

April 8, 2019

The Honorable Elad L. Roisman
Commissioner
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549

Subject: Recommendations – Oversight of Proxy Advisory Firms

Dear Commissioner Roisman:

On behalf of the Shareholder Communications Coalition (“Coalition”), I write in response to your recent speech to the Investment Company Institute regarding proxy issues.¹ In your remarks, you noted that the SEC should consider reassessing whether the current business practices engaged in by proxy advisory firms fit within the intended scope and purpose of the regulatory exemptions to the proxy solicitation rules relied on by these firms.

For almost a decade, the Coalition has urged the SEC to develop a uniform regulatory framework for proxy advisory firms, so that the SEC and the institutional clients of these firms could engage in more robust oversight of their activities and business practices.²

In the last Congress, the Coalition supported the passage of H.R. 4015, legislation sponsored by Representatives Sean Duffy (R-WI) and Gregory Meeks (D-NY) to establish a uniform regulatory framework for proxy advisory firms.³ H.R. 4015 would require each proxy advisory firm to register with the SEC and comply with certain requirements to: (1) improve the transparency of the activities engaged in by these firms; and (2) properly regulate certain business practices engaged in by one or more of these firms.

¹ Elad L. Roisman, Commissioner, Securities and Exchange Commission, Keynote Remarks: ICI Mutual Funds and Investment Management Conference (Mar. 18, 2019).

² The Coalition appreciates the SEC’s issuance of Staff Legal Bulletin 20 in 2014 and the recent withdrawal of two no-action letters relating to the use of proxy advisory firms by investment advisers.

³ H.R. 4015, the Corporate Governance Reform and Transparency Act, passed the House of Representatives in the last Congress and a hearing on the bill was held in the Senate Banking Committee on June 28, 2018.

We agree with you that SEC should evaluate whether the existing proxy solicitation exemptions applicable to proxy advisory firms are adequate to address the current business practices of these firms.⁴ As you know, current SEC rules operate to exempt proxy advisory firms from complying with solicitation and disclosure rules that apply to other proxy participants, as long as certain conditions are met.⁵

The SEC has the authority to expand the list of conditions in this Rule to address issues that have been raised involving the current activities and business practices of proxy advisory firms. At a minimum, the SEC should consider adding the following new conditions to the existing exemption:

1. Conflicts of Interest. A new condition should require proxy advisory firms to establish, maintain, and enforce written policies and procedures to disclose, mitigate, and eliminate conflicts of interest. These policies and procedures should include issuer-, issue-, or recommendation-specific conflicts of interest.⁶
2. Code of Conduct. A new condition should require proxy advisory firms to establish, maintain, and enforce a written code of ethics and professional conduct.
3. Public Transparency. A new condition should require proxy advisory firms to provide for website disclosure of the policies, procedures, guidelines and methodologies used by each firm. Each proxy advisory firm should also make available on its website without charge a copy of each report that contains a proxy voting recommendation about a public company, no later than ninety (90) days after the shareholder meeting to which the voting recommendation relates.
4. Company Reports. A new condition should require proxy advisory firms to provide each public company (that requests such a review) with an advance copy—at least five (5) business days before issuance—of any report that includes a proxy voting recommendation about such company.⁷ This advance disclosure would permit the company to review and comment on: (a) the factual accuracy of statements made in the report, and (b) the methodologies and assumptions used to develop any recommendations in the report. Companies should not have to pay the proxy advisory firms for the opportunity to review these draft reports.

⁴ See 17 C.F.R. § 240.14a-2(b)(3).

⁵ As an example, the proxy solicitation exemption permits proxy advisory firms to decline to make their reports publicly available, unlike public company proxy materials.

⁶ To ensure that investors are fully aware of potential conflicts of interest before voting, we believe that proxy advisory firms should be required to provide disclosure of conflicts on the front page of each proxy report.

⁷ To reduce the burden of this requirement, the SEC could use its discretion to allow the proxy advisory firms to implement the draft review process gradually (*e.g.*, S&P 500 companies in year one; S&P 1500 companies in year two; and Russell 3000 companies in year three).

5. **Factual Errors.** A new condition should require proxy advisory firms to promptly correct any factual or other error in a report that is identified by a public company. The firms should disclose when comments have been received from a public company on the front page of a report about that company, with a hyperlink provided for investors to access such comments. This process would ensure that investors don't vote based on inaccurate information or a flawed assumption by the proxy advisor.

Proxy advisory firms should also be required to (1) maintain records; (2) file annual or other reports required by the SEC; and (3) comply with any other conditions, limitations or requirements that the SEC deems to be in the public interest and for the protection of investors. Additionally, the SEC should examine proxy advisory firms on a regular basis, to ensure compliance with these recommended conditions.

To improve the oversight of proxy advisory firms by their institutional clients, the SEC should also consider amending Staff Legal Bulletin 20 to expand its requirements.⁸ At the very least, the amended guidance should:

- Require registered investment advisers to publicly disclose on at least an annual basis: (a) the engagement by an adviser of a proxy advisory firm by name in connection with the voting of securities; and (b) the adviser's policies and procedures for oversight of the voting recommendations provided by each proxy advisory firm engaged for this purpose;
- Require each registered investment adviser to ensure that its voting decisions with respect to client securities are in the best interests of its clients, shareholders, and beneficiaries; and
- Require each registered investment adviser to ensure that it is exercising appropriate oversight over its voting decisions with respect to client securities, including through the use of a process or procedure by which the investment adviser is responsible for expressly authorizing and directing its voting decisions for each individual ballot prepared by a proxy advisory firm.⁹

Thank you for your consideration of these recommendations. If you have questions, or

⁸ SEC Staff Legal Bulletin 20, Proxy Voting: Proxy Voting Responsibilities of Investment Advisers and Availability of Exemptions from the Proxy Rules for Proxy Advisory Firms (June 30, 2014).

⁹ A proxy advisory firm should not be permitted to offer an automated voting service that allows a client to establish, in advance of receiving proxy materials for a particular shareholder meeting, general guidelines or policies that the proxy advisory firm is then authorized or permitted to apply for the purpose of making and executing voting decisions on behalf of the client. Investment advisers should not be permitted to "outsource" their voting decisions in this manner. Such practices are inconsistent with Staff legal Bulletin 20 and the fiduciary duties that investment advisers owe to their clients and beneficiaries.

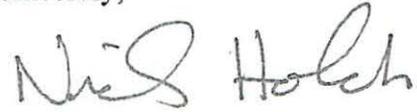
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need additional information, please contact me at [REDACTED], or via email at [REDACTED].

Sincerely,

A handwritten signature in black ink that reads "Niels Holch". The signature is written in a cursive, slightly slanted style.

Niels Holch
Executive Director
Shareholder Communications Coalition

cc: The Honorable Jay Clayton
The Honorable Robert J. Jackson, Jr.
The Honorable Hester M. Peirce
The Honorable Elad L. Roisman
William Hinman, Director, Division of Corporation Finance
Dalia Blass, Director, Division of Investment Management