



November 16, 2018

Submitted via electronic filing: rule-comments@sec.gov

Mr. Brent J. Fields Secretary
U.S. Securities and Exchange Commission 100 F Street, NE
Washington, DC 20549-1090

Re: SEC Staff Roundtable on the Proxy Process; File No. 4-725

Dear Mr. Fields:

On July 30, 2018, Chairman Clayton announced a Staff Roundtable on the “Proxy Process.” The purpose of the Roundtable is to provide the U.S. Securities and Exchange Commission (“SEC” or “Commission”) information on existing rules and practices related to the proxy process and shareholder engagement.¹ The suggested topics included: (i) voting process, (ii) retail shareholder participation, (iii) shareholder proposals, (iv) proxy advisory firms, and (v) technology and innovation. BlackRock supports the SEC’s efforts to facilitate a discussion on various aspects of proxy voting and shareholder engagement.

BlackRock has a multi-dimensional vantage point from which to provide a perspective on these issues. First, BlackRock Inc. is a U.S. public company that issues a proxy statement each year and solicits its shareholders to vote at its annual meeting. Second, BlackRock sponsors and is an investment adviser to investment companies registered under the Investment Company Act of 1940 – both open-end and closed-end – that themselves issue proxy statements and solicit proxies from fund shareholders. Third, as a fiduciary to its clients, BlackRock engages with portfolio companies and votes proxies globally at over 17,000 meetings annually. Finally, BlackRock manages \$6.4 trillion on behalf of clients, including public defined benefit plans, corporate defined benefit plans, defined contribution plans, sovereign wealth funds, foundations, endowments, insurers, and individuals located around the world.

We believe that improvements can be made throughout the proxy process, including around voting processes, shareholder proposals, and proxy advisors. Proxy advisors play an important role in the corporate governance ecosystem; however, we think that some improvements to transparency would benefit all stakeholders. We are confident that an open discussion of proxy process issues can engender workable solutions to make the process more efficient, less complex, and more effective. Resolving the existing inefficiencies and opacity would be consistent with our collective desire to enhance the quality of proxy process research and promote competition within the industry.

As discussed more fully below, we recommend that any restructuring of the proxy process begin with: (i) a set of guiding principles setting out the objectives that would help shape any changes to the process, and (ii) research on current processes to inform data-driven discourse.

¹ SEC, Chairman Clayton, Statement Announcing SEC Staff Roundtable on the Proxy Process (Jul. 30, 2018), available at <https://www.sec.gov/news/public-statement/statement-announcing-sec-staff-roundtable-proxy-process> (“SEC Proxy Roundtable Announcement”).

I. Principles to Guide Future Rulemaking on Proxy Process Matters

Principle 1: Transparency encourages market integrity and reduces conflicts

Currently, while some participants in the proxy voting ecosystem are subject to significant reporting requirements, other participants have no requirements at all and therefore provide no transparency. For example, registered funds² are required to publicly file Form N-PX on an annual basis, which discloses a fund's proxy voting record with respect to portfolio securities held by the fund.³ Likewise, public companies provide significant disclosure on conflicts and related party transactions in their public filings.

Conversely, proxy advisory firms are not subject to similar disclosure rules, even though they play an important role in the corporate governance ecosystem. These firms provide research and recommendations on the thousands of shareholder votes at U.S. public companies. For context, there were over 25,000 unique ballot items for the Russell 3000 for the year ending June 30, 2018, according to Institutional Shareholder Services (ISS). The research and recommendations of proxy advisors are an important input for many institutional investors. Yet, there currently are no standards or regulations that apply to reports prepared by proxy advisory firms to summarize proxy statements, and provide analysis and recommendations. Notwithstanding general proxy voting guidelines, proxy advisors do not disclose their methodology for their analyses and vote recommendations, and offer limited insight into which companies receive consulting services. Additional disclosure around potential conflicts of interest and how they are mitigated may be warranted.

BlackRock is committed to providing transparency going beyond what is currently required of asset managers. We currently share engagement priorities, voting guidelines, regional quarterly reports, a global annual report, and our actual voting record on-line.⁴ In addition, we provide disclosure on how we manage conflicts of interest. While BlackRock is providing this information on a voluntary basis, the SEC should consider whether some of this disclosure should be required of all asset managers.⁵

Separately, the shareholder proposal process could also benefit from greater transparency. Currently, proponents of shareholder proposals are not required to disclose if they are working with or have appointed another individual or institution to advocate or engage with an issuer on their behalf. In certain circumstances this information may be relevant to proxy advisors and investors in assessing proposals. Lastly, there is criticism that vote tabulators provide voting data to companies and withhold that information from investors.

