October 15, 2019

Ms. Vanessa Countryman
Secretary, Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549

File Number 4-725

RE: Release No. IA-5325 and the Fiduciary Duties of Proxy Advisors

Submitted By: Bernard S. Sharfman*

Dear Ms. Countryman,

The SEC's proxy process review[1] has so far led the SEC to approve two separate releases regarding proxy advisors.[2] The focus of this comment letter is on the guidance provided in one of those releases, Release No. IA-5325 (Release). This guidance identifies, under the Investment Advisers Act of 1940 (Advisers Act or Act), a "principles-based fiduciary duty" that requires investment advisers with delegated voting authority to closely monitor the voting recommendations and research provided them by their proxy advisors.[3] This comment letter recommends that the SEC provide additional guidance that recognizes a corresponding "principles-based fiduciary duty" owed by proxy advisors to their clients. This fiduciary duty would arise from the SEC recognizing proxy advisors as investment advisers under the Act. This duty would require proxy advisors to "implement policies and procedures" that result in voting recommendations that are in the *best interest* of their clients, supporting what is required of investment advisers under Release No. IA-5325. The burden of monitoring this new fiduciary duty would fall on the SEC, not the investment advisers. The following provides the argument for this additional guidance.

The Fiduciary Duties of Investment Advisers

In general, an '"investment adviser" means any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, *as to the value of securities* or as to the advisability of investing in, purchasing, or selling securities, or who, for

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* Bernard S. Sharfman is the Chairman of the Main Street Investors Coalition Advisory Council and a member of the Journal of Corporation Law's editorial advisory board. This writing was supported by a grant provided by the Main Street Investors Coalition. The opinions expressed here are the author's alone and do not represent the official position of any organization with which he is affiliated.

[1] Chairman Jay Clayton, U.S. Securities and Exchange Commission, *Statement Announcing SEC Staff Roundtable on the Proxy Process*, (July 30, 2018), https://www.sec.gov/news/public-statement/statement-announcing-sec-staff-roundtable-proxy-process.

[2] SEC, *Commission Guidance Regarding Proxy Voting Responsibilities of Investment Advisers*, Release Nos. IA-5325; IC-33605 (August 21, 2019), https://www.sec.gov/rules/interp/2019/ia-5325.pdf and SEC, *Commission Interpretation and Guidance Regarding the Applicability of the Proxy Rules to Proxy Voting Advice*, Release No. 34-86721(August 21, 2019), https://www.sec.gov/rules/interp/2019/34-86721.pdf.

[3] Release No. IA-5325, *supra* note 2, at 8.

compensation and as part of a regular business, *issues or promulgates analyses or reports concerning securities*; ⋯."[4]

Section 206 of the Advisers Act establishes "federal fiduciary standards" "to govern the conduct of investment advisers."[5] As stated by the United States Supreme Court in *SEC v. Capital Gains Research Bureau, Inc.*:

> Nor is it necessary in a suit against a fiduciary, which Congress recognized the investment adviser to be, to establish all the elements required in a suit against a party to an arm's-length transaction. Courts have imposed on a fiduciary an affirmative duty of "utmost good faith, and full and fair disclosure of all material facts," "as well as an affirmative obligation "to employ reasonable care to avoid misleading" his clients.[6]

According to the Proxy Voting Rule of 2003,[7] "[u]nder the Advisers Act . . . an adviser is a fiduciary that owes each of its clients duties of *care* and *loyalty* with respect to all services undertaken on the client's behalf, …."[8] In regard to the duty of care, "an investment adviser's duty of care includes, among other things, the duty to provide advice that is in the best interest of the client."[9] In regard to the duty of loyalty, "an adviser must make full and fair disclosure to its clients of all material facts relating to the advisory relationship.... In addition, an adviser must eliminate or at least expose through full and fair disclosure all conflicts of interest which might incline an investment adviser—consciously or unconsciously—to render advice which was not disinterested."[10] Moreover, acting in the "best interest" of the client pervades both duties:

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[4] 15 U.S.C. 80b-2(a)(11) (2018).

[5] Transamerica Mtg. Advisors, Inc. v. Lewis, 444 U.S. 11 (1979) ("As we have previously recognized, § 206 establishes "federal fiduciary standards" to govern the conduct of investment advisers, Santa Fe Industries, Inc. v. Green, supra, at 430 U. S. 471, n. 11; Burks v. Lasker, 441 U. S. 471, 441 U. S. 481-482, n. 10; SEC v. Capital Gains Research Bureau, Inc., 375 U. S. 180, 375 U. S. 191-192. Indeed, the Act's legislative history leaves no doubt that Congress intended to impose enforceable fiduciary obligations. See H.R.Rep. No. 2639, 76th Cong., 3d Sess., 28 (1940); S.Rep. No. 1775, 76th").

