

November 5, 2025

The Honorable Paul S. Atkins, Chair
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549

Re: Request for a Meeting to Discuss Rule 14a-8 on Shareholder Proposals

Dear Chair Atkins:

We write to request a meeting with you to discuss the Securities and Exchange Commission's Rule 14a-8 on shareholder proposals. We noted with interest and concern your keynote address at the John L. Weinberg Center for Corporate Governance's 25th Anniversary Gala on October 9, 2025.¹ As organizations that represent various institutional investors including pension plans, foundations, asset managers, and faith-based investors, we respectfully disagree with your keynote address remarks regarding the shareholder proposal rule. We would like to have a dialogue with you to share our concerns and to explore if there are areas of common agreement regarding the future of Rule 14a-8.

In your keynote address, you suggested that precatory (i.e., advisory) shareholder proposals are improper under Delaware state law. You also suggested that the Commission staff will now concur with company no-action requests that assert such shareholder proposals may be excluded from company proxy materials. Your argument was rather startling to us as the representatives of investors who have filed precatory shareholder proposals at Delaware incorporated companies for many decades since the Commission first adopted its original shareholder proposal rule in 1942. In effect, your argument upends more than 80 years of practice by endorsing a novel legal theory that would eliminate a core ability of investors to engage with their portfolio companies and each other at company annual meetings.

Based on a theory set forth in a forthcoming law review article,² your speech suggested that precatory shareholder proposals are not a proper subject for shareholder action under Delaware law. In fact, the law review author himself clarified his understanding of this in a November 4, 2025 webinar held by the Council of Institutional Investors.³ In that webinar, the author Kyle Pinder clarified that "if the feds say precatory proposals are one means that they would like for stockholders to be able to communicate pursuant to the proxy rules, Delaware is okay with that. We're not saying Delaware law... prohibits or that a precatory proposal would violate Delaware

¹ <https://www.sec.gov/newsroom/speeches-statements/atkins-10092025-keynote-address-john-l-weinberg-center-corporate-governances-25th-anniversary-gala>

² Kyle Pinder, *The Non-Binding Bind: Reframing Precatory Stockholder Proposals under Delaware Law*, 15 MICH. BUS. & ENTREPRENEURIAL L. REV. (forthcoming), <https://papers.ssrn.com/sol3/Delivery.cfm/5418534.pdf?abstractid=5418534&mirid=1&type=2>.

³ Council of Institutional Investors Webinar: Shareholder Proposals, the SEC and State Corporate Law, Noon EST, November 4, 2025.

law. It's that they're not a state law thing. It's really they're by virtue of the federal proxy rules.”⁴

In our view, Delaware corporate law is clear that shareholders may raise business at an annual meeting beyond the election of directors, providing that “any other proper business may be transacted[.]”⁵ Nothing in the Delaware statute limits “proper business” to subjects on which shareholders possess a statutory right to a “binding vote,” and the Commission’s implementation of the shareholder proposal rule no-action letter process has long recognized the ability of shareholders to file precatory proposals that do not interfere with board discretion.

Delaware strictly limits binding by law amendments to prevent any incursion on the board’s fiduciary discretion. Non-binding shareholder proposals are advisory requests and therefore do not interfere with board authority while enabling shareholders to raise significant matters of governance, accountability and oversight. The policy direction of your remarks seem intended to put an end to those precatory proposals.

The application of this policy change to the Commission’s longstanding no-action letter process would strip investors of the ability to present many issues of shareholder concern to companies through the submission of precatory shareholder proposals. Your remarks provide a roadmap for companies to avail themselves of this new theory, by stating an expectation that, if a Delaware lawyer opines in a no-action letter “that the proposal is not a proper subject for shareholder action” under 14a-8(i)(1), such an argument should prevail. You underscored this with your statement that you have “high confidence that the SEC staff will honor this position.”

This apparent directive to the Commission’s staff raises serious procedural concerns. It effectively disposes of long-standing practice under which the Division of Corporation Finance reviews each no-action request on its merits, considering the arguments provided by both proponents and issuers, with the burden of proof on the issuer to demonstrate applicability of an exclusion. Directing Commission staff to defer to the company’s legal position and adopt a predetermined legal conclusion undermines the practice and tradition of the staff performing neutral, unbiased legal analysis and exercising the independent judgment essential to its role. This not only disadvantages shareholders, but risks eroding public confidence in the objectivity of the Commission’s no-action process.

