February 3, 2020

Ms. Vanessa Countryman
Secretary, Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549
VIA ELECTRONIC MAIL: rule-comments@sec.gov

Re: **File Number S7-23-19**:
Procedural Requirements and Resubmission Thresholds under Exchange Act Rule 14a-8

Submitted by: James R. Copland

Dear Ms. Countryman:

I appreciate the opportunity to comment on the Commission's proposed rulemaking, "Procedural Requirements and Resubmission Thresholds under Exchange Act Rule 14a-8" (File No. S7-23-19). I am a senior fellow with the Manhattan Institute for Policy Research, a non-profit, non-partisan think tank that develops and disseminates ideas that foster economic choice and individual responsibility.[1] Since 2003, I have served as the Institute's director of legal policy.[2] The shareholder-proposal process under the SEC's Rule 14a-8 has constituted a significant focus of my research, especially since 2011, when the Institute launched ProxyMonitor.org, a publicly available database cataloging shareholder proposals and shareholder advisory votes on executive compensation at America's largest companies.[3] I have testified on the shareholder-proposal process before committees and subcommittees of the United States Senate[4] and United States House of Representatives,[5] in addition to authoring a number of reports, articles, and other writings on the subject, which are included in an appendix and incorporated herein by reference.

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[1] *See* About MI, https://www.manhattan-institute.org/about. My comment letter reflects only my own views, not my employer's. Some commentary is excerpted from my own prior writings, listed in the appendix, without attribution.
[2] *See* James R. Copland, https://www.manhattan-institute.org/expert/james-r-copland.
[3] *See* About Proxy Monitor, https://www.proxymonitor.org/Forms/About.aspx.
[4] *See* Statement of James R. Copland, "Who's Monitoring the Monitors? The Rise of Intermediaries and the Threat to Capital Markets," Hearing before the Senate Committee on Banking, Housing, and Urban Affairs: The Application of Environmental, Social, and Governance Principles in Investing and the Role of Asset Managers, Proxy Advisors, and Other Intermediaries, Apr. 2, 2019, *available at* https://www.banking.senate.gov/imo/media/doc/Copland%20Testimony%204-2-191.pdf.
[5] *See* Statement of James R. Copland, "SEC Rule 14a-8: Ripe for Reform," Hearing before the House Committee on Financial Services Subcommittee on Capital Markets and Government Sponsored Enterprises: Hearing on Corporate Governance: Fostering a System that Promotes Capital Formation and Maximizes Shareholder Value, Sept. 21, 2016, *available at* https://media4.manhattan-institute.org/sites/default/files/T-JC-0916.pdf; *see also* Statement of James R. Copland, "Economic Growth and Efficient Capital Markets: An Agenda at Odds with Subcommittee's Bills Under Consideration," Hearing before the House Committee on Financial Services Subcommittee on Investor Protection, Entrepreneurship, and Capital Markets: Promoting Economic Growth: A Review of Proposals to Strengthen the Rights and Protections for Workers, May 15, 2019, *available at* https://media4.manhattan-institute.org/sites/default/files/Testimony_JCopland_051519.pdf.

The proposed rulemaking would change the shareholder-proposal process in three ways:

1. By modifying the ownership thresholds for filing a shareholder proposal qualifying for proxy-ballot inclusion;[6]

2. By clarifying limits on submitting multiple shareholder proposals in a given year at a given company through representatives;[7] and

3. By modifying the resubmission thresholds whereby an issuer may exclude a shareholder proposal that has gained insufficient shareholder support (or, in this iteration, has seen a substantial decline in shareholder support).[8]

In my view, the proposed rulemaking is a modest, salutary reform. The shareholder-proposal process has too often been abused by shareholders advancing agendas for reasons other than improving share value, at other shareholders' expense.

The proposed rulemaking does not go far enough. The entire legal foundation of the SEC's shareholder-proposal rule is suspect; the SEC's role as shareholder-proposal gatekeeper goes beyond the Commission's proper role, which should be to facilitate *disclosure* rules necessary to the functioning of national securities markets—not intervening in corporations' annual-meeting process in substantive matters reserved to state law. And the proposed rules are unlikely to prevent certain very small long-term shareholders—including "corporate gadflies"[9] and small institutional-investing vehicles specifically designed to advance goals other than share value—from continuing to play an outsized role influencing corporate behavior. But on the margin, the proposed rules should make a positive difference, relative to the status quo.

My comment seeks to augment the record before the Commission, consistent with my research in the field. In Part I, I comment broadly on the shareholder-proposal process as the SEC has created and long overseen it. In Part II, I comment on each of the three proposed rules. In Part III, I suggest alternative rule changes the Commission may wish to consider.

Part I: The Shareholder-Proposal Process in General

U.S. capital markets continue to lead the world.[10] A significant reason for continuing U.S. market leadership is what Yale law professor Roberta Romano has called the "genius of American corporate law":[11] SEC rules and regulations promulgated under the authority of the federal

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[6] *See* 17 CFR 240.14a-8(b)(1).
[7] *See* 17 CFR 240.14a-8(c).
[8] *See* 17 CFR 240.14a-8(i)(12).
[9] "Corporate gadflies," as commonly used in Charles M. Yablon, *Overcompensating: The Corporate Lawyer and Executive Pay*, 92 COLUM. L. REV. 1867, 1895 (1992); and Jessica Holzer, *Firms Try New Tack Against Gadflies*, WALL ST. J., June 6, 2011.
[10] *See* Ron Surz, *U.S. Stock Market Is Biggest & Most Expensive In World, But U.S. Economy Is Not The Most Productive*, NASDAQ.COM, Apr. 2, 2018, https://www.nasdaq.com/articles/us-stock-market-biggest-most-expensive-world-us-economy-not-most-productive-2018-04-02.
[11] *See generally* Roberta Romano, THE GENIUS OF AMERICAN CORPORATE LAW (1993).

securities laws dictate disclosure rules, while substantive matters related to the distribution of authority between shareholders and corporate boards are left to state law.[12] Federal primacy in the disclosure regime enables investors to price securities efficiently on an apples-to-apples basis with adequate, accurate information. State primacy in allocating the substantive rights of shareholders vis-à-vis boards prevents a one-size-fits-all lock-in of inefficient rules—and facilitates a "race to the top" given shareholders' ability to incorporate variations in state legal regimes into securities pricing.[13]

Recent statutory changes have somewhat interfered with the distribution of authority between federal and state securities and corporation law—particularly the Sarbanes-Oxley Public Company Accounting Reform and Investor Protection Act of 2002[14] and the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010[15]. But in general, that states rather than the federal government have the "authority to regulate domestic corporations, including the authority to define the voting rights of shareholders" remains what the Supreme Court has called the most "firmly established" principle of American corporation law.[16]

The shareholder-proposal process under SEC Rule 14a-8 is, in many respects, a longstanding exception to this rule—albeit one created under the auspices of Commission rulemaking rather than clear statutory mandate. The SEC first promulgated a "shareholder proposal rule"—the antecedent to the current Rule 14a-8—in 1942.[17] Then–SEC chairman Ganson Purcell explained the purpose of the rule to the House Interstate and Foreign Commerce Committee as follows:

> Once a shareholder could address a meeting[;] today he can only address the assembled proxies which are lying at the head of the table. The only opportunity that the stockholder has of expressing his judgment comes at the time when he considers the execution of the proxy form, and we believe, whether we are right and whether we are wrong—and I think we are right—that that is the time he should have the full information before him and the ability to take action as he sees fit.

