Exchange Commission (the “SEC” or the “Commission”). Members of the AFR Education Fund coalition include consumer, civil rights, investor, retiree, community, labor, faith based, and business groups.¹

The Commission’s proposed changes to Rule 14a-8 on shareholder proposals will dramatically reduce the number of proposals that are submitted by shareholders each year. The proposed increase in stock ownership requirements will take away the rights of many Main Street investors to file shareholder proposals. The increased vote requirements to resubmit a proposal will also cut off shareholder debate before a consensus can be reached regarding new environmental, social, and governance topics. There have been numerous cases involving such critical issues as climate policy and human rights policy in which shareholder proposals initially received low votes but gained engagement and support with resubmission and eventually passed. Taken together, these changes will dramatically reduce the ability of shareholders to hold corporate CEOs accountable by bringing proposals to a vote at annual meetings.

We strongly disagree with the implication in the economic analysis of the 14a-8 proposal that shareholder proposals impose excessive costs on companies. In fact, there is extensive high-quality academic research demonstrating that shareholder voice can and does create long-term value for companies and helps to address agency costs resulting from the separation of ownership and control at large corporations.² The proposed changes to Rule 14a-8 simply do not

¹ A list of coalition members is available at: <http://ourfinancialsecurity.org/about/our-coalition/>

² Andrew Prevost, et.al., “Labor Unions as Shareholder Activists: Champions or Detractors?” *Financial Review*, Vol. 47, Issue 2, May 2012, pp. 219-421; Luc Rennebooga and Peter Szilagyi, “The Role of Shareholder Proposals in Corporate Governance,” *Journal of Corporate Finance*, Vol. 17, Issue 1, February 2011, pp. 167-188. Lucian Bebchuk, “The Case for Increasing Shareholder Power,” *Harvard Law Review*, Vol. 118, No. 3, pp. 833-914, January 2005.

reflect the economic or social benefits of shareholder voice and the ability to offer proposals to change company policies.

The Commission's proposed proxy voting advice rule amendments will create troubling new procedural requirements for proxy voting advisors that will also weaken shareholder influence. Of greatest concern, the SEC proposes to require that proxy advisors provide companies with an advance copy of their proxy voting advice for investors. This pre-review process will undermine the independence of proxy voter advisors by providing a mechanism for companies to badger and harass proxy voting analysts who recommend votes against management. As a result of this implicit tax on proxy voting advisor recommendations against management, fewer votes will be cast for shareholder proposals.

As others have previously commented,³ we question the SEC's goals in proposing these amendments. The fact that the Commission voted to approve the Proposals in the same open meeting suggests that they are intentionally linked. The Commission's proposed amendments to Rule 14a-8 on shareholder proposals will limit the ability of shareholders to submit proposals. The Commission's proposed amendments on proxy voting advice will limit the ability of shareholders to gain an objective assessment of such proposals and therefore to vote in an informed manner. These Proposals are two sides of the same coin – a wooden nickel that will limit the ability of shareholders to hold corporate CEOs accountable.

We are particularly concerned that the Commission's impetus for adopting these proposed rules did not come from the everyday investors who it is the Commission's mission to protect. Notably, even a majority of the Commission's own Investor Advisory Committee opposes the Proposals.⁴ Rather, the Proposals have long been called for by corporate CEOs who are represented by the Business Roundtable and big businesses that are represented by the U.S. Chamber of Commerce.⁵ This apparent domination of the SEC's rulemaking agenda by the companies and CEOs that the Commission is charged with regulating is a classic example of regulatory capture.

