



STATE OF NEW YORK
OFFICE OF THE STATE COMPTROLLER

May 24, 2018

Honorable Jeb Hensarling
Chairman
Committee on Financial Services
United States House of Representatives
Washington, DC 20515

Honorable Maxine Waters
Ranking Member
Committee on Financial Services
United States House of Representatives
Washington, DC 20515

Re: Opposition to H.R. 5756

Dear Mr. Chairman and Ranking Member Waters:

I write to express my strong opposition to H.R. 5756, requiring the Securities and Exchange Commission to drastically increase resubmission thresholds for shareholder proposals.¹ As Comptroller of the State of New York, I am Trustee of the New York State Common Retirement Fund (Fund), the third largest public pension fund in the United States, with an estimated \$206.9 billion in assets under management as of March 31, 2018. The Fund holds and invests the assets of the New York State and Local Retirement System on behalf of more than one million state and local government employees and retirees and their beneficiaries.

H.R. 5756 would raise thresholds for resubmitting shareholder resolutions, thereby precluding shareholder consideration of many important governance proposals that, if adopted, could enhance long-term shareowner value.

Over the years the Fund has filed shareholder resolutions at numerous portfolio companies seeking to change various corporate policies to protect and enhance long-term shareowner value. It has been our experience that it often takes several years for a proposal relating to emerging issues to gain enough support from investors to achieve double-digit votes. Most often, these proposals eventually receive substantial or majority support, which leads to companies' adopting the proposals as company policy.

¹ Current rules permit a shareowner to re-file a proposal only if it has received at least 3% of the vote on its first submission, 6% on the second and 10% on the third. This bill would substantially raise these thresholds to 6%, 15% and 30%, respectively.

For example, when shareowners first filed proposals encouraging board diversity, they initially received votes in the low single digits. Now, because of the persistent efforts of shareowners, board diversity policies have received high votes. This includes majority support for board diversity shareholder proposals, as was the case with the Fund's 2016 board diversity proposal at Fleetcor Technologies, Inc. that received 61% support from shareowners.

Issues raised by shareholders can have a significant impact on the company's long-term success. In 2015, the GAO released a report, requested by Representative Carolyn Maloney, examining gender diversity on corporate boards. The report highlighted the slow pace toward parity and research supporting positive financial performance and better decision-making on gender diverse boards. The GAO report confirmed the importance of board diversity for the economic success of companies, and the need for investors to have the ability to engage with companies on the issue. If H.R. 5756 had been enacted during the nascent stages of board diversity proposals, shareowners would have been thwarted in advancing this emerging issue that has resulted in improved value for shareholders.

Secondly, proponents of this bill will argue that an increase in shareowners' filing shareholder resolutions on special interest topics unrelated to significant business matters is burdensome to companies and warrants an increase in the resubmission thresholds. However, this argument fails to recognize that SEC regulations already allow companies to exclude proposals that relate to management functions or are insignificant to the company's business. Additionally, since 2010, there have been only 35 instances of re-filing after a vote of less than 20% for two or more years; this demonstrates that there is no significant burden imposed by shareholder resolutions.

Shareholder resolutions are an efficient means by which shareowners can communicate with their companies on issues of importance to their investments. Raising resubmission thresholds would be inconsistent with the SEC's mission of protecting investors and maintaining efficient markets, would weaken corporate accountability, and would dramatically diminish shareowners' current rights.

I urge the Committee to reject the proposal based on the concerns I have expressed on behalf of the more than one million members, retirees and beneficiaries of the System for whom the Fund invests.

Sincerely,

/s/

Thomas P. DiNapoli
State Comptroller

cc: Members of the House Committee on Financial Services