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[12] *See, e.g.*, CTS Corp. v. Dynamics Corp., 481 U.S. 69, 89 (1987) ("No principle of corporation law and practice is more firmly established than a State's authority to regulate domestic corporations, including the authority to define the voting rights of shareholders."); Santa Fe Industries, Inc. v. Green, 430 U.S. 462, 479 (1977) ("Corporations are creatures of state law, and investors commit their funds to corporate directors on the understanding that, except where federal law expressly requires certain responsibilities of directors with respect to stockholders, state law will govern the internal affairs of the corporation.").

[13] *See generally* Ralph K. Winter, *State Law, Shareholder Protection, and the Theory of the Corporation*, 6 J. LEGAL STUD. 251 (1977); Winter, *The "Race for the Top" Revisited: A Comment on Eisenberg*, 89 COLUM. L. REV. 1526 (1989). *See also* Roberta Romano, *Law as a Product: Some Pieces of the Incorporation Puzzle*, 1 J.L. ECON. & ORG. 225 (1985) (finding the "race to the top" hypothesis more supported than the "race to the bottom" hypothesis in empirical testing).

[14] Pub. L. No. 107-204, 116 Stat. 745 (2002). For a substantive critique of the Sarbanes-Oxley law, in the context of traditional American securities and corporate law, see generally Roberta Romano, *The Sarbanes-Oxley Act and the Making of Quack Corporate Governance*, 114 YALE L.J. 1521 (2005).

[15] Pub. L. No. 111-203, 124 Stat. 1376 (2010). The Dodd-Frank law interjects a federal role into the allocation of shareholder-board authority through, *inter alia*, requiring publicly traded companies to hold shareholder "advisory votes" on executive compensation annually, biennially, or triennially. *See id.* at § 951.

[16] CTS Corp. v. Dynamics Corp., 481 U.S. at 89.

[17] *See* Securities Exchange Act of 1934 Release No. 3347 (Dec. 18,1942), 7 Fed. Reg. 10,653 (1942).

> The proxy solicitation is now in fact the only means by which a stockholder can act and can perform the functions which are his as owner of the corporation. It, therefore, seems clear to us that only by making the proxy a real instrument for the exercise of those functions can we obtain what the Congress and this committee called for in the form of "fair corporate suffrage."[18]

The allusion to "fair corporate suffrage" is not to the statutory text of the Securities Exchange Act of 1934[19] but rather to legislative history included in the House Report.[20] The actual section of the Securities Exchange Act upon which Rule 14a-8 is promulgated, § 14(a), is principally designed to ensure corporate disclosures to shareholders to afford investment information and prevent deception, as the Supreme Court noted in its *Borak* decision in 1964: "The purpose of § 14(a) is to prevent management or others from obtaining authorization for corporate action by means of deceptive or inadequate disclosure in proxy solicitation."[21]

Although the unvoted-on legislative history in the House Report for the 1934 Act does allude to "fair corporate suffrage," the statute hardly wrests the allocation of substantive shareholder rights from the states and transfers them to the federal government.[22] As the D.C. Circuit explained in its 1990 *Business Roundtable* decision: "While the House Report indeed speaks of fair corporate suffrage, it also plainly identifies Congress's target—the solicitation of proxies by well informed insiders 'without fairly informing the stockholders of the purposes for which the proxies are to be used.'"[23] In *Business Roundtable*, the court rebuffed the Commission's "immensely broad" and "unbounded" view of its powers based on the allusion to "fair corporate suffrage" in the House Report;[24] the Court explained in no uncertain terms: "That proxy regulation bears almost exclusively on disclosure stems as a matter of necessity from the nature of proxies. Proxy solicitations are, after all, only communications with potential absentee voters."[25]

The proposed rulemaking observes that Rule 14a-8 is intended to facilitate "shareholders' traditional ability under state law to present their own proposals for consideration at a company's annual or special meeting." It cites for that proposition then-chairman Purcell's statement in his 1943 testimony that the shareholder-proposal rule "endeavor[s] to assure to the stockholder . . . those rights that he has traditionally had under State law, to appear at the meeting; to make a proposal; to speak on that proposal at appropriate length; and to have his proposal voted on."[26]

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[18] Hearings on H.R. 1498, H.R. 1821, and H.R. 2019, Before the House Committee on Interstate and Foreign Commerce, 78th Cong., 1st Sess., pt. 2, at 174-75 (1943).
[19] Pub. L. No. 73-291, Ch. 404, 48 Stat. 881 (1934) (codified at 15 U.S.C. §§ 78a–78oo (2006 & Supp. II 2009)), at §§ 78m, 78n & 78u.
[20] H.R. Rep. No. 1383, 73d Cong., 2d Sess. 14 (1934).
[21] J.I. Case Co. v. Borak, 377 U.S. 426, 431 (1964).
[22] *See* Business Roundtable v. SEC, 905 F.2d 406, 412 (D.C. Cir. 1990) (rejecting the premise that the SEC could "establish a federal corporate law by using access to national capital markets as its enforcement mechanism").
[23] *Id.* at 410. The court emphasized that "The Senate Report contains no vague language about 'corporate suffrage,' but rather explains the purpose of the proxy protections as ensuring that stockholders have 'adequate knowledge' about the 'financial condition of the corporation ... [and] the major questions of policy, which are decided at stockholders' meetings.'" *Id.* (citing S.Rep. No. 792, 73d Cong., 2d Sess. 12 (1934) (characterizing purpose of proxy protections as ensuring stockholders' "adequate knowledge" about the "financial condition of the corporation")).
[24] *Id.* at 407, 412 (rejecting SEC Rule 19c-4 because "the rule directly controls the substantive allocation of powers among classes of shareholders . . . in excess of the Commission's authority under Sec. 19 of the Securities Exchange Act of 1934, as amended").
[25] *Id.* at 410.
[26] Hearings on H.R. 1498, H.R. 1821, and H.R. 2019, Before the House Committee on Interstate and Foreign

But neither the current rulemaking analysis nor then-chairman Purcell's statement wrestles at all with underlying substantive rights under state law. In fact, no provision of Delaware's General Corporation Law[27] grants any shareholder a right, even as a default rule, to speak in a corporate annual meeting or to introduce a proposal for vote at the meeting—notwithstanding detailed rules governing annual meetings;[28] shareholder voting rights;[29] and shareholder rights to inspect shareholder lists and corporate books and records.[30] Apart from certain matters requiring a shareholder vote by law, or as otherwise specified in corporate bylaws or articles of incorporation, whether to take a shareholder vote on a matter is a matter of board discretion under Delaware law.[31]