We recommend a principle of transparency throughout the proxy ecosystem. We believe some of the issues that have been identified may prove self-correcting when all participants are held to a similar standard of transparency and when data is more readily available.

² Funds registered under the Investment Company Act of 1940, as amended (the "1940 Act") (i.e., mutual funds, closed-end funds, exchange-traded funds).

³ 17 CFR 274.129 - Form N-PX, Annual Report Of Proxy Voting Record of Registered Management Investment Company (Feb. 7, 2003), available at <https://www.sec.gov/rules/final/33-8188.htm>.

⁴ BlackRock, Investment Stewardship, available at <https://www.blackrock.com/corporate/about-us/investment-stewardship>.

⁵ BlackRock, Guidelines, reports and position papers, available at <https://www.blackrock.com/corporate/about-us/investment-stewardship/voting-guidelines-reports-position-papers>.

Principle 2: Accurate information is critical to decision making

A number of commentators have raised questions about dependability, factual mistakes and incorrect assumptions made in the company research reports issued by proxy advisory firms to institutional clients. This raises concerns as many clients of proxy advisory firms who are voting their own shares or those of their clients rely on the company reports accompanying the proxy advisor recommendation to determine how they will vote.

We recommend that the SEC pursue solutions that ensure accuracy, completeness and a fair and consistent process with regard to the proxy advisory firm's preparation of its company reports. Given the volume of proxy votes and the compressed time frame of U.S. public company annual general meetings, we recommend exploring technology solutions such as a digital portal for the review of draft company reports. We imagine a scenario where a portal would provide companies at least two business days to correct factual errors *prior to* the recommendation being issued to clients of the proxy advisory firm. The same portal could also be used to enable companies to submit a "rebuttal" that could be included in the final report.

Principle 3: A need to balance the rights of all shareholders

Rule 14a-8 under the Securities Exchange Act of 1934 Act (the "Rule") establishes the rules pursuant to which a shareholder may seek to include a proposal in a company's proxy statement. The Rule establishes a *de minimis* eligibility criteria to apply to shareholders who own at least \$2,000 or 1% of a company's securities eligible to vote for a holding period of one year. To the extent a proposal is unsuccessful, the resubmission thresholds allowing a shareholder to submit a substantially similar proposal the following year are quite low (i.e., the proposal would have to receive less than 3%, 6% or 10% favorable votes, as applicable, to be barred from being resubmitted the following year). Assuming a proposal meets these hurdles, there is no limit on the number of times that the same proposal can be put on a company's proxy for a shareholder vote.

Many proposals meet current resubmission thresholds and shareholders vote repeatedly on the same (or similar) proposals. A 2009 study noted that costs directly incurred by companies due to such proposals were estimated at \$87,000 per proposal, totaling \$90 million annually.⁶ While the data about the costs associated with this process should be updated, the evidence suggests that the costs are substantial and, of course, these costs are borne by all shareholders.

The need to balance the rights of shareholders is particularly important, as shareholder proposals are not the primary means by which all shareholders engage with the companies in which they invest. For example, BlackRock takes an engagement-first approach to investment stewardship, emphasizing direct dialogues with companies on issues that we believe have a material impact on financial performance. BlackRock has never introduced a shareholder proposal on any company's proxy statement, nor have we led an activist campaign for board seats.

We recommend the SEC gather data on shareholder proposals as discussed later under "Fact Finding." We believe this research will help in modernizing the eligibility criteria for initial submissions and the rules addressing resubmission.

⁶ Joao Dos Santos, M.Sc. Chen Song, PH.D., Analysis of the Wealth Effects of Shareholder Proposals, Volume II (May 18, 2009).

Principle 4: Cost-benefit analysis should underpin recommendations and rulemaking

Cost-benefit analysis is a fundamental underpinning of effective regulation. We believe cost-benefit analysis should be incorporated into the shareholder proposal process.

Several commentators have argued that shareholder proposals should address issues that are *material* to the business of the company at which they are submitted. We recommend requiring the proponents of a shareholder proposal to include a discussion of the materiality of the issue being addressed by their proposal.

Likewise, when a proxy advisory firm recommends in favor of a shareholder proposal, their analysis and report should consider the costs⁷ to the company associated with the implementation of the proposal. We believe that asset managers should similarly consider cost as a factor in their own vote determination.

