



April 25, 2017

The Honorable Maxine Waters and
House Committee on Financial Services (Minority)
U.S. House of Representatives
Washington, DC

Dear Representative Waters and Committee Members on Financial Services:

We are writing in response to the House Financial Services Committee's consideration of legislation that would effectively stop shareholders from engaging corporations through the shareholder proposal process. We ask that you oppose any attempt to limit the current shareholder proposal rule, as contemplated by Chairman Jeb Hensarling (R. Texas) in Section 844 of the Discussion Draft of the Financial CHOICE Act.¹ A hearing by the House Financial Services Committee is scheduled for April 26. As a committee member, we urge you to defend the rights of investors by opposing any attempt to limit the existing shareholder proposal process under Securities and Exchange Commission rule 14a-8.

For almost 175 years, the **Sisters of Mercy of the Americas** have served communities in the United States in health care, education and social service ministries. This deep commitment to caring for others has extended to the sisters' role as long-term investors in many companies through their investment program, **Mercy Investment Services**. The **Sisters of Mercy** consider not only the financial returns of their investments, but also believe that demonstrated corporate responsibility in matters of the environment, social and governance concerns fosters long-term business success. In addition to investing in companies, the **Sisters of Mercy** have invested in communities for more than four decades to bring access to health care, housing and jobs.

While we are deeply concerned about several parts of the Discussion Draft of the Financial CHOICE Act, we want to express our concerns on Section 844, which would change the current SEC shareholder proposal process by (1) increasing the holding requirement to submit a proposal to 1% ownership over a three-year period (vs. the current law of \$2000 for one year); (2) dramatically increasing resolution resubmission thresholds; and (3) prohibiting proposal by a proxy other than the shareholder.

As an investor, we oppose these recommendations that would interfere with shareholder rights. The shareholder proposal rule was created to support the ownership interests of all shareholders. For more than 45 years, the shareholder proposal process has served as a cost-effective way for corporate management and boards to hear and address shareholder concerns on issues of sustainability, corporate governance, and risk. Smaller shareholders, whether individuals or institutional investors, would be cut out of this process entirely, even though they, like the Sisters of Mercy, have been among the most important and active participants in the process. Depending on the size of the company, the holdings required by the

https://financialservices.house.gov/uploadedfiles/choice_2.0_discussion_draft.pdf

proposed threshold would be in the millions or even billions of dollars, cutting out all but the largest shareholders from access to corporate democracy.

The quality of ideas in shareholder proposals, and their ultimate contribution to value, does not correlate with the size of the stock positions held by shareholders. Experience shows that in the absence of the right to file a shareholder proposal, most shareholders may be ignored, and companies will act as if they are “too big to listen.” For an overview of some of the issues considered in shareholder proposals this year, we refer you to the [ICCR Proxy Book](#).

Several benefits of the current shareholder proposal rule include:

- ✓ **Facilitates communication between shareholders and companies:** It provides shareholders of all types and sizes, from large pension funds to individual investors, an opportunity to communicate directly with corporate boards and management on issues of importance.
- ✓ **Shareholder value and financial performance:** Over the years, the shareholder proposal process has contributed to many reforms that protect and enhance shareholder value, both at specific companies and in many cases to the benefit of the entire corporate and shareholder community. A 2015 study found that successful shareholder engagements can generate cumulative excess returns of +7.1%.² In another example, a 2012 and 2014 Credit Suisse Research Report “Gender Diversity and Corporate Performance” links board diversity – an issue that has been raised through dozens of shareholder proposals – to better stock market and financial performance.³
- ✓ **Protects shareholder rights:** The right to file a proposal is part of the bundle of rights that an investor receives when acquiring shares. Radically curtailing those rights and taking away this process through which investors can bring concerns to management’s attention would undermine investor confidence in the stability of share ownership.

The changes proposed in Section 844 represent a radical and dramatic interference with important shareholder rights:

- ✓ **1% ownership over a three-year period to submit a proposal:** For example, this would require an investor in Apple to own \$7 billion in shares, or at Wells Fargo to own \$2.5 billion in shares, to file a proposal. Shareholder proposals have been filed at Wells Fargo on matters such as customer fraud, independent board chairman, and irregularities in mortgage practices. Improvements in business are driven by the marketplace of ideas, and minority shareholders are also important stakeholders.
- ✓ **Increase resubmission thresholds consistent with previous SEC proposal:** Current rules require that for a proposal to be resubmitted, it must receive at least 3% support on its first year voted, 6% on the second, and 10% on the third. The proposal would raise these to 6%, 15%, and 30%, respectively. Yet support growing to 10% over three years is already proven to be a significant show of investor interest. This amendment would negatively impact shareholder refiling of proposals on new and emerging issues. Change does not come quickly to large and complex corporations, and ideas often require years of consideration before they are accepted.
- ✓ **Prohibit proposal by a proxy other than the shareholder:** Investors have a fundamental right to empower their representatives to act on their behalf, and the proxy is a basic mechanism for well-functioning corporate governance.

The legislation would upset more than 45 years of SEC rulemaking and deliberations on this important and well-functioning corporate democracy process. This existing balance of rights and responsibilities in our investments supports a relationship of trust between capital providers and corporations. Stripping away shareholder rights as proposed by Chairman Hensarling would undermine that relationship. To learn more


² https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2154724

³ <https://www.credit-suisse.com/us/en/articles/articles/news-and-expertise/2015/06/en/diveristy-on-board.html>

about this issue, we refer you to a [letter](#) from organizations, representing \$65 trillion of investments, opposing these proposals.

We are happy to speak about this at your convenience and can provide additional details on the impact of shareholder proposals. We urge you to oppose this attempt to limit shareholder rights.

Sincerely,

A handwritten signature in black ink that reads "Patricia McDermott, RSM". The signature is written in a cursive style with a large initial 'P'.

Sister Patricia McDermott RSM
President
Sisters of Mercy of the Americas