In a very real sense, then, the SEC's shareholder-proposal rules abrogate state law and substitute a substantive federal overlay: if a corporate board could, under Delaware law, refuse to grant speaking rights to a shareholder at an annual meeting—or refuse to allow a shareholder to put a matter up for a shareholder vote—then the SEC's contrary insistence is an implicit preemption of state law. And while *Congress* would surely have the power to override state corporate law and preempt the field, it has not done so; and the Supreme Court eschewed inferring precisely this result: "Absent a clear indication of congressional intent, we are reluctant to federalize the substantial portion of the law of corporations . . . particularly where established state policies of corporate regulation would be overridden."[32] There is simply no statutory justification for the Commission to *require* any corporation, by virtue of trading securities on a national exchange, to submit various shareholder issues to a vote of all shareholders, absent the consent of the corporate board of directors or a contrary directive under state law.

Yet that is precisely what the SEC has long done. And in its role as "shareholder-proposal gatekeeper," the Commission has often modified its substantive approach in diametrically varying ways. Consider the SEC's handling of shareholder proposals that it in 1952 described as "primarily for the purpose of promoting general economic, political, racial, religious, social, or similar causes."[33] The SEC's longtime position was that it "was not the intent of [the shareholder-proposal rule] to permit stockholders to obtain the consensus of other stockholders with respect to matters which are of a general political, social or economic nature."[34] Thus, the SEC permitted

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Commerce, 78th Cong., 1st Sess., at 17-19 (1943). *See also* Business Roundtable, 905 F.2d at 410 ("The goal of federal proxy regulation was to improve those communications and thereby to enable proxy voters to control the corporation as effectively as they might have by attending a shareholder meeting.").

[27] *See* 8 Del. C. § 101 *et seq.* For a variety of reasons, most large publicly traded companies in the United States are incorporated in Delaware. This phenomenon has long been the subject of academic debate. *Compare* William L. Cary, *Federalism and Corporate Law: Reflections upon Delaware*, 83 YALE L.J. 663, 663, 705 (1974) (lamenting a "race to the bottom" in U.S. corporate law) *with* Ralph K. Winter, *State Law, Shareholder Protection, and the Theory of the Corporation*, 6 J. LEGAL STUD. 251 (1977) (arguing that, *contra* Cary, the federal structure of corporate law creates a "race to the top"); Winter, *The "Race for the Top" Revisited: A Comment on Eisenberg*, 89 COLUM. L. REV. 1526 (1989). *See also* Roberta Romano, *Law as a Product: Some Pieces of the Incorporation Puzzle*, 1 J.L. ECON. & ORG. 225 (1985) (finding the "race to the top" hypothesis more supported than the "race to the bottom" hypothesis in empirical testing).

[28] *See id.* at §§ 211, 222, 228.

[29] *See id.* at §§ 212, 213, 216, 217, 218, 225, 231.

[30] *See id.* at §§ 219, 220.

[31] *See id.* at § 146.

[32] Santa Fe Industries, Inc. v. Green, 430 U.S. 462, 479 (1977)

[33] Exchange Act Release No. 4775, 17 Fed. Reg. 11,431, 11,433 (1952).

[34] Securities Exchange Act Release No. 3638 (Jan. 3, 1945), 11 Fed. Reg. 10,995 (1946).

companies to exclude shareholder proposals of such a nature from their proxy ballots.[35] In 1972, the SEC modified its substantive screen; its new rule merely permitted companies to exclude shareholder proposals "not significantly related to the business of the issuer or not within its control."[36] In 1976, the SEC issued an interpretive release recalibrating the new standard in a way that essentially *inverted* the pre-1972 rule: a company could exclude a shareholder proposal related to the "ordinary business" of the corporation only if the proposal "involve[d] business matters that are mundane in nature and do not involve any substantial policy or other considerations."[37]

Even were the SEC's shareholder-proposal rule to be a legal assertion of the Commission's statutory power, it is doubtful that its current iteration satisfies the Commission's statutory mandate to develop rules that "promote efficiency, competition, and capital formation."[38] To be sure, corporations are wise to communicate with shareholders—particularly those that list securities on actively traded exchanges. But it is instructive that no foreign regime has any equivalent to the SEC's Rule 14a-8; nor, to my knowledge, has any company not subject to the SEC rule voluntarily adopted anything remotely equivalent.

There's good reason for that. Large shareholders—including both ordinary institutional investors managing passive stock portfolios and actively managed hedge funds seeking to modify corporate behavior to drive returns—make almost no use of the shareholder-proposal process. Rather, the SEC's shareholder-proposal rule in its current form typically enables shareholders with a limited investment interest in the corporation—and/or an investment interest oriented around principles other than share value—to co-opt the corporate agenda for their own purposes.

For example, last February, jeans-maker Levi Strauss filed the paperwork to become a publicly traded corporation. In March, the People for the Ethical Treatment of Animals (PETA) announced it was acquiring shares in Levi's in order to propose shareholder resolutions involving the manufacturer's use of leather patches. PETA's decision was not related to investment concerns; it announced it was acquiring the minimum number of shares required to reach the SEC's $2,000 threshold.[39] Today, navigating such special-interest investors is simply an expected cost of being a publicly traded corporation—complicated by the SEC's extralegal

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[35] *See* Exchange Act Release No. 4775, 17 Fed. Reg. 11,431, 11,433 (1952).
[36] *See* Exchange Act Release No. 9784, 37 Fed. Reg. 23,178, 23,180 (1972).
[37] *See* Adoption of Amendments Relating to Proposals by Security Holders, Exchange Act Release No. 12,999, 41 Fed. Reg. 52,994, 52,997–98 (1976). To be sure, the SEC's reversal of position on shareholder proposals "of a general political, social or economic nature" did not occur in a vacuum. In 1970, a panel decision of the D.C. Circuit Court of Appeals had challenged the SEC staff's application of the rule in issuing a no-action letter to Dow Chemical; the staff's position was that the company could exclude a shareholder proposal from the Medical Committee on Human Rights asking that the company cease manufacturing napalm—as a matter of general political or social concern. *See* Med. Comm. for Human Rights v. Sec. & Exch. Comm'n, 432 F.2d 659, 663 (D.C. Cir. 1970), *vacated as moot*, 404 U.S. 403 (1972); *see also* 17 C.F.R. § 240.14a-8(c) (1970). The circuit court did not overturn the SEC's rule; rather, it remanded the case to the agency for reconsideration so that "the basis for (its) decision (may) appear clearly on the record, not in conclusory terms but in sufficient detail to permit prompt and effective review." Med. Comm. for Human Rights, 432 F.2d at 682. And the decision has no precedential value, having been subsequently vacated as moot by the Supreme Court. 404 U.S. 403 (1972). But the D.C. Circuit's opinion—with its lofty invocation of the "philosophy of corporate democracy," 432 F.2d at 681—very likely influenced the SEC's retreat and indeed U-turn from its prior position.
[38] 15 U.S.C. § 78c(f).
[39] Tanya Garcia, *PETA Takes a Stake in Levi's to Press for Vegan Leather Patches*, MARKETWATCH, Mar. 22, 2019, https://www.marketwatch.com/story/peta-takes-a-stake-in-levis-to-press-for-vegan-leather-patches-2019-03-22.

regulatory regime that vests groups like PETA with special authority to compel corporate speech and dictate corporate actions.