[6] SEC v. Capital Gains, *supra* note 5, at 194. Arthur Laby argues that the identification of federal fiduciary duties under the Advisers Act was based on a misreading of SEC v. Capital Gains. Nevertheless, "The advisers' federal fiduciary duty has become firmly entrenched in the law. The obligation appears in court decisions, SEC enforcement actions, and SEC administrative materials, such as rulemaking releases and decisions by administrative law judges. The principle appears unassailable." *See* Arthur B. Laby, *SEC v. Capital Gains Research Bureau and the Investment Advisers Act of 1940*, 91 B.U. L. REV. 1051, 1078 (2011).

[7] Proxy Voting by Investment Advisers, Investment Advisers Act Release No. IA-2106, 79 SEC Docket 1673 (Jan. 31, 2003) [hereinafter Proxy Voting by Investment Advisers], https://www.sec.gov/rules/final/ia-2106.htm.

[8] *Id.*; *see* SEC Staff Legal Bulletin No. 20 (IM/CF) (June 30, 2014) [hereinafter SEC Staff Legal Bulletin No. 20], https://www.sec.gov/interps/legal/cfslb20.htm (reaffirming the fiduciary approach from the final rule on proxy voting); Proposed Commission Interpretation Regarding Standard of Conduct for Investment Advisers; Request for Comment on Enhancing Investment Adviser Regulation, Investment Advisers Act Release No. IA-4889 (Apr. 18, 2018), 83 Fed. Reg. 21203 (May 9, 2018), https://www.sec.gov/rules/proposed/2018/ia-4889.pdf.

[9] Release No. IA-5325, *supra* note 2, at 4 citing Commission Interpretation Regarding Standard of Conduct for Investment Advisers, Release No. IA-5248 (June 5, 2019), 84 FR 33669, 33672 (July 12, 2019) [hereinafter, Fiduciary Intrepretation].

[10] *Id.* at 6, n. 20 quoting Fiduciary Interpretation, 84 FR 33669, at 33675-76.

> [I]n our view, the *duty of care* requires an investment adviser to provide investment advice in the *best interest* of its client, based on the client's objectives. Under its *duty of loyalty*, an investment adviser must eliminate or make full and fair disclosure of all conflicts of interest which might incline an investment adviser -- consciously or unconsciously -- to render advice which is not disinterested such that a client can provide informed consent to the conflict. We believe this is another part of an investment adviser's obligation to act in the *best interest* of its client.[11]

The Fiduciary Duties of Investment Advisers and Shareholder Voting

The SEC first recognized that shareholder voting implicates the fiduciary duties of an investment adviser in its Proxy Voting Rule of 2003.[12] In that release the SEC took the position that an investment adviser "is a fiduciary that owes each of its clients duties of *care* and *loyalty* with respect to all services undertaken on the client's behalf, *including proxy voting*."[13] Moreover, "To satisfy its fiduciary duty in making any voting determination, the investment adviser must make the determination in the *best interest* of the client and *must not place the investment adviser's own interests ahead of the interests of the client*."[14] For example, "for an investment adviser to form a reasonable belief that its voting determinations are in the best interest of the client, it should conduct an investigation reasonably designed to ensure that the voting determination is not based on materially inaccurate or incomplete information."[15]

Commissioner Elad Roisman, at the August 21, 2019 meeting where the Commission voted 3 to 2 to approve the two new releases, nicely summarized the SEC's approach to shareholder voting when he stated that: "[I] believe it is our job as regulators to help ensure that such advisers vote proxies in a manner consistent with their fiduciary obligations and that the proxy voting advice upon which they rely is complete and based on accurate information."[16]

Recognizing shareholder voting as part of an investor advisor's fiduciary duties followed in the footsteps of the Department of Labor's (DOL) famous "Avon Letter."[17] In the Avon letter, the Pension and Welfare Benefits Administration, the DOL department that preceded the Employee Benefits Security Administration in the administration of ERISA,[18] stated that "In general, the *fiduciary* act of managing plan assets that are shares of corporate stock includes the management of

