



NASAA

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

Dear Chairman Brown:

On behalf of the North American Securities Administrators Association, Inc. (“NASAA”)¹, I am writing 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 relating to Procedural Requirements and Resubmission Thresholds Under Exchange Act Rule 14a-8.” Under the Congressional Review Act of 1995, should S.J. Res. 16 be approved by both houses of Congress and signed by the President, your resolution would prevent the amendments to Rule 14a-8 from going into effect or continuing in effect.²

NASAA shares your view that the changes embodied by the Securities and Exchange Commission’s (“SEC”) adopted amendments to SEC Rule 14a-8 (“Shareholder Rule” or “Rule”), which is the subject of S.J. Res. 16, are detrimental to investors. The Shareholder Rule, as adopted, dramatically raised the eligibility thresholds for the shareholder proposal process. This threatens to suppress shareholders’ voices on such critical matters as executive pay, director elections, the sale of a company, and other matters that shareholders deem important to the long-term value of the companies they own. Moreover, the Rule would also make it more costly and difficult for shareholders to cast informed votes and to put important issues onto corporate ballots.

As you know, shareholder proponents have historically played an instrumental role in effecting significant improvements in corporate governance, including for example, majority vote rules for electing directors, staggered board terms, limits on “poison pills” that serve to entrench and protect management, and the increased adoption of proxy-access bylaws. Further, as NASAA discussed extensively in its 2020 comment letter to the SEC when the Rule was proposed, the voices of smaller and retail shareholders are valuable not only to fellow

¹ The oldest international organization devoted to investor protection, the North American Securities Administrators, Inc. was organized in 1919. Its membership consists of the securities administrators in the 50 states, the District of Columbia, Canada, Mexico, Puerto Rico and the U.S. Virgin Islands. NASAA is the voice of securities agencies responsible for grass-roots investor protection and efficient capital formation.

² 5 U.S.C. § 802(a)

shareholders, but to all investors and the capital markets.³ In fact, the contributions and insights offered by those holding smaller number shares are just as meaningful and necessary as the contributions of larger shareholders.⁴

In addition, it should be noted that, other than the Commission staff's description of views of management groups, there was scant analysis in the Shareholder Participation Proposal Release to suggest that shareholders are using the process excessively or inappropriately.⁵ Moreover, even if the Commission's concerns were borne out by the data, which they are not, it would be deeply problematic to amend SEC rules to systemically exclude the input of retail investors, which is a main consequence of the Shareholder Rule in the form in which it was adopted by the SEC last year.⁶

Again, NASAA is pleased to support S.J. Res. 16. Please do not hesitate to contact me or Mike Canning, NASAA's Director of Policy and Government Affairs, at (202) 737-0900, if we may be of any further assistance.

Sincerely,



Lisa Hopkins
NASAA President
General Counsel and Senior Deputy Commissioner of Securities, West Virginia

³ NASAA Comment Letter to SEC regarding “Consolidated Comments in Response to SEC Proposed Rulemakings: Amendments to Exemptions from the Proxy Rules for Proxy Voting Advice (File No. S7-22-19), and Procedural Requirements and Resubmission Thresholds under Exchange Act Rule 14a-8 (File No. S7-23-19)” (Feb. 3, 2020), available at <https://www.nasaa.org/wp-content/uploads/2020/02/NASAA-Comment-Letter-SEC-Releases-No-34-87457-34-87458-02-03-20.pdf>.

⁴ See, e.g., Comment Letter from the Office of the Illinois State Treasurer, Michael W. Frerichs (Jan. 16, 2020) at 3 (“Over the years, shareholders’ ability to submit proposals under Rule 14a-8 has provided companies with free guidance on which governance, environmental, and social factors raise investor concern.”).

⁵ See NASAA Comment Letter at 7.

⁶ As Commissioner Allison Herren Lee noted in her Statement at the Open Meeting to consider the Shareholder Rule, “The types of shareholders who will be most affected by these amendments are individual shareholders with smaller holdings who will be shut out of the shareholder proposal process to a startling degree.” See Commissioner Allison Herren Lee, Statement on the Amendments to Rule 14a-8 (Sept. 23, 2020), available at <https://www.sec.gov/news/public-statement/lee-14a8-2020-09-23>.