PETA's animal-rights orientation may be idiosyncratic, but the large role played by shareholder proposals oriented around matters of general social, environmental, or policy concerns is substantial—as is clear from the extensive evidence developed in my research drawn from the Proxy Monitor database, including in the appendix, as well as the SEC staff's own extensive economic analysis in pages 62 through 160 of the proposed rulemaking.[40]

There is little reason to believe that the SEC's current shareholder-proposal regime significantly promotes efficiency or competition or capital formation. The SEC staff's economic review briefly discusses, on pages 113 through 115, the literature and event studies showing negligible effects associated with shareholder proposals' introduction on proxy ballots.[41] (The analysis correctly notes that study results vary depending on the type of shareholder proposal at issue, the type of issuer, and study design; in some cases, different studies reach diametrically opposite findings about market reaction.)

As I have argued previously, allowing shareholders to exploit the shareholder-proposal process on behalf of far-flung social and environmental causes can be expected to hurt shareholder value.[42] As a general matter, equity ownership through outside common shareholders has substantially *higher* agency costs than alternative forms of ownership, such as employee ownership, customer ownership, or supplier ownership.[43] Yet ordinary common-stock ownership remains the *dominant* form of organization for large, profit-seeking enterprises in the United States. One reason why is that common-stock ownership minimizes collective decision-making costs.[44] Thus, shareholder voting rights, like state common-law fiduciary duties, exist for the limited purpose of mitigating agency costs—not to facilitate miniature "corporate democracies."[45]

One need not be an expert in public-choice theory to comprehend that aggregating

[40] The SEC staff's analysis aggregates shareholder proposals across a significantly broader cross-section of publicly traded companies than my Proxy Monitor analysis, which focuses on the 250 largest publicly traded companies by revenues. There are advantages and disadvantages to each approach. The SEC's analysis more comprehensively captures the entire universe of shareholder proposals under its rule. But straight-line averaging shareholder proposals across the universe of all companies understates their significance. As the staff analysis notes and my research confirms, shareholder proposals are concentrated among larger corporations. Obviously, a corporation like Apple with a market capitalization of around $1.4 trillion is of far greater economic significance than a microcap company trading on a public exchange. To be sure, larger companies also have economies of scale in processing shareholder proposals. But to the extent that shareholder proposals impose costs beyond mere processing—by consuming the scarce time of boards and senior management, or by prodding companies away from decisions that maximize share value—their concentration among larger companies has a magnified economic cost.

[41] *See* Rel. No. 34-87458 at 113 & n.214 (citing Matthew R. Denes, Jonathan M. Karpoff, & Victoria B. McWilliams, *Thirty Years of Shareholder Activism: A Survey of Empirical Research*, 44 J. CORP. FIN. 405 (2017)).

[42] *See, e.g.*, Statement of James R. Copland, *supra* note 4; James R. Copland, *Getting the Politics out of Proxy Season*, WALL ST. J., Apr. 23, 2015, *available at* https://www.manhattan-institute.org/html/getting-politics-out-proxy-season-5461.html.

[43] *See generally* HENRY HANSMANN, THE OWNERSHIP OF ENTERPRISE 35–49 (1996).

[44] *See id.*

[45] *See* Stephen M. Bainbridge, *The Case for Limited Shareholder Voting Rights*, 53 UCLA L. REV. 601 (2006) (arguing that increasing the power of shareholders to hold managers accountable, including through increased disclosure, imposes significant costs in reduced managerial authority).

disparate voting interests along multiple factors can make collective action difficult.[46] Democratic and republican institutions have many virtues, but "efficiency" is not among them. Corporations are something else entirely. And for publicly traded companies, the ability to sell one's shares is by far the greatest form of "investor protection"—provided investors receive adequate, truthful information upon which to act, which is precisely why the SEC's traditional focus on disclosure has been generally so successful.[47]

Part II: The Proposed Rules

I will now briefly comment on each of the changes proposed in the rulemaking petition.

Proposed Rule Change 1: Modifying Ownership Thresholds

Under current SEC rules, publicly traded corporations are required to place on their proxy ballots any proposal by a shareholder that has held at least $2,000 in stock, or 1% of the company's shares, for at least a year.[48] The proposed new rule would retain the $2,000 threshold for shareholders that have held shares for at least three years, but increase the ownership threshold, on a sliding scale, for shareholders with a shorter ownership tenure. Shareholders owning shares for at least one but no more than two years would need to hold $25,000 in shares at the record date to place a shareholder proposal on a corporate proxy ballot. The SEC proposes to drop the 1% ownership option as superfluous. And it "would not allow shareholders to aggregate their securities with other shareholders to meet the applicable minimum ownership thresholds."

Although I think the SEC's proposed new rule is salutary, I think it is far too modest a change to have much impact.

At present, the overwhelming majority of shareholder proposals are sponsored by three types of shareholder:

A. **Corporate gadflies**. These individual investors repeatedly file substantially similar proposals across a broad set of companies. The substance of their proposals varies from year to year, but they generally focus on governance rather than proposals related to

[46] *Cf.* KENNETH J. ARROW, SOCIAL CHOICE AND INDIVIDUAL VALUES (1963) (articulating Arrow's Impossibility Theorem, which holds that, given certain fairness criteria, voters facing three or more ranked alternatives cannot convert their preferences into a consistent, community-wide ranked order of preferences).
[47] These concerns are theoretical, but the comport with at least some empirical evidence as well. As the SEC staff rightly notes in its analysis, it can be difficult to parse out long-term stock effects of shareholder proposals due to the host of confounding factors. *See* Rel. No. 34-87458 at 113 & n.214. In an effort to assess this relationship, however, the Manhattan Institute commissioned an econometric study of shareholder activism and firm value by Tracie Woidtke, an economics professor at the University of Tennessee. *See* The University of Tennessee Knoxville: Tracie Woidtke, http://finance.bus.utk.edu/Faculty/TWoidtke.asp. In her study, published in 2015, Professor Woidtke examined the valuation effects associated with public pension fund influence, measured through ownership, on Fortune 250 companies. Woidtke found that "public pension funds' ownership is associated with lower firm value" and, more particularly, that "social-issue shareholder-proposal activism appears to be negatively related to firm value." *See* Tracie Woidtke, *Public Pension Fund Activism and Firm Value*, at 16 (Manhattan Institute 2015), *available at* https://www.manhattan-institute.org/html/public-pension-fund-activism-and-firm-value-7871.html.
[48] *See* 17 C.F.R. § 240.14a-8 (2007).

social or environmental policies. These shareholders have relatively small stock holdings but exert a relatively large influence over the shareholder-proposal process: over the last fifteen years, three individuals—John Chevedden, Kenneth Steiner, and James McRitchie—have, along with their family members, sponsored between one-quarter and one-third of all shareholder proposals annually, among those introduced at the 250 largest publicly traded American companies by revenues.