Some commentators have suggested that registered funds should solicit input from fund shareholders to inform the registered funds' proxy voting (sometimes referred to as "pass-through proxy voting") in portfolio securities held by the fund. While this idea sounds simple, the costs and complexity are significant. As Investment Company Institute (ICI) CEO Paul Schott Stevens outlines in a recent [viewpoint](#), "pass-through voting, forc[es] advisers to impose that burden on shareholders, at great complexity and expense, [which is] a giant step in the wrong direction."⁸

Importantly, these costs would negatively impact returns for fund shareholders. A typical equity fund holds dozens (if not hundreds) of individual stocks. Each company in the portfolio has multiple directors as well as other proxy ballot items. Simple math would suggest that this approach would require registered fund shareholders to advise on the vote on thousands of proxy ballot items on the underlying companies. The cost and complexity of seeking such "votes" (or guidance) would be different from, and in addition to, the registered fund shareholder votes that are already required annually for closed-end funds and periodically for electing directors of the registered fund, and other registered fund ballot items. Importantly, registered funds publish their proxy voting guidelines and report their votes annually on Form N-PX. Fund shareholders can make a determination as to whether or not they support the funds' corporate governance approach, and with the thousands of funds available, can likely find a similar fund in which to invest that has a voting record more in line with their views. As discussed later under "Fact Finding," we recommend that the SEC undertake an analysis of the current processes in place.

⁷ At present, proxy advisory firms do not inform clients of the potential cost implications of recommending in favor of a shareholder proposal balanced against the benefits of the company implementing the resolution. While a comprehensive cost-benefit analysis may not be feasible, a more fulsome discussion around cost-benefits would substantially improve their analyses.

⁸ Paul Schott Stevens, SEC Should Reject Complex, Costly "Pass-Through" Proxy Voting (Oct. 2, 2018), available at https://www.ici.org/viewpoints/view_18_passthrough_voting.

Principle 5: Voting integrity is paramount to investor confidence

As evidenced by commentary at the recent SEC Investment Advisory Committee meeting, proxy plumbing is quite complex and would benefit from improvements.⁹ The issues that challenged the voting system when the SEC issued its 2010 concept release on proxy plumbing remain relevant today: close votes such as [Proctor & Gamble](#) continue to highlight the difficulties in properly tallying the results under the current system. As evidenced by the 2010 release, institutional investors have been advocating for end to end vote confirmation for a significant amount of time, and would welcome the modernization of this process.

Ken Bertsch of the Council of Institutional Investors (CII) testified at the SEC Investor Advisory Roundtable, advocating for a solution using blockchain.¹⁰ Chairman Clayton's July 30th statement similarly indicated that "blockchain" or distributed ledger technology, could be used to streamline or create more accountability in the proxy process." We believe technology solutions can address the record keeping and reconciliation challenges across the multiple layers of data exchange and several solutions should be explored to modernize the antiquated proxy plumbing infrastructure.

We recognize that the technology space changes rapidly. Rather than advocating for blockchain or any specific solution at this time, we recommend the SEC host a multi-disciplinary working group to identify potential solutions. This group should include issuers, investors, custodians, broker-dealers, technologists, transfer agents, tabulators and existing and emerging intermediaries in the voting process to ensure multiple perspectives are reflected in the solutions. This working group would conclude by offering one or more recommendations for the Commission to consider for modernizing proxy plumbing regulation.

In addition to technology, we recognize that a system-wide change will require direct regulatory involvement as no single market participant (nor even a small subset of participants) can independently solve this problem. The recent move from T+3 to T+2 provides a useful corollary. In the settlement change, regulators established the new rule and set a deadline which enabled market participants to adjust and develop processes and technology, and one set of standards allowed all participants to perform a system-wide test prior to the go-live date.¹¹

The SEC has recently expressed interest in exploring solutions to improve the distribution of information to shareholders and hopefully improve voting participation through the use of e-delivery of proxy information. BlackRock is a strong supporter of e-delivery as a modern method of communication which is environmentally-friendly and one which should reduce costs both to issuers and to registered funds. Just as the Commission adopted Rule 30e-3 for registered fund shareholder reports, we recommend extending the use of e-delivery for the distribution of proxy materials.

⁹ Cydney Posner, SEC's Investor Advisory Committee discusses proxy plumbing (Sept. 18, 2018), available at <https://cooleypubco.com/2018/09/18/sec-committee-discusses-proxy-plumbing/>.

