

Congress of the United States
Washington, DC 20515

December 13, 2021

The Honorable Gary Gensler
Chair
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-0100

Dear Chairman Gensler:

We write today with concerns about the Securities and Exchange Commission's ("SEC") new staff guidance on shareholder proposals submitted to publicly traded companies under SEC Rule 14a-8.

On November 3, 2021, the SEC's Division of Corporation Finance rescinded Staff Legal Bulletins ("SLB") Nos. 14I, 14J, and 14K and replaced them with SLB 14L.¹ Instead of considering shareholder proposals based on their nexus to the company, SEC staff will now "focus on the social policy significance of the issue that is the subject of the shareholder proposal ... [and] consider whether the proposal raises issues with a broad societal impact, such as that they transcend the ordinary business of the company."

This is yet another example of the Commission pushing a progressive agenda on the shareholder proposal process like it is doing in other areas of our capital markets, such as the public company disclosure regime. The unelected staff of the SEC should not be the arbiters of social policy in our financial markets. The SEC has neither the statutory authority nor the expertise to make determinations about issues of broad societal impact. Instead of operating outside of its jurisdiction, the SEC should focus on its statutory mission to protect investors; maintain fair, orderly, and efficient markets; and facilitate capital formation.

Another major flaw in this SLB is that it provides no objective process for how SEC staff will evaluate if a proposal is or is not socially significant. How will staff decide whether an issue has a broad societal impact, what criteria will be considered, and what proof is necessary to support such a finding? This opaque process will give staff enormous power to force companies to engage on social issues that have nothing to do with their business.

We call on the SEC's Division of Corporation Finance to immediately rescind SLB 14L and reinstate SLB Nos. 14I, 14J, and 14K. It is inappropriate for the SEC to use staff guidance to go around the statutory rulemaking process under the Administrative Procedures Act while

¹ <https://www.sec.gov/corpfin/staff-legal-bulletin-14l-shareholder-proposals>

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making major changes to the shareholder proposal process. If the SEC wishes to make changes to Rule 14a-8, then the Commission should formally propose amendments to the rule and solicit feedback from the public like it did in September 2020.²

Sincerely,



French Hill
Member of Congress



Bill Huizenga
Member of Congress



Andy Barr
Member of Congress



Barry Loudermilk
Member of Congress

² <https://www.sec.gov/news/press-release/2020-220>