AMERICAN COUNCIL FOR CAPITAL FORMATION

Timothy M. Doyle
General Counsel

October 10, 2018

Mr. Brent J. Fields
Secretary
U.S. Securities and Exchange Commission

Re: File Number 4-725; SEC Staff Roundtable on the Proxy Process

Dear Mr. Fields:

The American Council for Capital Formation (ACCF) is a nonprofit, nonpartisan economic policy organization dedicated to the advocacy of pro-growth tax, energy, environmental, regulatory, trade and economic policies that encourage saving and investment.

We applaud the formation of the Staff Roundtable on the Proxy Process and appreciate the enhanced shareholder engagement this effort will bring. We welcome the opportunity to participate in this conversation and contribute our research findings to add value to the discussion, particularly on the topic of proxy advisors, and hope this conversation will yield productive outcomes that squarely address some of the questionable practices that warrant special attention in today's proxy voting process.

As noted in Chairman Jay Clayton's statement outlining the issues the SEC Staff Roundtable hopes to address, proxy advisory firms provide a number of services related to proxy voting, including voting recommendations. These firms continue to grow in scale and influence, given the rising popularity of shareholder activism and the proxy advisors' influence over a broad range of stakeholders—including companies influenced by the proxy votes and individual investors whose personal savings are invested as parts of bigger funds. Little remains known, however, about the ways proxy advisors operate, including the fact that two firms, ISS and Glass Lewis, wield significant control of the market—an estimated 97 percent—and have the ability to impact major voting decisions based on their recommendations. Studies found that a negative ISS recommendation can lead to a 25-percentage-point decrease in voting support.

According to ACCF's May 2018 report, "The Conflicted Role of Proxy Advisors," investors are overwhelmingly relying on proxy advisors to make their votes, a practice that can have a significant impact on large corporations and an even larger impact on voting at smaller companies, where voting correlations are particularly high. Institutions particularly in the quant and hedge fund space have also resorted to using measures such as robo-voting to vote in-line with proxy advisors' recommendations in order to manage the massive number of votes to cast and limited time and resources for analysis. Such practices pose an amplified risk as these funds have recently shown strong tendencies to blindly align their votes with ISS. While this may not seem troublesome on ordinary-course matters, these powerful votes can add up to create lasting implications for corporate policy, profits, and disclosures.

Despite this outsized influence, ISS and Glass Lewis provide little-to-no transparency as to what truly impacts their proxy voting guidelines. In fact, there is little systematic oversight of the proxy firm's research processes, interactions with companies, and communications with investors. This dynamic, while giving increased power to proxy advisors, also decreases the ability of companies to advocate for themselves or their businesses in the face of an adverse recommendation. It also inevitably places undue pressure on smaller companies, who must bear the burden of meeting the constantly evolving requirements of the proxy advisors that wield heavy influence over their shareholders.

Another issue slated to be discussed at the Roundtable is whether there are conflicts of interest in proxy advisors' services, including with respect to related consulting services provided by these firms. As ACCF notes in its May 2018 report, ISS provides consulting through its Governance Advisory Services -- the details of which are not clearly defined on its website -- and has drawn criticism for attempting to simultaneously rate a company and sell consulting services to companies seeking to improve their ratings. This consulting role remains generally unknown to the public, and potential conflicts of interest are not stated on ISS's website, which carefully outlines the firm's influence as a proxy advisor. It is worth noting that this type of conflict of interest is not tolerated in other industries. Most notably, the passage of Sarbanes-Oxley Act of 2002 required the separation of the parts of financial institutions that provide ratings on companies and those that conducted advisory work for those same companies. It also required disclosure of all relationships between those financial institutions and the companies they work for when releasing those ratings.

As issues within the proxy advisory industry mount, ACCF has made three recommendations for ways to tackle these problems head on. First, we recommend that elected officials, regulators, and the general public support congressional efforts to introduce basic oversight over proxy advisory firms. This includes H.R. 4015, a bill passed in the House last December and currently being considered in the Senate, that seeks to level the playing field and decrease the burden proxy advisors can have on companies. The bill also provides for greater transparency around proxy firms' research practices and conflicts of interest. Second, regulators should demand greater transparency about the formation of proxy advisory recommendations. Proxy advisory firms should publish the comments to their policy changes, indicating who requested the change and why. Lastly, proxy advisors should be required to disclose that much of the data they use are unaudited and incomplete. Proxy advisory firms have failed to adequately disclose to their

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subscriber and the wider public that they rely heavily on unaudited and, potentially, incomplete or inaccurate disclosures from the companies they research to make recommendations on environmental and social disclosure-based policies.

ACCF commends the SEC for its efforts to bring change to this industry. The recent decision to rescind two previously issued guidance letters that had allowed proxy advisors to wield undue influence over the shareholder proposal process is an important first step in reforming an essential part of the corporate governance system. With the withdrawal of these letters, there is renewed hope that federal regulators will focus their attention on the fiduciary duty owed investors and on genuine reform.

We would be happy to discuss our research and recommendations in further detail or directly participate in the Roundtable's discussion. We hope to see the conversations at this Roundtable shed light on the overlooked burdens of smaller companies and investors, bringing a healthy sense of transparency to a process that, as Chairman Clayton rightly stated, "is a hallmark of our public capital markets."

Sincerely,

Tim Doyle

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American Council for Capital Formation

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