¹⁰ Ken Bertsch, Remarks to the Sec Investor Advisory Committee (Sept. 13, 2018), available at <https://www.sec.gov/spotlight/investor-advisory-committee-2012/iac091318-opening-remarks-ken-bertsch.pdf>.

¹¹ SEC Adopts T+2 Settlement Cycle for Securities Transactions, *U.S. Securities and Exchange Commission* (Mar. 22, 2017), available at <https://www.sec.gov/news/press-release/2017-68-0>.

II. Fact Finding on the Current Process

As interest in the proxy process has increased, a number of misperceptions have emerged in the ongoing dialogue. Changes to the proxy process should be grounded in data, not based on speculative statements. A robust discussion would benefit from some basic fact finding and level setting in advance of contemplating changes. We recommend further assessment of: (i) actual voting records, (ii) shareholder proposals, and (iii) registered fund processes.

Actual Voting Records

We often hear statements repeated by various commentators in various publications such as “index managers outsource their vote to proxy advisory firms” and “large asset managers follow the recommendations of proxy advisory firms.” As clearly outlined in our recent letter to The Wall Street Journal, both statements are factually inaccurate.¹² Prominent asset management firms that sponsor index funds employ dedicated stewardship teams that focus on company engagement and proxy voting. To put this in perspective, BlackRock’s Investment Stewardship team has more than 40 professionals responsible for developing independent views on how we should vote proxies on behalf of our clients.¹³

We recently undertook a study of voting data using N-PX files. As noted in our *ViewPoint: [The Investment Stewardship Ecosystem](#)*, we reviewed the voting records of four large asset managers on shareholder proposals. The results could not have been more clear: the managers’ voting patterns differed considerably from each other and from ISS’ recommendations. While ISS recommended in favor of more than 70% of the shareholder proposals, the asset managers supported between 14% and 33% of these proposals. Digging deeper, we also found tremendous variation in the underlying votes across the spectrum of topics covered by shareholder proposals.¹⁴

This analysis should be expanded to cover a wider group of asset management firms. We recommend that the SEC compare the actual voting data in the N-PX files against the proxy advisor recommendations on shareholder proposals.¹⁵ This analysis may also highlight which firms appear to rely more heavily on proxy advisor recommendations as well as demonstrate the different voting policies of various firms and the lack of correlation in the voting data.

Shareholder proposals

Various market participants have tremendously different perceptions of shareholder proposals, which makes this a topic where data would prove beneficial to the dialogue. For example, in the statement announcing the Roundtable, Chairman Clayton highlighted that “it often is noted that a small group of shareholders submits a significant percentage of the total number of shareholder proposals each year.”¹⁶ There are multiple private sector analyses

¹² Barbara Novick, BlackRock Makes Its Own Proxy-Voting Choices, *The Wall Street Journal* (Sep. 27, 2018), available at <https://www.wsj.com/articles/blackrock-makes-its-own-proxy-voting-choices-1538075415>.

¹³ As of November 2018.

¹⁴ ISS Analytics, BlackRock Analysis. Based on Russell 3000 company proposals during N-PX calendar year (July 1, 2016 to June 30, 2017).

¹⁵ In 2017, there were 28,000 ballot items from companies in the Russell 3000. Of these, 98% were routine management proposals. Not surprisingly, these receive 90% to 95% approval.

¹⁶ SEC Proxy Roundtable Announcement.

produced at the end of each proxy season that review the number, topic, and source of shareholder proposals.¹⁷ The SEC could rely on this information or prepare its own similar analysis with additional data that is otherwise not available to the private sector.

For example, the SEC could develop better insight into “proposals by proxy” (including centralized coordination of proposals and the use of “target lists”) as well as the costs incurred by companies and borne by their shareholders. It may even be possible for the SEC to estimate the costs borne by others in the proxy process ecosystem – proxy advisory firms, institutional investors and others – that must separately analyze and make decisions on each shareholder proposal.