B. **Socially responsible institutional investors**. Although most institutional investors make little use of the shareholder-proposal process, institutional investors that expressly concern themselves with social or political issues apart from solely share-price maximization are very active in sponsoring shareholder proposals. Such investors include special-purpose social-investing funds, as well as policy-oriented foundations and various retirement and investment vehicles associated with religious or public-policy organizations

C. **Labor-affiliated pension funds**. The other class of institutional investors are pension plans with captive capital and an affiliation with organized labor or political actors. Among these are "multiemployer" pension plans affiliated with labor unions such as the American Federation of Labor–Congress of Industrial Organizations (AFL-CIO) or American Federation of State, County, and Municipal Employees (AFSCME). Several state and municipal pension plans also regularly sponsor shareholder proposals, particularly those plans representing New York City and State.

The proposed changes to the submission thresholds are very unlikely to affect these shareholders' behavior in sponsoring shareholder proposals.

To be sure, some of these investors—chiefly corporate gadflies and social-investing funds—tend to introduce shareholder proposals with quite low ownership stakes, as the SEC staff describes in its economic analysis. The gadfly investor John Chevedden—the most-active sponsor of shareholder proposals dating back to 2006—has made substantially the same proposal at Ford Motor Company each of the last fifteen years, individually or through a family trust; he reportedly owns 500 shares, currently valued at less than $5,000. When a social investor known as Holy Land Principles, Inc. sponsored a 2016 shareholder proposal at Pepsico, relating to employment practices in areas governed by Israel and the Palestinian Authority, it owned a reported 55 shares, worth $5,932.85 on the company's February 26 record date.

As Mr. Chevedden's multiyear record suggests, however, gadfly investors appear to be long-term "buy and hold" shareholders, not active traders in securities. As such, the existing $2,000 ownership threshold—applied to three-year owners—will likely have *no* material impact on his ability to play a dominant role in the shareholder-proposal process, along with the fellow members of the "Chevedden group."[49]

Labor-affiliated pension funds have sufficient assets under management that the changed

[49] Corporate gadflies Chevedden, McRitchie, and Steiner embrace the "Chevedden group" moniker. *See* James McRitchie, *Chevedden Group Proxy Proposals*, Oct. 31, 2018, https://www.corpgov.net/2018/10/chevedden-group-proxy-proposals/.

ownership thresholds are highly unlikely to affect their behavior in sponsoring shareholder proposals.

Some social-investing funds or institutional investors focused on social or religious purposes may be modestly affected by the proposed new rule. As suggested by the Holy Land Principles and PETA examples, some of these investors have attempted to place shareholder proposals on corporate proxy ballots with very small stock holdings in the corporation at issue. By increasing the threshold ownership requirement for one-year stock owners from $2,000 to $25,000, the proposed new rule would modestly constrain these investors' ability to "jump in" and file shareholder proposals at very low cost without a longer-term holding period: they would have to invest more than $25,000. I agree with the SEC staff's analysis that "having a longer holding period is particularly important if the dollar value of the ownership interest is minimal because a person seeking to misuse the shareholder-proposal process could more easily purchase the smallest possible stake in a company to take advantage of the process."[50] That said, the assets under management of the most of the social-investing funds typically active in sponsoring shareholder proposals are easily sufficient to meet this additional threshold.

I note that the express strategies developed by social-investing funds and related policy-oriented investment vehicles—to co-opt the proxy process to magnify their policy interests—are *ipso facto* evidence of something amiss. If such investors were motivated by a genuine belief that the market is mis-valuing a company like ExxonMobil, the clear *investment* strategy would be to divest or sell the company's shares. There is no sensible *investment-based* rationale for buying a tiny stake in a huge oil company, holding the tiny stake for the long term, and trying to get the company to stop drilling for oil.[51] And $25,000 is no less a tiny stake than $2,000 in this context.

The motivations of corporate gadflies, who typically file governance-related proposals, are harder to pin down than those of social investors or labor-affiliated pension funds.[52] But at least one individual shareholder, the late corporate gadfly Evelyn Davis, displayed a profound ability to manipulate the shareholder-proposal process to extract corporate rents:

> Davis . . . publishe[d] a yearly investor newsletter, *Highlights and Lowlights*, which earn[ed] her an estimated $600,000 annual income. According to one media account, Davis [sold] the $495, 20-page newsletter in part by

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[50] *See* Rel. No. 34-87458 at 20.

[51] In a free country, individuals should of course have every opportunity to invest their shares according to whatever principles they choose. There is nothing wrong with social investing. But there is something wrong with an SEC rule that empowers social investors to impose costs on their fellow investors, given the Commission's statutory mandate to develop rules promoting efficiency, competition, and capital formation.

[52] Although labor-affiliated pension funds are unlikely to be affected by an ownership-threshold rule, evidence suggests that they too exploit the SEC's shareholder-proposal rules for reasons other than enhancing share value. Such funds have disproportionately targeted companies, *inter alia*, based on their company PACs' political giving and ongoing union-organizing campaigns. *See, e.g.*, James R. Copland, *Proxy Monitor 2015 Finding 3: Special Report: Public Pension Funds' Shareholder-Proposal Activism* (Manhattan Institute 2015), https://www.proxymonitor.org/Forms/2015Finding3.aspx; James R. Copland, *Proxy Monitor 2013 Finding 3: Special Report: Public Pension Fund Activism* (Manhattan Institute 2013), https://www.proxymonitor.org/Forms/2013Finding3.aspx; James R. Copland, *Proxy Monitor 2011: A Report on Corporate Governance and Shareholder Activism* (Manhattan Institute 2011), available at https://www.proxymonitor.org/Forms/pmr_02.aspx.

> "cajol[ing] the nation's business titans into subscribing … with a minimum order of two copies." Company executives also regularly shower[ed] largesse on Davis to stay in her good graces. According to one report in the 1990s, executives of all three major American car companies offered to deliver any car she purchased to her. Lee Iacocca reportedly said that he would do so in person.[53]

Among the 153 shareholder proposals that Davis submitted to the companies in the Proxy Monitor database from 2006 through the year she "retired" as a corporate gadfly, only one received majority shareholder support.[54]

A rule denying owners like Ms. Davis or Mr. Chevedden from leveraging a minute quantum of stock into the ability to co-opt annual meetings through the proxy process would not meaningfully erode shareholder voting rights, given their purpose of mitigating agency costs. Such owners would still have the ability to vote their shares. And of course small shareholders would retain the ability to sell their shares, too.