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[11] Fiduciary Interpretation, *supra* note 9, at 33671.
[12] Proxy Voting by Investment Advisers, *supra* note 7.
[13] *Id.*
[14] Release No. IA-5325, *supra* note 2, at 3.
[15] *Id.* at 4.
[16] Commissioner Elad L. Roisman, *Statement at the Open Meeting on Commission Guidance and Interpretation Regarding Proxy Voting and Proxy Voting Advice*, Public Statement, U.S. SEC. AND EXCH. COM. (August 21, 2019), https://www.sec.gov/news/public-statement/statement-roisman-082119.
[17] Letter from U.S. Dep't of Labor to Helmuth Fandl, Chairman of Retirement Board, Avon Products, Inc. (Feb. 23, 1988) (Established the current DOL policy that the fiduciary act of managing plan assets also includes managing the voting rights associated with a plan's equity holdings.)
[18] Department of Labor, *History of EBSA and PWBA*, ("Until February 2003, EBSA was known as the Pension and Welfare Benefits Administration (PWBA)"), https://www.dol.gov/agencies/ebsa/about-ebsa/about-us/history-of-ebsa-and-erisa.

voting rights *appurtenant* to those shares of stock."[19] This DOL policy has been affirmed by the DOL in 1990,[20] 1994,[21] 2008,[22] 2016,[23] and 2018.[24]

It should be noted that a policy that includes shareholder voting in the fiduciary duties of investment advisors presumes that significant, not *de minimis*, value will accrue to their clients if an investment adviser, in accordance with her fiduciary duties, properly manages the shareholder voting rights it has been delegated. This value manifests itself in several ways. As argued by Thompson and Edelman, shareholder voting (in general, an uncommon occurrence because corporate decision making is typically delegated to the board of directors and executive management) is most needed when (1) "replacing entrenched directors who are blocking a value-increasing transaction" and (2) "blocking an empire building merger proposed by directors and managers."[25] More generally, "[w]hen shareholders vote they are also participating, alongside the board, in corporate decision making. That is, they are temporarily transformed into a locus of corporate authority that rivals the authority of the board."[26] But perhaps most importantly:

> Shareholder voting, when it happens, has an obvious and very important impact on a publicly traded company; it shines light on corporate decision making, moving decision making away from the private confines of the boardroom and into the public arena where the board's approach on how to proceed can be debated by those who have the authority to vote. According to Leo Strine, Chief Justice of the Delaware Supreme Court, shareholder voting, even in its limited scope, is one of the components of corporate law that encourages the board to view decision making through the lens of shareholder interests. However, at the same time, shareholder voting makes corporate decision making much more unwieldy and potentially subject to the whims of uninformed and/or opportunistic shareholders.[27]

When corporate law provides shareholder voting as a means to send the necessary message to the board that it should be doing its work through the lens of shareholder interests, it is taking a risk that shareholders will either be uninformed or acting opportunistically when they participate in corporate

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[19] *Id.*

[20] Letter from U.S. Dep't of Labor to Robert A.G. Monks, Institutional Shareholder Services, Inc. (Jan. 23, 1990) ("If either the plan or the investment management contract (in the absence of a specific plan provision) expressly precludes the investment manager from voting proxies, the responsibility for such proxy voting would be part of the trustees' exclusive responsibility to manage and control the assets of the plan.").

[21] *See* Department of Labor, *Interpretive bulletin relating to writing statements of investment policy, including proxy voting policy and guidelines*, 59 Fed. Reg. 38863 (July 29, 1994) ("… a statement of proxy voting policy would be an important part of any comprehensive statement of investment policy.").

[22] *See* Department of Labor, *Interpretive Bulletins Relating to the Employee Retirement Income Security Act of 1974*, 73 Fed. Reg. 61,732 (Oct. 17, 2008) ("The fiduciary act of managing plan assets that are shares of corporate stock includes the management of voting rights appurtenant to those shares of stock.")

[23] *See* Department of Labor, *Interpretive Bulletin Relating to the Exercise of Shareholder Rights and Written Statements of Investment Policy, Including Proxy Voting Policies or Guidelines*, 81 Fed. Reg. 95879 (Dec. 29, 2016) ("The Department's longstanding position is that the fiduciary act of managing plan assets which are shares of corporate stock includes decisions on the voting of proxies….").

[24] Department of Labor, Field Assistance Bulletin 2018-01 (April 23, 2018), https://www.dol.gov/agencies/ebsa/employers-and-advisers/guidance/field-assistance-bulletins/2018-01.

[25] Robert B. Thompson & Paul H. Edelman, *Corporate Voting*, 62 VAND. L. REV. 129, 132 (2009).

