Siskiyou County Sheriff's Department

JON LOPEY
Sheriff

July 16, 2019

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

Via SEC internet submission form Re: File No. 4-725 - SEC Staff Roundtable on the Proxy Process

Dear Mr. Fields:

I am writing in response to a request for comments related to the SEC Staff Roundtable on the Proxy Process, which occurred on Nov. 15, 2018. My name is Sheriff Jon Lopey. I am the Sheriff-Coroner of Siskiyou County, California. I have been a peace officer for well over 41-years in the state of California, and I have police, California Highway Patrol, and experience in my current elected position for nearly 9-years. I have served in many metropolitan and rural areas during my law enforcement career, such as East Los Angeles, Oakland, and various Northern California commands.

As a retired State of California employee, current county law enforcement administrator, and a concerned citizen, I am deeply concerned about a trend that the Securities and Exchange Commission addressed in its November roundtable: the growing power of two private companies that are attempting to shape corporate policy in a manner dangerous to maximizing investment returns and thus affecting the retirements of millions of Americans.

These two proxy advisory firms, Institutional Shareholder Services (ISS) and Glass Lewis (GL), account for 97 percent of the market for proxy advisory (PA) services. Academic research has shown that PA firms have a powerful impact on the voting of corporate proxies, especially by managers of state pension funds and mutual funds.

Often, the recommendations of PA firms are based on political and ideological motivations that have little to do with – and often run counter to -- enhancing shareholder value for retirees.

Many of these recommendations align with the investment philosophy of ESG, or "environmental, social, and corporate governance" investing. The result of this kind of investing is lower returns and higher costs for local government, which is virtually bankrupting some smaller jurisdictions or diminishing public, health, and safety resources. A study by researchers at Stanford University and the Manhattan Institute found "a negative relationship between share value and public pension funds' social-issue shareholder-proposal activism — which is much more likely to be supported by proxy advisory firms than by the median shareholder."

As a result, a 2016 report from the Center for Retirement Research at Boston College concluded, "While social investing raises complex issues, public pension funds are not suited for this activity. The effectiveness of social investing is limited, and it distracts plan sponsors from the primary purpose of pension funds – providing retirement security for their employees."

Of course, some individual investors may want to sacrifice returns for practicing what they feel is socially beneficial investing, but a public pension plan should not be making such moral and political decisions for all its current and future retirees. In fact, such practices should be forbidden by the SEC. The effect of proxy advisors is to promote and spread this ESG ideology, to the detriment of pension-fund members. I believe it is the role of the SEC to protect investors from such practices. Such decisions threaten pension portfolios and betray the brave men and women in law enforcement and other dangerous professions and, needless to say, other loyal, hard-working, and dedicated public servants.

The result of an ESG-oriented investment program can be vividly seen in the performance of CalPERS, the California Public Employees Retirement System, the largest public pension fund in the nation.

For the five years ending Dec. 31, 2018, the fund returned an annual average of just 5.1%. Over this period, SPDR, a popular exchange-traded index fund linked to the benchmark Standard & Poor's 500-Stock Index returned 10.4%. A Vanguard long-term bond fund returned an annual average of 4.8% over the five years. So a simple portfolio split 50-50 between these two investments would have returned 7.6% -- or fully 2.5 percentage points more than the CalPERS portfolio.

Consider this example: In 2000, the CalPERS board decided to divest the fund's tobacco stocks. An analysis in 2015 found that the divestment cost the fund $3.6 billion, and later calculations by Wilshire Associates showed that the "amount of foregone performance has continued to grow." Despite the losses, the CalPERS board rejected the advice of its staff in 2016 to reinstate tobacco stocks and instead broadened its restrictions. While I do not use or condone the use of tobacco products, a more prudent step would be to transition out of such investments gradually over time but decisions should be left to investment experts and not politically-driven or ideological decision-makers.

It is not surprising, then, that in an election last year, Jason Perez, a fellow police officer, defeated the president of the CalPERS board, an ardent supporter of ESG investing. Sgt. Perez "wants to shift the $360 billion investment fund toward higher yields that secure pensions with less focus on social issues," said an article on the Calpensions website.

Despite Perez's victory, CalPERS plans to continue this unacceptable policy of putting political views ahead of the financial interests of retirees, in early October CalPERS signed onto a letter to the Securities and Exchange Commission further exposing the pension fund's political agenda. CalPERS asked the regulatory body to initiate a rulemaking process that would require corporations and investment managers to begin reporting on their environmental, social, and governance (ESG) practices for their corporate operations.

In response, I recently joined 11 other pensioners and public officials from all around California in signing a letter urging CalPERS to reverse itself. It is not the job of either CalPERS or the SEC to facilitate political or ideological agendas. With such massive unfunded liabilities, CalPERS' support for ESG rulemaking sends a contradictory signal to state workers. Our letter stressed that the board's chief job is to uphold its fiduciary responsibility to provide retirement security for hardworking state employees. The letter also noted that state residents should not be asked to pay more in taxes to make up for shortfalls. What is needed is better investment strategies and management by pension fund overseers.

We cannot and should not count on the efforts of private citizens to protect our pensions. We have to count on you, the SEC. You have the authority to limit the power of proxy advisory firms. The largest of these firms has a severe conflict of interest in that it serves as a paid advisor both to corporations wishing to prevail on proxy questions and to funds that seek its recommendations on how to vote on those questions.

The SEC should remove any safe-harbor protections for these conflicts of interest as well as for their specific recommendations. It should also clarify that a proxy recommendation from a PA is a "solicitation" under Rule 14a-1(1) and that pension and mutual funds are violating their own fiduciary duty when they cast votes under criteria other than enhancing the value of the shares they own. In addition, PAs should not be able to make global recommendations on proxy questions; they must be issuer-specific.

The SEC's first obligation, according to its own mission statement is "to protect investors." But PA firms have grown far too powerful because of changes in the SEC's own regulations 15 years ago. These firms use their position of power to spread a particular ideology. I am not passing judgment on that ideology – only on the fact that it is being imposed on unwitting public servants, many of them fellow police officers, and threatening their retirements. Please act to constrain these proxy advisory firms.

The future of California, its pension systems, and others impacted are at stake and so is the welfare of countless public employees, governmental organizations, political subdivisions, retired public servants, and the citizens we serve or have served, whom invariably and irrevocably are harmed as a result of these types of ideological decisions.

Sincerely,

Jon E. Lopey, Sheriff-Coroner