COLORADO PERA

October 30, 2019

VIA EMAIL

Hon. Jay Clayton, Chairman
Hon. Robert J. Jackson, Jr., Commissioner
Hon. Allison Herren Lee, Commissioner
Hon. Hester M. Peirce, Commissioner
Hon. Elad L. Roisman, Commissioner
Securities and Exchange Commission
100 F Street NE
Washington, DC 20549

Re: File No. 4-725 Proxy Advisor Regulation

Dear Commissioners:

On behalf of the Colorado Public Employees' Retirement Association (Colorado PERA), I hereby submit the following comments in strong support of the views contained in the letter of October 15, 2019 from the Council of Institutional Investors (CII) and a coalition of signatory investors (Coalition).[1] Colorado PERA was a signatory to said letter, which asserted the Coalition's concerns about realized (Proxy Advisor Interpretation and Guidance) and potential (Proxy Advisor Rulemaking) actions by the Securities and Exchange Commission (Commission) pertaining to proxy advisory firms and services. The below comments reiterate the Coalition's stance, and further represent Colorado PERA's perspective as a large institutional investor.

Colorado PERA is the state's largest public pension plan, managing approximately $49 billion in assets under obligation to protect the retirement security of over 600,000 plan participants and beneficiaries. In fulfillment of our fiduciary duty, we vote proxies on behalf of those beneficial owners of the shares we hold. In order to effectively vote on proposals in a cost-efficient manner, Colorado PERA contracts with proxy advisory firms to obtain and review their research on ballot items. Although we incorporate third party research into our analysis, we ultimately vote according to own guidelines and policies, which we believe are in the best interest of our plan beneficiaries.

Proxy voting provides shareholders with a useful, market-based mechanism by which to establish accountability of corporate boards of directors and management. It permits investors, as owners of the company, to weigh in on important matters and to express their approval, or

1 https://www.cii.org/files/issues_and_advocacy/correspondence/2019/201910015proxy_advisor_sign_on_final.pdf

disapproval, of company oversight measures. In order to efficiently evaluate the implications of each proposal, investors such as Colorado PERA rely on proxy advisor services.

Proxy advisory firms provide independent, third party research on ballot items to pension funds and other institutional investors. They also incorporate feedback from companies and investors in formulating their own guidelines. In this way, advisors play an integral part in facilitating objective informational efficiency on which investors rely in exercising shareholder rights and responsibilities.

Furthermore, proxy advisory firms provide such information to investors for thousands of domestic and international companies, proposals, and meetings. Adequately assessing the implications of so many ballot items necessitates a degree of human and financial capital resource allocation that would otherwise place asymmetric cost burdens on institutional investors holding millions of shares in thousands of companies on behalf of plan beneficiaries.

Colorado PERA believes cost is one of the most impactful and fundamental factors for any investor to consider, and cost-consciousness is central to our stewardship as pension plan fiduciaries. We foresee that potential Proxy Advisor Rulemaking could considerably increase our costs, and thus negatively impact our capacity to secure retirement benefits for plan beneficiaries.

It is likely that costs to evaluate and vote proxies on behalf of pension plan beneficiaries could increase substantially for Colorado PERA if Proxy Advisor Rulemaking leads to a consolidation in the proxy advisory industry. Were the Commission to inflict regulatory conditions affecting proxy advisor reliance on Rule 14a-2(b) exemptions pertaining to federal filing mandates, we fear the obligations could be overly burdensome. Under such conditions, we believe proxy advisors could be subject to higher implementation costs for compliance, and to litigation costs for non-compliance. Regulation that would place excess pressure on proxy advisors to allocate additional resources in order to meet new requirements could potentially cause a contraction from the existing oligopoly to a duopoly, or even monopoly, in the proxy advisor industry. Restricting competition in the market would foreseeably induce any surviving proxy research providers to increase costs to the principals of the service relationship – investors.

The alternative would be for investors to allocate additional internal resources in an effort to obtain the information otherwise provided by proxy advisors. In 2018, Colorado PERA participated in 6,025 meetings and submitted votes on 63,031 individual items. It would take a dedicated team of staff, at a very significant cost, to perform the quality of research we currently contract from proxy advisory firms at such magnitude.

We believe potential Proxy Advisor Rulemaking could also give corporations the ability to hinder and delay the independent proxy analysis process by creating conflicts of interest if rules were to establish an inappropriate feedback loop between proxy advisors and issuers. Proxy advisors are agents of the institutional investors that employ their services, and should not violate that agency by instead acting in the best interests of corporate management. Therefore, we share the Coalition’s concern that any regulation mandating proxy advisors preview their

[2] Id.

recommendations to issuers would "…severely jeopardize the interests of investors, individual and institutional, in a fair and fully-functioning proxy voting system."[2]

Such interference would undermine proxy advisors' capacity to fulfill their agency role to investors, increase costs to investors, and thus, potentially reduce the prosperity of beneficial owners. We therefore ask the Commission to further evaluate the effects of any potential Proxy Advisor Rulemaking, and to consider referring the matter to its new Asset Manager Advisory Committee for thorough analysis and further recommendation. In the interim we ask the Commission to seek public comment on its Proxy Advisor Interpretation and Guidance issued August 21, 2019, which set the tone for any such Proxy Advisor Rulemaking.

Thank you for your consideration. If you have any questions regarding this letter, please do not hesitate to contact me at [redacted] or [redacted].

Sincerely,

Ron Baker
Executive Director
Colorado Public Employees' Retirement Association

CC:

Dalia Osman Blass, Director, Division of Investment Management
William H. Hinman, Director, Division of Corporation Finance
Rick Fleming, Investor Advocate

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[2] Id.