[26] Bernard S. Sharfman, *Enhancing the Value of Shareholder Voting Recommendations*, TENN. L. REV. (forthcoming, 2020) at 3, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3305372.

[27] *Id.* at 5.

decision making through voting. Such voting can create havoc in a firm and lead to a significant reduction in shareholder wealth and a corresponding drop in the value of a client's equity holdings. However, the voting recommendations and research of proxy advisors, if informed, unbiased, and sufficiently precise can help rectify this situation.

The Fiduciary Duties of Investment Advisers Under Release No. IA-5325

Based on the Release, it is the fiduciary duties of investment advisers that require them to implement the monitoring of proxy advisors that they retain. According to the Release:

> In order to act consistently with Rule 206(4)-6, an investment adviser that has retained a third party (such as a proxy advisory firm) to assist substantively with its proxy voting responsibilities and carrying out its fiduciary duty should adopt and implement policies and procedures that are reasonably designed to sufficiently evaluate the third party in order to ensure that the investment adviser casts votes in the best interest of its clients.[28]

As succinctly stated by Cydney Posner, '"the new SEC guidance posits the investment adviser as "enforcer," focusing on investment advisers' policies and procedures for due diligence and oversight, especially as applied to the proxy advisory firms they engage."'[29] For example, it is up to each investment adviser to make sure that a proxy advisor "has the capacity and competency to adequately analyze the matters for which the investment adviser is responsible for voting."[30] Moreover, "[i]n this regard, investment advisers could consider, among other things, the adequacy and quality of the proxy advisory firm's staffing, personnel, and/or technology."[31] In addition, "[s]uch an investment adviser should also consider whether the proxy advisory firm has an effective process for seeking timely input from issuers and proxy advisory firm clients with respect to, for example, its proxy voting policies, methodologies, and peer group constructions, including for "say-on-pay" votes."[32]

Another example found in Release No. IA-5325 involves the situation where an investment adviser becomes aware "of potential factual errors, potential incompleteness, or potential methodological weaknesses in the proxy advisory firm's analysis that may materially affect one or more of the investment adviser's voting determinations."[33] Here again, the burden is on the investment adviser: "the investment adviser's policies and procedures should be reasonably designed to ensure that its voting determinations are not based on materially inaccurate or incomplete information."[34]

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[28] *See* Release No. IA-5325, *supra* note 2, at 22.
[29] Cydney Posner, *SEC Guidance for Investment Advisers and Proxy Advisory Firms: An Analysis*, HARVARD LAW SCHOOL FORUM ON CORPORATE GOVERNANCE AND FINANCIAL REGULATION (Sept. 1, 2019), https://corpgov.law.harvard.edu/2019/09/01/sec-guidance-for-investment-advisers-and-proxy-advisory-firms-an-analysis/.
[30] Release No. IA-5325, *supra* note 2, at 17.
[31] *Id.*
[32] *Id.*
[33] *Id.* at 20-21.
[34] *Id.*

The Issues with this Approach

This "enforcer" approach is certainly a necessary first step in helping to make sure that proxy advisors provide investment advisers with informed, unbiased, and precise voting recommendations and research. However, this approach leaves unresolved two issues. First, given that the proxy advisor industry is dominated by two entities, Institutional Shareholder Services (ISS; 61% market share) and Glass Lewis (37% market share), being dissatisfied with one or both proxy advisors does not give an investment adviser much choice or leverage when trying to improve the quality of deficient voting recommendations and research. For example, Tamara Belinfanti describes the difficult situation a mutual fund is faced with when it wants to switch from ISS to a competing proxy advisor:

> [A] dissatisfied ISS mutual fund client who wants to employ a strategy of exit is constrained by, inter alia, *switching costs*, the *lack of vigorous competition* and by *the need to involve ISS in transferring proxy voting data from its voting platform to that of an ISS competitor*. Unlike stock which is a relatively liquid investment for common shareholders, the employment of ISS is a highly illiquid investment for ISS' mutual fund clients. Thus, although exit is generally thought to provide a powerful monitoring and sanctioning device, in the case of ISS, exit poses significant costs to a mutual fund, which in turn weakens its efficiency as an agency cost control tool.[35]

Second, who is going to monitor the investment advisors to make sure they are meeting their fiduciary duties as described in Release No. IA-5325? Institutional Shareholder Services has approximately 2,000 institutional clients[36] and Glass Lewis has over 1,300 such clients.[37] For sure, not all of them are investment advisers, e.g., public pension funds are not investment advisers, but it is likely that a significant number are. So, who is going to make sure that the 1,000 plus investment advisers that utilize proxy advisors are actually complying with Release No. IA-5325? It is doubtful that the SEC has the resources or interest to do so.

