



United States House of Representatives
One Hundred Eighteenth Congress
Committee on Financial Services
2129 Rayburn House Office Building
Washington, DC 20515

April 13, 2023

The Honorable Gary Gensler
Chairman
U.S. Securities and Exchange Commission
100 F Street NE
Washington, DC 20549

Dear Chairman Gensler:

I am writing to express my concerns about the large number of proposals issued by the Securities and Exchange Commission (SEC) under your leadership. Specifically, I am worried about the potential impact of these proposals on companies, especially those that are smaller and those considering entering the public markets. Therefore, I request that the SEC provide a thorough assessment of the combined effects and costs of these rulemakings on public companies and market entrants. It is crucial that we consider the holistic impact of these proposals to ensure that they do not create undue barriers to entry or stifle innovation in the marketplace.

Since 2021, the SEC has:

1. Mandated the use of “universal proxy cards” for contested director elections at public companies;¹
2. Abandoned the incremental reforms to the proxy advisory industry that SEC adopted in 2020. These reforms were abandoned before they even went into effect,² and a new rule adopted in 2022 will leave investors vulnerable to false or misleading information provided by proxy advisory firms;³
3. Issued Staff Legal Bulletin 14L (SLB 14L) which will likely increase the number of immaterial or frivolous shareholder proposals public companies receive during proxy season and put SEC staff in the position of arbitrarily deciding which shareholder proposals raise political or social issues with a “broad societal impact;⁴
4. Proposed rules to Exchange Act Rule 14a-8 that would effectively negate reforms adopted by the SEC in 2020. The SEC’s proposal, if adopted, would allow special

¹ Universal Proxy (86 FR 68330).

² Statement on Compliance with the Commission’s 2019 Interpretation and Guidance Regarding the Applicability of the Proxy Rules to Proxy Voting Advice and Amended Rules 14a-1(1), 14a-2(b), 14a-9 (June 1, 2021).

³ Proxy Voting Advice (87 FR 43168).

⁴ Shareholder Proposals: Staff Legal Bulletin 14L (November 3, 2021).

interests to submit controversial proposals year after year, even if the vast majority of shareholders continuously register their opposition to these proposals;⁵

5. Proposed rules that would mandate a comply-or-explain approach for issuers to disclose whether any member of a company's board has cybersecurity expertise⁶ or expertise in climate-related risks.⁷ The SEC's climate proposal would also require prescriptive disclosures about a board's role in overseeing climate-related risks, despite the fact that many companies already disclose relevant information related to climate risks.
6. Indicated it will propose substantial new disclosure mandates regarding human capital management that will require companies to provide sensitive information about hiring practices along with board and management composition.

These proposed and finalized rules will impact the ability of public company boards and executives to focus on strategy and shareholder returns. For example, large publicly traded companies faced an unprecedented number of shareholder proposals last year. Specifically, shareholder proposals concerning environmental and social policies accounted for 61% of all shareholder proposals included in proxy ballots in 2022, nearly twice the number of the previous year.⁸ This surge in proposals can be attributed to the SEC's elimination of longstanding guardrails under Exchange Act Rule 14a-8 and is ultimately putting additional pressure on corporate boards. Moreover, such activism has been found to be negatively related to firm value and may be harming the financial interests of everyday investors.⁹

The SEC's proposed micromanagement of public company boards, reversal of modest transparency and accountability standards for the proxy advisory industry, and mandatory use of the so-called "universal" proxy card will have profound impacts on corporate governance and the attractiveness of our public markets. Yet, the SEC has conducted no holistic analysis to assess the cumulative effect of its corporate governance rulemaking agenda. This is a serious concern and one that must be addressed immediately.

Accordingly, please respond to the following:

⁵ Substantial Implementation, Duplication, and Resubmission of Shareholder Proposals Under Exchange Act Rule 14a-8 (Release No. 34-95267).

⁶ See SEC Proposed Rule, "Cybersecurity Risk Management, Strategy, Governance, and Incident Disclosure," available at <https://www.sec.gov/rules/proposed/2022/33-11038.pdf>.

⁷ See SEC Proposed Rule, "The Enhancement and Standardization of Climate-Related Disclosures for Investors," available at <https://www.sec.gov/rules/proposed/2022/33-11042.pdf>.

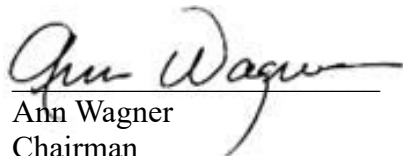
⁸ See Comment Letter of James R. Copland (Sep. 12, 2022), available at <https://www.sec.gov/comments/s7-20-22/s72022-20138931-308628.pdf>.

⁹ 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>; See also James R. Copland, "Getting the Politics out of Proxy Season" (Apr. 23, 2015), available at <https://www.manhattan-institute.org/html/getting-politics-out-proxy-season-5461.html>.

1. Has the SEC conducted any type of comprehensive analysis to determine how the above-referenced rulemakings will impact the ability of boards and management of public companies to focus on long-term performance and shareholder returns? If not, please explain why no such analysis has been conducted.
2. Has the SEC conducted any type of analysis to determine how the above-referenced rulemakings may influence a private business' decision to enter (or not enter) the public markets through an initial public offering? If not, please explain why no such analysis has been conducted.
3. The adopting release for the universal proxy rulemaking stated that the SEC disagreed with commenters who argued that the universal proxy rule would increase the frequency of proxy contests at public companies. Please provide any supporting documentation, staff analysis, or any internal communications that support the conclusion reached by the SEC with this statement.
4. SLB 14L stated that shareholder proposals that deal in issues that have a "broad societal impact" would not be eligible for exclusion under the "ordinary business" exemption of Rule 14a-8. Please provide supporting documentation that describes how the SEC plans to define the term "broad societal impact" as it relates to shareholder proposals, and the specific process staff will follow to determine whether an issue implicates a "broad societal impact."

We appreciate your prompt attention to these matters. Please provide responses to the questions and supporting documentation no later than May 4, 2023.

Sincerely,



Ann Wagner
Chairman
Subcommittee on Capital Markets
House Financial Services Committee