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Via Email to: chairmanoffice@sec.gov

October 29, 2019

The Honorable Jay Clayton
Securities and Exchange Commission
100 F Street NE
Washington, DC 20549

Re: File No. 4-725 Proxy Advisor Regulation

Dear Mr. Chairman:

The purpose of this letter is to express our strong support for the views contained in the attached letter of October 15, 2019 from the Council of Institutional Investors (CII) and a coalition of institutional investors (Coalition).

We share the Coalition's concerns about potential actions by the Securities and Exchange Commission (Commission) to propose rule amendments to address proxy advisors' reliance on the proxy solicitation exemptions in Rule 14a-2(b), which is listed in the current Commission Regulatory Flex Agenda ("Proxy Advisor Rulemaking").

More specifically and even beyond the Coalition's position, we are concerned that the Proxy Advisor Rulemaking will contemplate a requirement that proxy advisors share advance copies of their recommendations with corporate issuers.

Proxy advisors are contractual agents of institutional investors, not of corporate issuers. We do not believe a mandatory process for prior review by corporate issuers of the work product of proxy advisors would be desirable or helpful to the proxy voting process. Further, the Commission has cited neither the market failure that this proposed regulation is trying to solve nor why this merits regulatory interference into the free market of contractual relationships between institutional investors and their suppliers, especially since neither contracting party desires such interference.

It would appear that such a proposed regulatory change by the Commission implies a duty of loyalty and care by proxy advisors toward corporate issuers where, in fact, no such duty exists. In the United States, fiduciary investors, as trustees, must act in the sole interest of the beneficiaries and in doing so must exercise reasonable skill, care and caution (Sitkoff & Schanzenbach, Harvard Law School Discussion Paper No. 971, April 2019). Any duty of loyalty and care owed by proxy advisors arises from their agency relationship with their fiduciary investor clients and these investors' duty toward beneficiaries. The duty of a proxy

advisor toward beneficiaries is therefore derivative of fiduciary investors' duty to beneficiaries. As this duty to beneficiaries is a "sole interest" duty, there is no room to add another party's – corporate issuers – interest into this agency.

In our view, any new Commission regulation intruding on the independence of proxy advisors and on their contractual agency relationship to institutional investors would be a significant change in the Commission's regulatory policy, without any foundation in the SEC's historic role of investor protection, and is very likely to severely jeopardize the interests of investors and their duty to act, aided by their advisors, in the sole interest of beneficiaries, within a fair fully-functioning and market-based proxy voting system.

We understand the Commission's focus on proxy advisors, given the Commission's role in proxy solicitation. However, there are many different factors at work in a decision to vote on a company meeting agenda item. Take the example of compensation. This requires forming a view on corporate performance, which may bring the broader universe of investment research into the proxy voting decision. By this extension, all investment research and advisory inputs could theoretically be taken up as part of voting research and recommendations. This makes it very hard to know where to draw the line between pure proxy voting recommendations and investment research. We acknowledge that it would be impractical to include all investment research in the envisaged "prior issuer corporate review" and is it therefore sensible to regulate only proxy advisory research in this way when it does not include all the inputs into voting recommendations or decision making?

We would make a further point. Hermes EOS does not make investment decisions but investment decisions often have a more profound effect on issuers than nearly all voting recommendations and proxy advice. Investment advisors' publications, sometimes including incomplete or inaccurate information and opinions that the issuer disagrees with, can contribute to investment decisions that have a significant effect on issuers. There are rightly no proposals to regulate this market. It is our strong belief that both investors and voters, under the freedom enjoyed within United States' capital markets, should be free to make investment and voting decisions using in-house and/or advisor-provided research with which the issuer may disagree as professionals who freely enter into contracts and are aware of the risks associated with them.

We believe it is important that the Commission understand that one of the principal roles of proxy advisors like Institutional Shareholder Services (ISS) and Glass Lewis, that is important to the fair and fully functioning proxy voting system, is that both companies provide platforms for investors to establish and execute their own custom voting policies, independent of ISS' and Glass Lewis' recommendations.

ISS encourages its clients to develop their own custom voting policies in line with clients' own investment and stewardship policies - a point that the discussion about ISS' influence on voting often seems to miss. We would like to emphasize that the Hermes' voting policy is very different from ISS' standard policy. Indeed, the platform that ISS provides also enables us to develop, annually update, implement and report on our own customized voting practices. By way of an example of one of these policies, we recommend a vote against the re-election of a CEO who is also the chair of the company in only very exceptional circumstances, whereas ISS' standard policy is much more likely to do so. In 2018 at 1,637 meetings for US issuers, we had at least one voting action against ISS' recommendations, out of 2,318 meetings that year, which is a 71% rate of opposing at least one meeting's recommendation versus ISS' standard policy. And in 2019 year to date, we have had 1,584 meetings with at least one voting action against ISS' recommendations, out of 1,934

meetings voted so far this year. This equates to an 82% against ISS' standard recommendations meetings rate for 2019 and is a 12% year over year increase.

These statistics are the proof point that ISS does not exert a significant influence on our voting recommendations and that our custom voting policy implemented on the ISS platform enables our increasing trend of voting actions taken independently of ISS' recommendations.

Not only is our record of voting actions different from ISS' standard template, but also many other investors' voting records differ from ISS' recommendations. We believe that ISS helps us, other institutional investors and advisors conduct stewardship activities that we and our clients believe enhance both long-term returns and foster better performing corporations that are long-term job creators. Over-regulation of this aspect of our free and functioning capital markets may damage these outcomes and will certainly make it harder for institutional investors to make informed voting decisions particularly in large portfolios.

Proxy advisors help large, sophisticated institutional investors to focus on particular material issues without driving investors' decision making. Without proxy advisors providing research and custom voting platforms, institutional investors may seek to simplify their voting by casting all ballots for board recommendations, or casting votes against board recommendations on a less informed basis. While no system is perfect, we believe the changes the Commission is contemplating would reduce the effectiveness of proxy advisors. These changes, therefore, would serve neither the long term interests of investors and beneficiaries, nor of the corporations whose voting shares they own.

If you have any questions regarding this letter, please do not hesitate to contact me at [REDACTED]

Sincerely,



Timothy Youmans
Lead – North America, Hermes EOS

Attached: Council of Institutional Investors letter dated October 15, 2019

CC via the email addresses shown:

The Honorable Robert J. Jackson, Jr., Commissioner
The Honorable Allison Herren Lee, Commissioner
The Honorable Hester M. Peirce, Commissioner
The Honorable Elad L. Roisman, Commissioner
Dalia Osman Blass, *Director, Division of Investment Management*
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