Such monitoring is critical because of the small economic incentive that investment advisers have to do so. Again, according to Belinfanti: "[V]oice is also an unrealistic sanctioning tool for ISS' mutual fund clients because mutual funds typically own a *de minimis* amount of any company's stock and have very little incentive to expend resources to exercise voice….[38] Mutual funds have little incentive to actively monitor and voice concerns, …." Therefore, without active monitoring by the SEC, it can be expected that investment advisers will not invest significant resources in voluntarily enforcing their fiduciary duties under Release No. IA-5325.

Recommendation

To address these issues, the SEC should consider additional guidance that recognizes a proxy advisor's fiduciary duty to "implement policies and procedures" that result in voting

[35] Tamara C. Belinfanti, The Proxy Advisory & Corporate Governance Industry: The Case for Increased Oversight and Control, 14 STAN. J.L. BUS. & FIN. 384, 426 (2009).
[36] ISS, About (accessed on Sept. 28, 2019), https://www.issgovernance.com/about/about-iss/.
[37] Glass Lewis, About Us (accessed on Oct. https://www.glasslewis.com/company-overview/.
[38] Belinfanti, *supra* note 35, at 426.

recommendations and research that are consistent with what is required of investment advisers under Release No. IA-5325. These fiduciary duties will substitute for a marketplace that does not allow for significant choice. That is, it will put the needed pressure on a proxy advisor to comply with the requirements of what investment advisers are looking for in order to meet their fiduciary duties when managing their delegated voting authority.

In addition, the SEC is in the best position to monitor how well proxy advisors are complying with their fiduciary duties and what needs to be done to correct deficiencies. Since there are relatively few proxy advisors to monitor, the resources required to adequately perform this monitoring should be relatively small. Moreover, the SEC's monitoring should be greatly aided by investment advisers and issuers' reporting to the SEC alleged deficiencies in a proxy advisor's voting recommendations and research that appear to result from a breach in a proxy advisor's fiduciary duties and suggestions on how to remediate those deficiencies.

Of course, the recommendation that the SEC recognize a proxy advisor's fiduciary duties in regard to voting recommendations and research hinges on the SEC being able to make the legal argument that a proxy advisor has fiduciary duties under the Advisers Act. This argument is provided below.

Proxy Advisers as Investment Advisers and Fiduciaries

The fact that ISS has voluntarily registered to be an investment adviser for more than 20 years[39] creates the presumption that it has the fiduciary duties of an investment adviser when it provides voting recommendations and research for its clients. This appears to the position taken by ISS: "As a registered investment adviser, we have a fiduciary obligation to our clients to provide advice that is in their best interest."[40] But even if ISS did not *voluntarily* register as an investment adviser, it still would be an investment adviser because it meets the definition of such under the Act. This means that all proxy advisors, including Glass Lewis,[41] are investment advisers with fiduciary duties.

According to the Advisers Act, a person meets the definition of an investment adviser when it "issues or promulgates analyses or reports concerning securities."[42] This is certainly what a proxy advisor does. It also meets the definition by providing advice to investment advisers that allow them to maximize the value, or meet the non-wealth maximizing objectives that they are contractually

[39] Gary Retelny, President and Chief Executive Officer, Institutional Shareholder Services to Mr. Brent J. Fields, Secretary, U.S. Securities and Exchange Commission at 1 (August 7, 2018), https://www.sec.gov/comments/s7-09-18/s70918-4184213-172552.pdf.
[40] Gary Retelny, President and Chief Executive Officer, Institutional Shareholder Services to Mr. Brent J. Fields, Secretary, U.S. Securities and Exchange Commission at 2 (Nov. 7, 2018), https://www.sec.gov/comments/4-725/4725-4629940-176410.pdf.
[41] Glass Lewis does not take the position that it is an investment adviser under the Advisers Act. *See* Katherine Rabin, Chief Executive Officer, Glass Lewis to Jay Clayton, Chairman, U.S. Securities and Exchange Commission, attachment, Willkie Farr & Gallagher Memorandum at 2-5 (Nov. 14, 2018), https://www.sec.gov/comments/4-725/4725-4649188-176490.pdf.
[42] 15 U.S.C. 80b-2(a)(11) (2018).

required to seek,[43] of their investments under management. The SEC succinctly made both arguments when it issued its 2010 Concept Release on the Proxy Process System:[44]

