

Are Shareholder Engagement Rights at Risk?

Tuesday, January 28, 2020



Miller/Howard urges the SEC to reconsider two proposed rules that would limit shareholder engagement rights.

Miller/Howard recently wrote a letter urging the SEC to reconsider two proposed rules that would limit the rights of shareholders to engage with company management. We believe:

- The proposed rules would create unnecessary risks for all stakeholders.
- Resolutions filed by a single owner raise issues of interest to larger groups of investors.
- The proposed rules threaten to exclude important proposals that could gain traction over time, and may stifle key reforms.

On November 5, 2019, the US Securities and Exchange Commission (SEC) proposed two new rules that would severely limit the rights of shareholders to engage with corporations using the shareholder resolution process over issues with a distinct impact on long-term value:

- [S7-23-19](#) Procedural Requirements and Resubmission Thresholds under Exchange Act Rule 14a-8
- [S7-22-19](#) Amendments to Exemptions from the Proxy Rules for Proxy Voting Advice

During the open comment period, Miller/Howard wrote a [letter](#) to Jay Clayton, Chairman of the SEC, urging the SEC to reconsider the proposed rules that would limit the rights of shareholders to engage with company management. We believe:

The proposed rules would create unnecessary risks for all stakeholders.

As long-only investors, we find value for our clients by engaging companies to recognize and mitigate manageable risks – particularly on critical environmental, social, and governance (ESG) issues. We believe that the proposed rules are unnecessary, and will undermine a corporate engagement process that has been of great value to both companies and investors.

For decades, the shareholder proposal process has served to benefit issuers and proponents alike as an effective, efficient, and valuable tool for corporate management and boards to gain a better understanding of shareholder priorities and concerns. The proposed rule changes will make companies far less accountable to shareholders, stakeholders, and the public at large.

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The proposed increase in ownership thresholds will make it difficult for smaller investors to voice important concerns and raise issues of risk to the companies they own. The current ownership threshold of \$2,000 ensures that a diversity of voices are heard, not just the biggest players. Small investors have contributed a multitude of now commonplace best practices.

Resolutions filed by a single owner raise issues of interest to larger groups of investors.

Investment managers, such as Miller/Howard, may file a proposal using the shares of a single client who owns a small position in the company – but we do so while representing the interests of all of our clients invested in that company. This constitutes a much larger group than would be suggested by the position of the single owner whose name is on the filing.

According to data compiled by the Sustainable Investments Institute, 187 resolutions on social and environmental topics came to a vote at US companies in the spring of 2019. Many of these were filed by investors with relatively small stakes consistent with the existing filing thresholds. The proposals received an average of 25.6% support (about the same as the average of 25.4% for resolutions of this kind in 2018, and 21.4% in 2017). These numbers demonstrate that proposals of interest to a large portion of a company's shareholder base can and do originate with smaller individual and institutional investors.¹

Excluding this group of shareholders until they have held shares for three continuous years raises serious questions about the equity of the proposal process and leaves smaller investors who can make valuable contributions without access to the proxy.

The proposed increase in 'resubmission thresholds' threatens to unnecessarily exclude important proposals that gain traction over time. Additionally, the proposed increase may ultimately stifle key reforms.

There are a number of instances where resolutions that initially received low votes went on to receive significant support or have led to productive engagement, as shareholders came to appreciate the serious risks they presented to companies. Resolutions highlighting human rights risks in global supply chains initially received low votes at companies, but as a result of engagement prompted by the proposals, sector leaders have adopted human rights policies and supplier codes of conduct that help minimize legal, reputational, and financial risks. Clearly these and other votes on critical matters signify that investors appreciate the value of the issues being raised in these resolutions.

It can take some time for shareholders to get up to speed on emerging issues. The proposed changes could prevent significant topics, such as climate change, human rights issues, and board governance issues from even being raised and considered, to the detriment of all stakeholders.

The current 14a-8 rule has worked well for decades, and there is no need to revise it.

We engage on ESG risks as shareholders because we are concerned about the long-term health of the companies in which we are invested. Many of the companies that we engage with understand that this engagement enables them to mitigate reputational, legal, and financial risks, and build value. The filing of shareholder resolutions by investors—big and small—is a crucial part of the engagement process.

For the above reasons, we strongly urge the SEC to reconsider the proposed rule changes.

If you would like to read our original letter, it is available on the [SEC website](#).

¹ Si2 'FACT SHEET: Shareholder Proposal Trends', Sustainable Investments Institute, Oct.17, 2019, https://siinstitute.org/special_report.cgi?id=80



Luan Jenifer

Chief Executive Officer and President
Miller/Howard Investments

Luan Jenifer, Chief Executive Officer and President, joined Miller/Howard Investments in 2002. She manages our Environmental, Social and Governance (ESG) activities. In her prior role as Chief Operating Officer, Ms. Jenifer oversaw the firm's operations, trading, technology, and performance analytics departments. Ms. Jenifer served for many years as Director of Operations and Shareholder Advocacy. She holds a BS in Organizational Leadership from Marist College.

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