

November 14, 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, corporate governance, retirement, infrastructure and economic policies that encourage savings and investment. This submission is in addition to a previous comment by ACCF and is in light of new research that we have carried out which we believe should be considered as a part of the U.S. Securities and Exchange Commission's assessment of the proxy process.

Institutional investors have to submit hundreds, if not thousands, of votes each year. Because not all have sufficient in-house resources to collect and assess the information, proxy advisers' recommendations have become an important and influential tool in the proxy process for some.

Unfortunately, new ACCF research shows that a number of institutions have come to automatically rely on proxy firms' recommendations, in a practice known as 'robo-voting'. Authored by Frank Placenti, Chair of Corporate Governance at Squire Patton Boggs, the paper, *Are Proxy Advisors Really a Problem?*,<sup>1</sup> includes a survey of 100 public companies' experience in the 2016 and 2017 proxy seasons. It demonstrates that almost 20% of shareholders votes are cast within three days of an adverse recommendation, suggesting that many asset managers follow proxy advisory firms without taking the time to conduct their own due diligence.

Subsequently ACCF also carried out an examination of which asset managers have historically voted in line with the recommendations of the largest proxy advisory firm, Institutional Shareholder Services (ISS). Featured in a second paper, *The Realities of Robo-Voting*,<sup>2</sup> the research finds that 175 entities with

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<sup>1</sup> Frank M. Placenti, *Are Proxy Advisors Really A Problem?*, American Council for Capital Formation (October 2018): [http://accfcorgov.org/wp-content/uploads/2018/10/ACCF\\_ProxyProblemReport\\_FINAL.pdf](http://accfcorgov.org/wp-content/uploads/2018/10/ACCF_ProxyProblemReport_FINAL.pdf).

<sup>2</sup> Timothy M. Doyle, *The Realities of Robo-Voting*, American Council for Capital Formation (November 2018): [http://accfcorgov.org/wp-content/uploads/ACCF-RoboVoting-Report\\_11\\_8\\_FINAL.pdf](http://accfcorgov.org/wp-content/uploads/ACCF-RoboVoting-Report_11_8_FINAL.pdf).

more than \$5 trillion in assets under management followed ISS' guidance over 95% of the time between July 2012 and 2018.

We note that a recent comment<sup>3</sup> submitted to the SEC argues that robo-voting is not taking place, citing the voting records of the largest 20 asset managers on Say on Pay votes between July 1, 2017 to June 30, 2018. We view this data only as corroboration that the larger investors with sufficient in-house resources to conduct their own analysis are not robo-voting, a point we reiterated several times in *The Realities of Robo-Voting*.<sup>4</sup> The data in our paper showing how often and how quickly certain other asset managers are robo-voting is not impacted by that conclusion.

The practice of robo-voting is all the more concerning given ongoing concerns over the accuracy of advisor recommendations, the limited amount of time proxy advisors allow for company corrections, and the need for investment managers to align voting with fiduciary considerations.

These failings were also discussed in the *Are Proxy Advisors Really a Problem?*<sup>5</sup> paper, which identified 139 significant problems, including 49 that were classified as 'serious disputes, based on a review of supplemental filings to the Commission from 2016 through September 30, 2018. Given the limited window of time available for companies to respond, we believe that these only represent a sample of the total number of objections issuers have to proxy advisers' guidance.

We believe the findings are significant in that they shed light on the true role played by proxy advisers in today's proxy process. While proxy firms regularly assert that their recommendations are only intended to be a supplemental tool used in voting decisions, our research suggests otherwise and shows clearly that they directly impact shareholder votes in America's public companies.

ACCF commends the SEC for the decision to review the proxy process, including proxy advisory firms. The lack of oversight of proxy advisors who dictate as much as 25% of proxy voting outcomes, and have emerged as pseudo-regulators for America's public companies, is increasingly becoming a real issue for investors and must be addressed.

We would be happy to discuss our research and recommendations in further detail. Following this letter are two reports discussed herein for the SEC's consideration.



Timothy M. Doyle  
Vice President of Policy and General Counsel  
American Council for Capital Formation

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<sup>3</sup> Comment from Proxy Insight to Mr. Brent J. Fields, Securities and Exchange Commission, *Re: File Number 4-725 Submission in advance of Staff Roundtable on the Proxy Process*, Proxy Insight (November 13, 2018):

<https://www.proxyinsight.com/press/Proxy%20Insight%20SEC%20Proxy%20Rountable%20Submission.pdf>.

<sup>4</sup> Timothy M. Doyle, *The Realities of Robo-Voting*, American Council for Capital Formation (November 2018): [http://accfcorgov.org/wp-content/uploads/ACCF-RoboVoting-Report\\_11\\_8\\_FINAL.pdf](http://accfcorgov.org/wp-content/uploads/ACCF-RoboVoting-Report_11_8_FINAL.pdf).

<sup>5</sup> Frank M. Placenti, *Are Proxy Advisors Really A Problem?*, American Council for Capital Formation (October 2018): [http://accfcorgov.org/wp-content/uploads/2018/10/ACCF\\_ProxyProblemReport\\_FINAL.pdf](http://accfcorgov.org/wp-content/uploads/2018/10/ACCF_ProxyProblemReport_FINAL.pdf).