> We understand that typically proxy advisory firms represent that they provide their clients with advice designed to enable institutional clients to ***maximize*** the value of their investments. In other words, proxy advisory firms provide analyses of shareholder proposals, director candidacies or corporate actions and provide advice concerning particular votes in a manner that is intended to assist their institutional clients in achieving their investment goals with respect to the voting securities they hold. In that way, proxy advisory firms meet the definition of investment adviser because they, for compensation, engage in the business of issuing reports or analyses concerning securities and providing advice to others *as to the value of securities*.[45]

This statement reflects the understanding that voting recommendations are always linked to shareholder value. A proxy advisor who provides voting recommendations to its clients that are adequately precise and lack bias may significantly increase a company's intrinsic value and its stock price. However, if a recommendation lacks precision and/or was created with significant bias, then it may significantly decrease its value.

Looked at in another way, if the voting recommendations and research of a proxy advisor are created in an informed and unbiased manner (the first steps in making sure that voting recommendations are adequately *precise*, not just a flip of the coin),[46] resulting in precise recommendations, then this *advice* can go a long way to helping cure the problem of shareholders being allowed to share decision making with the board through the vote, but not being adequately informed when voting. If voting recommendations and associated research are made with adequate precision, then shareholder voting will be reflective of this and corporate decision making will be enhanced.

In sum, a proxy advisory firm meets the definition of investment adviser because, for compensation, it provides voting recommendations and research to its clients as a means to enhance the value of their equity securities held in portfolio and achieve their investment goals.

Conclusion

As an investment adviser, the proxy advisor has fiduciary duties that it owes its clients.[47] This understanding creates the foundation for the SEC to provide additional guidance that recognizes a corresponding "principles-based fiduciary duty" owed by proxy advisors to their clients. This duty

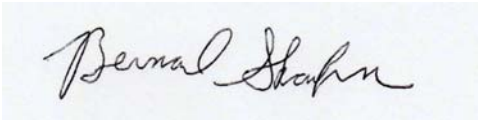
[43] At the end of 2018, it was reported that $1.2 trillion had been invested in funds that followed "non-economic guidelines." *See* Antony Currie and Neil Unmack, *Breakingviews - Breakdown: ESG investing faces sustainability test*, REUTERS (May 28, 2019), reuters.com/article/us-global-asset-management-breakingviews/breakingviews-breakdown-esg-investing-facessustainability-test-idUSKCN1SY1VM.
[44] Securities and Exchange Commission, *Concept Release on the US Proxy System*, 75 Fed Reg 42981 (July 22, 2010) [hereinafter, *Concept Release*].
[45] *Id.* at 43010.
[46] Sharfman, *Enhancing the Value of Shareholder Voting Recommendations*, *supra* note 26 at 3.
[47] *Concept Release*, *supra* note 44, at 43010.

would require proxy advisors to "implement policies and procedures" that result in voting recommendations that are in the *best interest* of their clients, supporting what is required of investment advisers under Release No. IA-5325. Such support appears to be consistent with the ISS' desire to harmonize the fiduciary duties of investment advisers and proxy advisors:

> [A]s a proxy advisory firm that has been registered under the Advisers Act for more than twenty years, ISS believes that subjecting proxy advisers to the same fiduciary standards that apply to the asset managers who use their services provides a critical layer of protection for investors." Having the option to receive proxy analyses and recommendations based on custom voting policies or a variety of ISS policies geared to different investor needs enables investment advisers to tailor their voting practices to each client's best interest. And the extensive array of policies and procedures ISS has adopted to satisfy its fiduciary duties of care and loyalty make it easier for investment managers to satisfy their own fiduciary obligation to conduct comprehensive due diligence before engaging a proxy advisory service. In short, a harmonized fiduciary standard around proxy voting provides end-to-end protection of investors' best interests.[48]

What Release No. IA-5325 has done is to lay the foundation for such harmonization. The next step is for the SEC to provide guidance that allows proxy advisors to "implement policies and procedures" that support what is required of their clients under Release No. IA-5325. These policies and procedures, as enforced by the SEC, will help correct for a marketplace where there is very few voting recommendation providers, resulting in few options for an investment adviser that wants to improve the quality of deficient voting recommendations and research, and support the ability of investment advisers to meet their fiduciary duties as described in the Release.

Very truly yours,



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Bernard S. Sharfman

[48] Gary Retelny (Nov. 7, 2018), *supra* note 40, at 9-10.