U.S. registered funds processes

Several processes need to be understood before considering, as some have suggested, that shareholders of U.S. registered funds (e.g., mutual funds, closed-end funds, ETFs, business development companies) should have a means of providing input on how a fund’s investment advisor votes its portfolio securities.¹⁸

The process begins with the governance of registered funds themselves. Registered funds are governed by an independent board of directors who represent the interests of shareholders in the fund. As part of its fiduciary duty to shareholders, the fund’s board of directors has responsibility for the oversight of voting proxies relating to portfolio securities of the fund. A fund’s board typically delegates proxy voting responsibility to the fund’s investment adviser, who is then responsible for voting proxies in accordance with the fund’s proxy voting policies and procedures. These proxy voting policies and procedures are reviewed and approved annually by the fund’s board, and are disclosed in the fund’s registration statement filed with the SEC. In addition, by no later than August 31 of each year, a registered fund is required to publicly file with the SEC its complete proxy voting record for the most recent 12-month period ended June 30. The board is expected to hold the advisor accountable to the fund and its shareholders.

In contrast to the above, there are circumstances where registered funds are required to seek approval from their own shareholders with respect to matters relating to the fund (not its portfolio securities), which would be voted on at a fund shareholder meeting. For example, a registered fund would be required to seek a vote from its shareholders to make changes to certain investment policies, to make material changes to its investment advisory contract, or to merge the fund into another fund. Those are just a few examples. In addition, closed-end funds and business development companies that are listed on a stock exchange (e.g., New York Stock Exchange) are subject to listing rules that require the funds to hold annual shareholder meetings to elect directors. Mutual funds and ETFs, which are not subject to these listing rules, are required to have a shareholder meeting to elect directors only if certain thresholds under the 1940 Act are not met (i.e., at least two-thirds of a fund’s board must have been elected by shareholders immediately after a board appoints a new director). In general, the quorum and vote standard varies depending on the matter being voted upon, and is determined by standards set forth in the fund’s charter documents and by state law and 1940 Act

¹⁷ See Pete Atkins et al., An Overview of U.S. Shareholder Proposal Filings, *Harvard Law School Forum on Corporate Governance and Financial Regulation* (Oct. 18, 2018), available at <https://corpgov.law.harvard.edu/2018/02/28/an-overview-of-u-s-shareholder-proposal-filings/>; see also 2018 Proxy Season Review, *Sullivan & Cromwell LLP* (Jul. 12, 2018), available at <https://www.sullcrom.com/files/upload/SC-Publication-2018-Proxy-Season-Review.pdf>.

¹⁸ Fund shareholders do not have direct ownership or voting rights in a fund’s portfolio securities.

requirements. Depending on the matter at hand, the vote standard could range, as examples, from a plurality standard (not uncommon in the case of a director election), to a “1940 Act majority,” to a majority, or even a super majority vote requirement.¹⁹

Given the requirements noted above and the large number of shareholders that most funds have, registered funds (similar to corporate issuers) typically hire proxy solicitation firms to obtain the necessary votes cast to meet the legal requirements. Registered fund shares may be held by institutional investors and/or individuals. Share ownership by individuals may be held in a variety of different ways, for example as a direct investment, or through an employer-sponsored retirement plan or similar program. The costs of these shareholder solicitations may be a significant expense to the funds, both on routine and non-routine proposals. In addition, the costs of printing and mailing proxy statements are not insignificant.

We recommend that the SEC undertake a survey of registered funds to better understand the process and costs associated with soliciting proxies for registered fund shareholders. In addition to cost data, this survey should collect data on the level of response to proxies from registered fund shareholders.

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We thank the Commission for providing BlackRock with the opportunity to comment on the proxy voting process. As noted at the beginning of this letter, we bring multiple perspectives to this discussion as a public company, a sponsor of open-end and closed-end funds, and an asset manager who votes proxies on behalf of our clients. We are eager to assist the Commission in developing ideas to modernize the proxy process to benefit all stakeholders. Please contact the undersigned if you have any questions or comments regarding BlackRock’s stances.

Sincerely,

Barbara Novick
Vice Chairman

Ray Cameron
Managing Director

cc:

The Honorable Jay Clayton
Chairman
Securities and Exchange Commission

The Honorable Robert J. Jackson Jr.
Commissioner
Securities and Exchange Commission

¹⁹ A “1940 Act majority” is defined under the 1940 Act to mean the vote of (A) 67% or more of the voting securities present at a meeting, if the holders of more than 50% of the outstanding voting securities are present or represented by proxy; or (B) more than 50% of the outstanding voting securities of the fund, whichever is less.

The Honorable Hester M. Peirce
Commissioner
Securities and Exchange Commission

The Honorable Elad L. Roisman
Commissioner
Securities and Exchange Commission

The Honorable Kara M. Stein
Commissioner
Securities and Exchange Commission