In your tenure as Commission Chair, you have repeatedly stated your goal of transparency and open dialogue with interested parties – a commendable approach which we of course support. But on this issue, we do not believe the Commission has sought the necessary input from investors, particularly the issuance of a request for comment.

In our view, your stated position amends the Commission’s Rule 14a-8 shareholder proposal rule

⁴ Webinar, Council of Institutional Investors, November 4, 2025.

⁵ Section 211(b) of the DGCL. The provision is subject to § 141(a) *See* 8 Del. C. § 109(a); *CA, Inc. v. AFSCME Emples. Pension Plan*, 953 A.2d 227, 232 (Del. July 17, 2008) (holding that section 109(a) must be read together with section 141(a) and that it is well-established that stockholders of a corporation subject to the DGCL may not directly manage the business and affairs of the corporation).

without conducting a formal rulemaking process. As your keynote address recognized, the note to Rule 14a-8(i)(1) states that “In our experience, most proposals that are cast as recommendations or requests that the board of directors take specified action are proper under state law.”⁶ In our opinion, changes to the Commission staff’s longstanding procedures are best achieved through a notice and comment process that is required under the Administrative Procedure Act. As you are aware, the Commission has placed Rule 14a-8 on its agenda for future rulemaking, and we believe that any policy changes regarding the Commission’s no-action letter process would be best addressed through a formal rulemaking.

Finally, we wish to discuss with you the unintended consequences of such a policy change. As you know, shareholders have relied for decades on the ability to make shareholder proposals. They are a key mechanism for investors to engage with the companies they own. As a leading case stated, they have “become an indispensable part of corporate governance.”⁷ Shareholder engagement has encouraged many companies to adopt governance policies that are now widely adopted as best practices and recognized as important to long-term value creation (e.g., independent directors, say-on-executive-pay). And resolutions relating to environmental and social practices have led to important changes such as widespread adoption of international human rights principles, corporate codes of conduct, and better management of climate risks.

Do corporate issuers really want to encourage their shareholders to instead submit more binding shareholder proposals that would amend company bylaws? In our view, the precatory shareholder proposal process has facilitated private ordering of companies on a large variety of widely followed corporate governance best practices as well as voluntary corporate disclosures on environmental and social issues. We fail to see the value in limiting the ability of shareholders to make advisory recommendations at company annual meetings that do not unduly tie the hands of board of directors on how to respond. The elimination of the ability of shareholders to introduce precatory shareholder proposals will encourage the submission of more binding shareholder proposals that will result in needless litigation and reduced board discretion.

In conclusion, we believe that narrowing shareholders’ ability to raise matters of concern with corporate issuers through the shareholder proposal process undermines the Commission’s core mission to protect investors, maintain fair and efficient markets, and facilitate capital formation.⁸ Companies that list their shares on public stock exchanges gain access to capital from the American public and, in exchange, give those shareholders a voice in their governance. The idea that the owners of public companies should have a voice in how the companies that they own are

⁶ The Commission’s note to Rule 14a-8(i)(1), since 1998, stated further “Accordingly, we will assume that a proposal drafted as a recommendation or suggestion is proper unless the company demonstrates otherwise.” Issuers have since then tried and failed to demonstrate such a broad basis to exclude advisory proposals, and such proposals have become accepted practice.

⁷ *Amalgamated Clothing & Textile Workers Union v. Wal-Mart Stores, Inc.*, 821 F. Supp. 877, 881 (S.D.N.Y. 1993)

⁸ <https://www.sec.gov/about/mission>

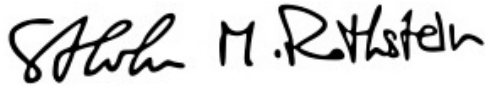
managed has long been a hallmark of the American free enterprise system. These longstanding investor expectations of corporate democracy should not be abrogated.

For these reasons, we respectfully request the opportunity to meet with you to discuss our concerns regarding the future of Rule 14a-8. Please contact Sanford Lewis, Director and General Counsel of the Shareholder Rights Group, at (413) 992-8297 or sanfordlewis@strategiccounsel.net to propose a meeting date.

Respectfully submitted,



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Maria Lettini
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cc:

The Honorable Hester M. Peirce
The Honorable Caroline A. Crenshaw
The Honorable Mark T. Uyeda