There is thus little justification for the SEC's apparent unwillingness to depart from the principle that an investor with a very small investment should be able to co-opt the corporate proxy process and compel speech on behalf of the corporation—and a vote by all fellow corporate shareholders. Such a rule is extraordinary. Consider the SEC's rule—current and proposed—in the context of the large-cap companies that face the preponderance of shareholder proposals. Apple has a current market capitalization of roughly $1.4 trillion. As a rule for democratic representation, the SEC's *proposed* $25,000, one-year ownership threshold, as applied to Apple, is the equivalent of empowering any six American citizens to mandate a national referendum vote on any matter of their concern. That is marginally less crazy than that implicit in the current $2,000 rule—which is the functional equivalent of granting the referendum-sponsoring power to a single individual. But it is bizarre indeed as a matter of republican principle, let alone a governance schema consistent with market efficiency.

In short, although the SEC's proposed rule change to ownership threshold levels is a marginal improvement over the status quo, it is not likely to have much impact at all on the shareholder-proposal process. I agree with the SEC staff commentary that the 1% ownership threshold is superfluous—and that there is little rationale for allowing shareholders to aggregate their holdings to meet minimum-ownership thresholds—given the absurdly low ownership levels required to sponsor a ballot proposal.

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[53] James R. Copland et al., *Proxy Monitor 2012: A Report on Corporate Governance and Shareholder Activism*, at 9 (Manhattan Inst. for Pol'y Res., Fall 2012), *available at* http://www.proxymonitor.org/Forms/pmr_04.aspx.

[54] That proposal, a 2006 proposal at Bank of New York Mellon, sought cumulative voting (allowing shareholders to aggregate their ballots for directors into a single candidate). It received 51% of the shareholder vote. The bank decided not to act on the narrow vote, and Davis continued to submit the proposal each year through 2012. The proposal never again received more than 38% shareholder support.

Proposed Rule Change 2: Clarifying Shareholders' Inability to Sponsor Multiple Proposals

The proposed rule also would increase shareholders' threshold obligations to demonstrate their share ownership, as well as clarifying that shareholders are limited to sponsoring "no more than one proposal, directly or indirectly" for a given annual meeting. This change is salutary and *might* affect somewhat the behavior of corporate-gadfly investors, such as the members of the Chevedden group, who regularly coordinate efforts and act as each others' representatives in shareholder-proposal sponsorship.

In its 1976 Adopting Release, the SEC argued that permitting a single shareholder to sponsor multiple shareholder proposals at a single company in a single year would "constitute an unreasonable exercise of the right to submit proposals at the expense of other shareholders."[55] That reasonable limit is easily circumvented, however, if a single shareholder is able to find an allied representative to "sponsor" a proposal with no ownership stake.

Consider that without this proposed rule, allied shareholders with a limited pool of total investable assets could "game" the ownership and one-proposal rules by divvying up their investments such that each held minimum-ownership levels in different companies, and cross-sponsoring allied proposals at multiple companies. There is at least some evidence that the Chevedden group gadflies may be employing this strategy. It is not clear how much this constraint will meaningfully limit their ability to file multiple proposals annually in concert: given the low long-term ownership thresholds, they each need only maintain $2,000 separate stakes in any given company to do so. But to the extent that the prohibition on a single shareholder filing multiple annual proposals has any utility—and I think it does—there is little justification for allowing shareholders to game the system.

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[55] *See* Adoption of Amendments Relating to Proposals by Security Holders, Release No. 34-12999 (Nov. 22, 1976).

Proposed Rule Change 3: Modifying Resubmission Thresholds

Under current SEC rules, a shareholder can introduce the same proposal year after year, and a publicly traded company must include it on its proxy ballot even when 90% of all voting shareholders consistently oppose it.[56] The proposed rule increases shareholder "resubmission thresholds." A company would still be required to include on its proxy ballot any shareholder proposal even if a substantially similar shareholder proposal, if voted on once in the preceding three years, received just 5% shareholder-voting support. But if voted on multiple times within the preceding five years, a shareholder proposal could be excluded if it fails to meet higher shareholder-vote thresholds: at least 15% support for the second of two votes within the last three years, and 25% in the most-recent vote within the prior three years if voted on more than two times within the five-year window.

The proposed rulemaking would also allow companies to exclude from proxy ballots shareholder proposals submitted three or more times during the preceding five years if the proposal received the support of less than half of voting shareholders and "the percentage of votes cast declined by 10 percent or more compared to the immediately preceding shareholder vote on substantially the same subject matter."

I view each of these proposed changes to shareholder-proposal resubmission thresholds as salutary—and likely to have the greatest impact among the three proposed rule changes. The effects would still be modest: the SEC staff estimates that, across Russell 3000 companies, only 15% of shareholder proposals resubmissions between 2011 and 2018 would be excludable based on the new rule. Most of these would be excludable only after a third submission—in which the SEC's ultimate threshold is increasing from 10% to 25% support.

Despite its modest impact, a 25% final threshold—as opposed to a 10% threshold—is meaningful. A 2012 analysis I lead authored for the Manhattan Institute found that a recommendation "for" a given shareholder proposal by the dominant proxy-advisory firm, ISS—controlling for other factors including company size, industry, proponent type, proposal type, and year—was associated with a 15-percentage-point increase in the shareholder vote for any given proposal.[57] Other estimates vary,[58] but there is little doubt that the extraordinarily low resubmission thresholds under the SEC's current rule make the two principal proxy advisors effective gatekeepers for shareholder-proposal submission—exacerbating the concerns articulated in SEC Release No. 34-87457.

The proposed new "momentum" rule, were it to go into effect, might prove to be the most significant change in the new rulemaking. The SEC staff estimates that only 4% of resubmitted shareholder proposals might be excludable under the rule, based on historical voting trends. But I agree with the SEC staff that the momentum rule "could provide further incentives to management to expend resources to influence the voting outcome of a shareholder proposal

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[56] *See* Amendments to Rules on Shareholder Proposals, Exchange Act Release No. 40,018; 63 Fed. Reg. 29,106, 29,108 (May 28, 1998) (codified at 17 C.F.R. pt. 240).

[57] *See* James R. Copland with Yevgeniy Feyman & Margaret O'Keefe, *Proxy Monitor 2012: A Report on Corporate Governance and Shareholder Activism* (Manhattan Institute 2012), *available at* https://www.proxymonitor.org/Forms/pmr_04.aspx.

[58] For a summary of the literature, see James R. Copland *et al.*, *Proxy Advisory Firms: Empirical Evidence and the Case for Reform* (Manhattan Institute 2018), *available at* https://media4.manhattan-institute.org/sites/default/files/R-JC-0518-v2.pdf.

because the benefit of influencing the voting outcome (i.e., three year exclusion of the proposal) could be greater than under current rules."[59] To me, that potential outcome is a feature, not a bug. The shareholder voting process is beset with collective-action problems, as Bernard Sharfman ably explained in his comment letter on Release No. 34-87457,[60] and as the SEC has readily acknowledged in prior rulemakings.[61] Assuming that a shareholder proposal will be placed on a ballot against a board's wishes in the first instance, there is little downside to engaging shareholders more aggressively—giving them better information and more incentives to consider carefully a proxy-ballot item—as long as corporate boards are empowered whether or not to devote resources to the effort.

