



California Public Employees' Retirement System

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The Honorable Sherrod Brown
Chairman
Senate Committee on Banking, Housing & Urban Affairs
534 Dirksen Senate Office Building
Washington, DC 20510

May 4, 2021

Subject: Support for S.J. Res. 16, Providing Congressional Disapproval of the Securities and Exchange Commission's Rule 14a-8 Amendments

Dear Chairman Brown,

On behalf of the California Public Employees' Retirement System (CalPERS), I write to express support for S.J. Res. 16 – "A Joint Resolution providing for Congressional disapproval of the rule submitted by the Securities and Exchange Commission (SEC) relating to Procedural Requirements and Resubmission Thresholds Under Exchange Act Rule 14a-8." We oppose the amendments to Rule 14a-8 (Amendments) because we believe that (i) the SEC and Congress should strengthen, not undermine, shareholders' rights, and (ii) more engagement by shareholders with corporate management, not less, produces better financial outcomes for shareholders and companies.

The Amendments would undermine shareholders' rights by adding unnecessary complexity to an already intricate system, creating legal uncertainty with state law requirements, and imposing substantial costs on shareholders who seek to engage with corporate managers. Moreover, we are concerned that the SEC has overstepped its legal authority in approving the Amendments. The Amendments are insufficiently supported by data, so the SEC did not comply with the Administrative Procedure Act's requirements when it finalized the Amendments. The Amendments also expand the SEC's power substantially by overriding state laws, rewriting company articles of incorporation and bylaws, and micro-managing investor activities. We do not believe that the SEC's current statutory authority confers such powers on the SEC.

CalPERS wrote an extensive comment letter highlighting numerous issues with the Amendments and the SEC's deliberations,¹ as did other investors. The SEC, however, ignored investors' input, choosing instead to rely on the recommendations promoted solely by certain

¹ <https://www.sec.gov/comments/s7-23-19/s72319-6744100-207900.pdf>.

corporate interests.² Absent modification or nullification, we are deeply concerned that the Amendments will end decades of shareholders' robust participation in our shareholder democracy.³ The Congressional Review Act is an important tool that Congress can and should use to nullify rulemakings as harmful as the Amendments.

Moving forward, we do not believe that Rule 14a-8 requires any amendments. The rule is critical to company-shareholder engagement because it provides a mechanism for shareholders to have their proposals included in a company's annual proxy statements to other shareholders. This process facilitates shareholders' traditional ability under state law to present their own proposals for consideration at a company's annual or special meeting, and it facilitates the ability of all shareholders to consider and vote on such proposals. For nearly eighty years, the SEC has supervised a shareholder proposal system that has been used to elevate company-shareholder engagement and we see no reason to fundamentally alter that system.

Contrary to critics' assertions, Rule 14a-8 does not facilitate an unduly burdensome influx of proposals. On average, a U.S. company receives a shareholder proposal once every 7.7 years.⁴ In fact, the number of shareholder proposals put forth have been in decline over the past 15 years. Accordingly, the majority of U.S. public companies have never held a vote on a shareholder proposal. If the Amendments are not rescinded, the number of shareholders who are permitted to have a voice would be decreased significantly, and the already low number of shareholder proposals would further decline as would company and shareholder engagement.

In short, the Amendments are the product of a concerted effort to curb shareholder democracy. They do not properly value shareholder proposals or shareholders' rights. Congress has an opportunity to undo this damage and restore an important component of shareholder oversight and corporate accountability. We applaud your leadership in introducing S.J. Res. 16.

We welcome the opportunity to discuss our comments to the Amendments in more detail. Please contact Anne Simpson, Managing Investment Director, at (916) 795-9672, if you have any questions or wish to discuss in more detail.

Sincerely,

Marcie Frost
Chief Executive Officer

cc: Anne Simpson

² The Amendments adhere to proposals supported by groups including The Business Roundtable, The US Chamber of Commerce, The Center of Executive Compensation, The Main Street Investors Coalition, and the Society of Corporate Governance.

³ Roundtable Discussions Regarding the Federal Proxy Rules and State Corporation Law (May 2007) Transcript. Professor Neuhauser: "But the idea that the smaller shareholder should be able to participate is important. That's certainly our tradition."

⁴ Transcript Shareholder Proposals Panel Proxy Roundtable Securities and Exchange Commission, November 15, 2018, comments by Brandon Rees on pages 11 and 12.