

April 24, 2017

Honorable Members  
House Financial Services Committee  
538 Rayburn House Office Building  
Washington, D.C.

Dear Honorable Members,

On behalf of the Corporate Reform Coalition, we write to oppose the forthcoming Financial Choice Act and in particular to highlight our concerns with the provision that prohibits the Securities and Exchange Commission from promulgating a rule to provide for proxy access. We also oppose the radical change in ownership requirements for shareholders proposing resolutions that appear on the proxy.

"Proxy access" refers to the ability of long-term shareholders to place a limited number of alternative board candidates on the company's proxy ballot for the company's annual shareholder meeting. As proxy access is typically envisioned, the shareholders must hold a substantial number of shares (often 3 percent of the outstanding shares) and have demonstrated a long-term interest by holding them for a substantial period of time (often three years). Further, the shareholders may only nominate candidates for 20 percent of the total board seats

The fundamental right of shareholders as the owners of a company is their prerogative to participate in the election of directors. Directors oversee executive officers, notably the CEO, who, in turn, oversee the deployment of shareholder capital. Determining the identity of the candidate directors, naturally, should also be the right of shareholders. In practice, however, it is the board itself that selects the candidate directors. And in nearly 100 percent of board elections, there are only as many candidates as there are board positions to fill. As Ann Simpson, Investment Director of the California Public Employee Retirement System, described, [proxy access] "is one of the most important rights for owners of a company. Without effective proxy access, the director election process simply offers little more than a ratification of management's slate of nominees."<sup>1</sup>

Directors who are largely unaccountable to shareholders arguably contribute to poor oversight. Certainly, the number of examples where boards failed to discern long festering problems is legion, from the accounting scandals epitomized by Enron, to the present case of Wells Fargo, where the board was oblivious to more than a decade of client account falsification.<sup>2</sup> According to the Securities and Exchange Commission, many institutional investors "saw a link between the [2008 financial crash] and shareholders' inability to have nominees included in a company's proxy materials."<sup>3</sup>

Proxy access provides a vehicle to introduce modest shareholder accountability into director elections, and in turn create a board that will listen to investor needs as they call for items like more disclosure in areas like corporate political spending.

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<sup>1</sup> Ann Simpson, *Letter to Exxon Mobile Shareholders*, CALPERS (May 11, 2016) <https://www.calpers.ca.gov/docs/exxon-mobile-shareowner-letter.pdf>

<sup>2</sup> Eleanor Bloxham, *Here's How Wells Fargo's Board Just Failed Customers*, FORTUNE (April 14, 2017) <http://fortune.com/2017/04/14/wells-fargo-fake-accounts-2/>

<sup>3</sup> Facilitation Shareholder Director Nominations, SECURITIES AND EXCHANGE COMMISSION (November 2010) shareholders' inability to have nominees included in a company's proxy materials.

The support for proxy access spans the investment community:

- **Vanguard:** “We believe that long-term investors may benefit from having proxy access . . . In our view, this improves shareholders' ability to participate in director elections while potentially enhancing boards' accountability and responsiveness to shareholders.”<sup>4</sup>
- **Blackrock:** “We believe that long-term shareholders should have the opportunity, when necessary and under reasonable conditions, to nominate individuals to stand for election to the boards of the companies they own and to have those nominees included on the company's proxy card. . . . [This] can enhance shareholders' ability to participate meaningfully in the director election process, stimulate board attention to shareholder interests, and provide shareholders an effective means of directing that attention where it is lacking.”<sup>5</sup>
- **Institutional Shareholder Services:** “Supports proxy access as an important shareholder right.”<sup>6</sup>
- **Council of Institutional Investors:** “The Council of Institutional Investors (CII) believes that proxy access is a fundamental right of long-term shareowners. Proxy access—a mechanism that enables shareowners to place their nominees for director on a company's proxy card—gives shareowners a meaningful voice in board elections.”<sup>7</sup>