As with the ownership threshold rule, a comparison to analogous real-world *democratic* structures is illustrative. Many states with initiative ballot processes prevent reintroduction of the same or substantially similar ballot item when a voter-sponsored initiative fails to receive 50% support.[62] Notably, these state rules prevent reintroduction for a period of time when a measure fails to receive a *majority* of votes—not merely a sliver of votes as in the SEC-mandated ballot process. For example, in Massachusetts, when an initiative is proposed on a ballot, then voted on and ultimately rejected, the law provides: "A measure cannot be substantially the same as any measure that has been qualified for submission or appeared on the ballot at either of the two preceding biennial state elections."

In short, both the increase in vote thresholds required to resubmit shareholder proposals and the new "momentum" rule allowing companies to table proposal ideas for a brief window of time if shareholder support has faded are sensible, modest changes to the status quo shareholder-proposal regime. I would personally suggest that the SEC opt for even higher resubmission thresholds,[63] but the suggested modest changes would make a difference. The average shareholder would benefit by facing higher-quality shareholder proposals—and fewer low-quality proposals that complicate effective shareholder analysis and voting.

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[59] *See* Rel. No. 34-87458 at 146–47.

[60] *See* Comment from Bernard S. Sharfman, Dec. 20, 2019, *available* at https://www.sec.gov/comments/s7-22-19/s72219-6571096-201082.pdf (discussing shareholder-voting collective-action problem).

[61] *See, e.g.*, Proposed Disenfranchisement Rule, 52 Fed.Reg. 23,665, 23,672/1 (1987) (discussing shareholder-voting collective-action problem).

[62] *See* National Conference of State Legislatures: Restrictions on Repeat Measures, https://www.ncsl.org/research/elections-and-campaigns/repeat-measures.aspx.

[63] *See* Statement of James R. Copland, "SEC Rule 14a-8: Ripe for Reform," *supra* note 5.

Part III: Possible Alternative Rules

In addition to the well-considered, if modest, rules proposed in this release, I would encourage the SEC to consider others that may more effectively rework the shareholder-proposal process to shareholders' benefit:

- **Make Rule 14a-8 Default Rather than Mandatory**. Permit issuers to "opt out" of the SEC's rules requiring companies to add shareholder proposals on proxy ballots, subject to state-law and corporate bylaw constraints.
- **Take the Politics Out of the Proxy Process**. Revisit the SEC's 1976 rule forcing companies to include on their proxy ballots most shareholder proposals that involve "substantial policy . . . considerations"—an approach I have publicly favored.[64]
- **Implement a "Loser Pays" Rule for Shareholder Proposals**. Require shareholder-proposal sponsors to reimburse the corporation at least some portion of the direct costs of assessing, printing, distributing, and tabulating their proposals if any proposal fails to receive majority (or threshold) shareholder support—an idea suggested by Yale Law professor Roberta Romano.[65]

As discussed above, I believe that the SEC's proposed new rules are salutary; but they are *very modest* changes to a process that exceeds the Commission's statutory authority.

Although it is now longstanding, SEC Rule 14a-8 creates a *federal* process overseeing substantive rights of shareholders and the substantive conduct of annual meetings—effectively abrogating contrary state law without clear congressional direction. The Commission could take a significant step toward ameliorating this problem by making its requirement *default* rather than *mandatory*. My strong expectation would be that most publicly traded companies would opt for the stable expectations of sticking with the SEC default rule—at least for now. But there might be variation. And shareholders making actual buy and sell decisions could price the costs and benefits of alternative rules that more tightly constricted shareholders' ability to co-opt annual meetings through ballot proposals: shareholder voting is beset by collective-action problems that severely limit its efficacy as a decision rule; but share *markets* are highly efficient.

The Commission should also clearly allow companies to exclude from proxy ballots shareholder proposals chiefly concerned with broad social and economic policy issues—the SEC's earlier rule, prior to 1976. I would not expect many companies to utilize this rule in sweeping fashion; institutional investors are themselves under significant pressures from their investors on environmental and social concerns;[66] and they would likely exert pressure on issuers who too cavalierly sought to exclude shareholder proposals from proxy ballots. Again, however, different issuers could employ different strategies. And investors in efficient markets could make buy and sell decisions pricing varying decision rules.

Finally, a limited loser-pays rule would be an effective disciplining mechanism preventing some shareholders from imposing costs on others—even shareholders with very limited stakes.

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[64] James R. Copland, *Getting the Politics out of Proxy Season*, WALL ST. J., Apr. 23, 2015, *available at* https://www.manhattan-institute.org/html/getting-politics-out-proxy-season-5461.html.

[65] *See* Roberta Romano, *Less Is More: Making Institutional Investor Activism a Valuable Mechanism of Corporate Governance*, 18 YALE J. REG. 174, 229–49 (2001).

[66] *See* Statement of James R. Copland, *supra* note 4.

Any ownership threshold rule—whether predicated on a specific dollar-amount owned or a percentage of outstanding holdings—is arbitrary. $2,000—and $25,000—are too "low" to be meaningful. The 1% ownership rule is too high to be useful. Rather than speculating on an arbitrary number, it would make more sense to require shareholders who submit unsuccessful ballot items to reimburse the corporate fisc. Certain rules would be necessary to deter companies from overspending to "game" the system (perhaps a fixed-dollar cap consistent with the Commission's best information about average costs; perhaps adjusted for corporate size). And any sensible rule would make a company's decision to seek to enforce the loser-pays mechanism discretionary, rather than mandatory.

To be sure, a loser-pays rule for shareholder proposals would substantially impair the ability of corporate gadflies and social-issue investors to flood companies with shareholder proposals at low cost, year after year. That's the point. Institutional investors have shown themselves fully capable of sponsoring shareholder proposals to change corporate-governance rules, ranging from proxy access for shareholders' director nominees to annual rather than staggered board elections to majority voting rules for directors. There is little reason for shareholders with small investing stakes to dominate this process—and little reason not to preclude them from doing so.

Conclusion

Agency costs are very real. Shareholder voting rights as well as common-law fiduciary duties are important to mitigating those costs. But shareholder voting rights should *not* be a vehicle enabling minority shareholders—even those with tiny stakes—to convert the governance of a corporation into a mini-democracy. Indeed, corporations controlled through outside common shareholders have emerged as the preferred vehicles for organizing complex businesses in no small part because they minimize complex decision-making costs and orient organizational objectives around a single variable, share value.