We also note that the SEC has not yet implemented rules that are mandated by the Dodd-Frank Wall Street Reform and Consumer Protection Act that was enacted over 10 years ago.⁶ Among its provisions, the Dodd-Frank Act sought to address the corporate governance failures that precipitated the 2008 Wall Street financial crisis. For example, Section 954 of the Dodd-Frank Act requires the adoption of clawback policies by companies to recover excess incentive-based

³ See e.g., Letters from Nell Minow, ValueEdge Advisors, to the SEC dated January 31, 2019, available at <https://valueedgeadvisors.com/2020/01/31/vea-comment-on-the-secs-awful-proxy-advisory-proposal/> and <https://valueedgeadvisors.com/2020/01/31/vea-comment-on-the-secs-awful-shareholder-proposal-draft-rule/>.

⁴ Recommendation of the SEC Investor Advisory Committee (IAC) Relating to SEC Guidance and Rule Proposals on Proxy Advisors and Shareholder Proposals (January 24, 2020), available at <https://www.sec.gov/spotlight/investor-advisory-committee-2012/sec-guidance-and-rule-proposals-on-proxy-advisors-and-shareholder-proposals.pdf>.

⁵ Petition for Rulemaking Regarding Resubmission of Shareholder Proposals Failing to Elicit Meaningful Shareholder Support, U.S. Chamber of Commerce et al., August 9, 2014, available at <https://www.sec.gov/rules/petitions/2014/petn4-675.pdf>; Letter to SEC Chairman White on Proxy Advisory Firms, Business Roundtable, September 12, 2013, available at <https://www.businessroundtable.org/archive/resources/letter-to-chairman-white-on-proxy-advisory-firms>.

⁶ "Four Unfinished Dodd-Frank Rules to Watch at SEC in 2020," Bloomberg Law, Dec. 27, 2019, available at <https://news.bloomberglaw.com/securities-law/four-unfinished-dodd-frank-rules-to-watch-at-sec-in-2020>.

compensation that resulted from a financial restatement. The Commission proposed new clawback rules on July 1, 2015 but the final rules still have not been adopted.

Ironically, investors are using the shareholder proposal rule to accomplish privately what the SEC appears unwilling to do even when mandated by law. For example, in 2013, Wells Fargo adopted an enhanced clawback policy in response to a shareholder proposal by the New York City Comptroller. In 2017, Wells Fargo successfully clawed back tens of millions of dollars in executive compensation from its disgraced former CEO John Stumpf and former head of community banking Carrie Tolstedt as a result of the company's fraudulent accounts scandal.⁷ This clawback likely would not have happened but for the shareholder proposal rule.⁸

We note that Institutional Shareholder Services, the largest proxy voting advisor, has recommended that its clients vote in favor of shareholder proposals to enhance executive compensation clawback policies. These include a 2010 shareholder proposal at Bank of America and a 2015 shareholder proposal at JPMorgan Chase that each received a 44 percent "for" vote in favor of the proposal.⁹ How would the interests of investors be served by allowing these too-big-to-fail banks to pre-review the proxy voting recommendations of Institutional Shareholder Services? Will Main Street investors benefit from giving more power to Wall Street banks?

In conclusion, we strongly urge the SEC to withdraw these misguided Proposals on proxy advisors and shareholder proposals. Instead, the Commission's limited rulemaking resources should be allocated to completing the rules that are required by the Dodd-Frank Act. Thank you for the opportunity to comment on the Proposals. If you have questions, please contact Marcus Stanley, AFREF's Policy Director, at [REDACTED] or [REDACTED]

Sincerely, Americans for Financial Reform Education Fund

⁷ Emily Glazer, "Wells Fargo Claws Back Millions From CEO After Scandal," The Wall Street Journal, Sept. 27, 2017, available at <https://www.wsj.com/articles/wells-fargo-board-actively-considering-executiveclawbacks-1474985652>.

⁸ Gretchen Morgenson, "Meet the Legislation Designed to Stifle Shareholders," The New York Times, June 16, 2017, available at <https://www.nytimes.com/2017/06/16/business/wells-fargo-clawback-fair-choice-act-shareholders.html>.

⁹ "Bank of America Corporation," ISS Proxy Advisory Services, April 15, 2010 and "JPMorgan Chase & Co.," ISS Proxy Advisory Services, May 5, 2015.