Also supporting proxy access: Colorado Public Employees' Retirement Association; CtW Investment Group; Florida State Board of Administration; International Corporate Governance Network; Connecticut State Treasurer; Ohio Public Employees Retirement System; Pax World; Teamsters; AFL-CIO; California State Teachers' Retirement System; Nathan Cummings Foundation; Pershing Square; Relational Investors; RiskMetrics; Social Investment Forum; State of Wisconsin Investment Board, and Trillium, among others. These organizations supported the SEC's effort to make proxy access a rule.<sup>8</sup>

Already, at least 367 companies, including more than half of the S&P 500 index, have amended their bylaws to allow proxy access.<sup>9</sup> Between January 2015 and October 2016, 95 shareholder proposals calling for proxy access received majority votes.<sup>10</sup> These reforms led to increases in share prices of the firms in aggregate. In fact, a study in 2014 by the CFA Institute found that if all firms adopted the change, this would increase the market value of US firms by as much as \$140 billion.<sup>11</sup>

Achieving proxy access through shareholder resolutions, however, is limited by state law; some states provide for such bylaw changes through shareholder resolutions, while others do not. This was one key justification for the Dodd-Frank Section 971, which enabled the SEC to promulgate a proxy access rule.

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<sup>4</sup> Vanguard's Proxy Voting Guidelines, VANGUARD (website visited April 17, 2017) <https://about.vanguard.com/vanguard-proxy-voting/voting-guidelines/>

<sup>5</sup> Proxy Voting Guidelines for US Securities, BLACKROCK (website visited April 17, 2017) <https://www.blackrock.com/corporate/en-br/literature/fact-sheet/blk-responsible-investment-guidelines-us.pdf>

<sup>6</sup> ISS Summary Proxy Voting Guidelines, ISS (website visited April 18, 2017) <https://www.issgovernance.com/file/policy/2016-us-summary-voting-guidelines-23-feb-2016.pdf>

<sup>7</sup> Proxy Access, Best Practices, COUNCIL OF INSTITUTIONAL INVESTORS, (website visited April 18, 2017), [http://www.cii.org/files/publications/misc/08\\_05\\_15\\_Best%20Practices%20-%20Proxy%20Access.pdf](http://www.cii.org/files/publications/misc/08_05_15_Best%20Practices%20-%20Proxy%20Access.pdf)

<sup>8</sup> Facilitation Shareholder Director Nominations, SECURITIES AND EXCHANGE COMMISSION (November 2010) shareholders' inability to have nominees included in a company's proxy materials.

<sup>9</sup> Proxy Access, COUNCIL OF INSTITUTIONAL INVESTORS (website visited April 17, 2017) [http://www.cii.org/proxy\\_access](http://www.cii.org/proxy_access)

<sup>10</sup> See shareholder resolution at Schwab, proxy statement (April 2017)

<https://www.sec.gov/Archives/edgar/data/316709/000119312517103408/d319517ddef14a.htm>

<sup>11</sup> Proxy Access in the United States, CFA INSTITUTE (August 2014) <http://www.cfapubs.org/doi/pdf/10.2469/ccb.v2014.n9.1>

Those who oppose proxy access are not investors but corporate leaders. They do not state that they oppose accountability, but rather disguise their concerns as a wish to maintain collegiality among directors. Investors, however, do not value collegiality as much as functional management well monitored by effective directors.

In a separate provision, the CHOICE act would increase the threshold for submitting shareholder resolutions to 1 percent of a company's outstanding shares. Currently, the rules require a shareholder to hold at least \$2,000 worth. In effect, this would eliminate the ability of average Americans to submit shareholder resolutions. At JP Morgan, for example, a shareholder would need to own more than \$2 billion worth of stock. At Apple, a shareholder would need to hold more than \$7 billion in stock. Only the largest institutional investors could submit a resolution, and none has. We find this proposal preposterous.

In the end, proxy access and shareholder resolutions are about choice, the ability of the owners of a corporation to select among candidates to serve them as management overseers, to propose changes in governance and company policies.. The Financial CHOICE Act poorly reflects its name if it limits this choice. We ask that you oppose this provision as one of the reasons (among many) to oppose the overall bill.

For inquiries, please contact: Lisa Gilbert, [lgilbert@citizen.org](mailto:lgilbert@citizen.org), Vice President of Legislative Affairs at Public Citizen