Although I think the proposed reforms in the current release do not go nearly far enough, I do want to applaud the Commission for taking a careful look at Rule 14a-8—for the first time in more than two decades. The proposed rules should have real, if marginal, effects that clean up the shareholder-proposal process. I would just encourage the Commission not to expect miracles.

Also, I urge the Commission not to consider this matter closed. Share ownership continues to concentrate in a small number of institutional hands. Social media and other communication innovations continue to lower the costs necessary to pressure large corporate enterprises—with or without share ownership. Yes, Rule 14a-8 and its antecedents are longstanding. But the playing field continues to shift; and the Commission should continue to analyze what's transpiring and modify the rules of the game as necessary.

Please feel free to reach out to me, through the Manhattan Institute, about my testimony or any of the appended writings. Thank you for your time and consideration.

Respectfully submitted,
James R. Copland
Senior Fellow and Director, Legal Policy, Manhattan Institute for Policy Research

Appendix: Additional Writings

Please incorporate by reference this sampling of additional testimony, reports, and other writings authored or co-authored by me or published under my direction by the Manhattan Institute.

Testimony

Statement of James R. Copland, "Economic Growth and Efficient Capital Markets: An Agenda at Odds with Subcommittee's Bills Under Consideration," Hearing before the House Committee on Financial Services Subcommittee on Investor Protection, Entrepreneurship, and Capital Markets: Promoting Economic Growth: A Review of Proposals to Strengthen the Rights and Protections for Workers, May 15, 2019, *available at* https://media4.manhattan-institute.org/sites/default/files/Testimony_JCopland_051519.pdf.

Statement of James R. Copland, "Who's Monitoring the Monitors? The Rise of Intermediaries and the Threat to Capital Markets," Hearing before the Senate Committee on Banking, Housing, and Urban Affairs: The Application of Environmental, Social, and Governance Principles in Investing and the Role of Asset Managers, Proxy Advisors, and Other Intermediaries, Apr. 2, 2019, *available at* https://www.banking.senate.gov/imo/media/doc/Copland%20Testimony%204-2-191.pdf.

Statement of James R. Copland, "SEC Rule 14a-8: Ripe for Reform," Hearing before the House Committee on Financial Services Subcommittee on Capital Markets and Government Sponsored Enterprises: Hearing on Corporate Governance: Fostering a System that Promotes Capital Formation and Maximizes Shareholder Value, Sept. 21, 2016, *available at* https://media4.manhattan-institute.org/sites/default/files/T-JC-0916.pdf

Manhattan Institute Reports and Findings

James R. Copland & Margaret M. O'Keefe, *Proxy Monitor2017: Season Review* (Manhattan Institute 2017), https://www.proxymonitor.org/Forms/pmr_15.aspx.

James R. Copland & Margaret M. O'Keefe, *Proxy Monitor 2016: A Report on Corporate Governance and Shareholder Activism* (Manhattan Institute 2016), *available at* http://www.proxymonitor.org/pdf/pmr_13.pdf.

Tracie Woidtke, *Public Pension Fund Activism and Firm Value* (Manhattan Institute 2015), https://media4.manhattan-institute.org/sites/default/files/lpr_20.pdf.

James R. Copland & Margaret M. O'Keefe, *Proxy Monitor 2015: A Report on Corporate Governance and Shareholder Activism* (Manhattan Institute 2015), *available at* https://www.proxymonitor.org/Forms/pmr_11.aspx.

James R. Copland, *Proxy Monitor 2015 Finding 3: Special Report: Public Pension Funds' Shareholder-Proposal Activism* (Manhattan Institute 2015), https://www.proxymonitor.org/Forms/2015Finding3.aspx.

James R. Copland & Margaret M. O'Keefe, *Proxy Monitor 2014: A Report on Corporate Governance and Shareholder Activism* (Manhattan Institute 2014), *available at* https://www.proxymonitor.org/Forms/pmr_09.aspx.

James R. Copland, *Proxy Monitor 2014 Finding 5: Frequent Filers: Shareholder Activism by*

Corporate Gadflies (Manhattan Institute 2014), https://www.proxymonitor.org/Forms/2014Finding5.aspx.

James R. Copland, *Proxy Monitor 2014 Finding 4: Special Report: Shareholder Activism by Socially Responsible Investors* (Manhattan Institute 2014), https://www.proxymonitor.org/Forms/2014Finding4.aspx.

James R. Copland, *Proxy Monitor 2014 Finding 3: Special Report: Labor-Affiliated Shareholder Activism* (Manhattan Institute 2014), https://www.proxymonitor.org/Forms/2014Finding3.aspx.

James R. Copland & Margaret M. O'Keefe, *Proxy Monitor 2013: A Report on Corporate Governance and Shareholder Activism* (Manhattan Institute 2013), *available at* https://www.proxymonitor.org/Forms/pmr_06.aspx.

James R. Copland, *Proxy Monitor 2013 Finding 3: Special Report: Public Pension Fund Activism* (Manhattan Institute 2013), https://www.proxymonitor.org/Forms/2013Finding3.aspx.

James R. Copland with Yevgeniy Feyman & Margaret O'Keefe, *Proxy Monitor 2012: A Report on Corporate Governance and Shareholder Activism* (Manhattan Institute 2012), *available at* https://www.proxymonitor.org/Forms/pmr_04.aspx.

James R. Copland, *Proxy Monitor 2011: A Report on Corporate Governance and Shareholder Activism* (Manhattan Institute 2011), *available at* https://www.proxymonitor.org/Forms/pmr_02.aspx.

Article

James R. Copland, "Against an SEC-Mandated Rule on Political Spending Disclosure: A Reply to Bebchuk and Jackson," 3 *Harvard Business Law Review* 381 (2013), *available at* http://www.hblr.org/wp-content/uploads/2013/10/HLB209_crop.pdf.

Columns

James R. Copland, "Senator Warren's Bizarro Corporate Governance," *economics21.org*, Aug. 16, 2018, *available at* https://economics21.org/warren-backwards-corporate-governance.

James R. Copland, "Another Shareholder Proposal? McDonald's Deserves a Break Today," *Wall Street Journal*, Jul. 7, 2017, *available at* https://www.wsj.com/articles/another-shareholder-proposal-mcdonalds-deserves-a-break-today-1499381801.

Howard Husock & James R. Copland, "'Sustainability Standards' Open a Pandora's Box Of Politically Correct Accounting, *Investor's Business Daily*, Mar. 24, 2017, *available at* https://www.investors.com/politics/commentary/sustainability-standards-open-a-pandoras-box-of-politically-correct-accounting/.

James R. Copland, "Getting the Politics out of Proxy Season," *Wall Street Journal*, Apr. 23, 2015, *available at* https://www.manhattan-institute.org/html/getting-politics-out-proxy-season-5461.html.

James R. Copland, "Politicized Proxy Advisers vs. Individual Investors," *Wall Street Journal*, Oct. 7, 2012, *available at* https://www.manhattan- institute.org/html/politicized-proxy-advisers-vs-individual-investors-3863.html.