VIA E-MAIL: rule-comments@sec.gov
December 13, 2021

Vanessa A. Countryman, Secretary
Securities and Exchange Commission
100 F Street, NE Washington, DC 20549

RE: Enhanced Reporting of Proxy Votes by Registered Management Investment Companies; Reporting of Executive Compensation Votes by Institutional Investment Managers, File No. S7-11-21

Dear Ms. Countryman:

By way of introduction, I am a leading shareholder advocate. According to a former NYTimes columnist,[1] I am one of 3 individuals holding corporations "hostage." But, of course, I am attempting to hold corporations accountable, not hostage. Large universal owners routinely support my shareholder proposals.

Targeted by recently enacted SEC rules aimed at deterring involvement by retail investors, I refused to be intimidated and filed more proposals than ever while continuing to yield an average vote of over 50%.[2]

I am a member of the Interfaith Center on Corporate Responsibility[3] and the Shareholder Rights Group.[4] In addition, I frequently cooperate with The Shareholder Commons,[5] As You Sow,[6] the Center for Political Accountability,[7] SumOfUs,[8] and others on shareholder advocacy issues.

On *Corporate Governance* (Corpgov.net),[9] I chronicle essential issues. I also facilitate weekly open conversations on Zoom with leading thinkers on corporate accountability.[10]

The Proposed Rules

Proposed amendments to Form N-PX will provide greater transparency to the information funds report about their proxy votes. Rule 14Ad-1 would require institutional investment managers who are required to report on Form 13F to disclose how they voted on executive compensation matters (say-on-pay). These represent necessary steps in facilitating information transparency critical to beneficial owners. However, they fall short of meeting the needs of an

[1] https://dealbook.nytimes.com/2014/08/19/grappling-with-the-cost-of-corporate-gadflies/
[2] https://www.corpgov.net/2021/08/spring-2021-corpgov-net-proxy-proposal-results/
[3] https://www.iccr.org/
[4] http://www.shareholderrightsgroup.com/
[5] https://theshareholdercommons.com/
[6] https://www.asyousow.org/
[7] https://www.politicalaccountability.net/
[8] https://www.sumofus.org/
[9] https://www.corpgov.net/
[10] https://www.corpgov.net/2021/08/corporate-accountability-fall-2021-online-forum/

investment world that increasingly operates at nearly the speed of light. Below I highlight some of the more significant proposed changes and make recommendations.

Some Key Specifics

Use of structured data language; standardized descriptions and order of voting matters; categorization of votes. The description of proxy voting matters disclosed on Form N-PX is proposed to match the issuer's Form of proxy categorized by specified type and order in the proxy. The SEC proposed a list of 16 primary categories, each with multiple subcategories — ranging from "director election" to "auditor rotation" to "responsible tax policies" — that N-PX filers would select and apply to all ballot items. Votes that defy categorization could be labeled "Other," with an accompanying brief description. Form N-PX reporting would use structured data, such as XML. However, the lack of a standardized description for each proposal has made it difficult to compare how funds voted on a particular proposal. To address this, the proposal would require funds and managers ("reporting persons") to use the same language as the issuer's Form of proxy to identify proxy voting matters.

These requirements would facilitate the comparison of fund votes and stimulate competition around voting aligned with the values of beneficial owners. The ultimate result is likely to be fund voting that better addresses environmental, social, and governance (ESG) issues while reducing externalization of costs by portfolio firms onto society and the environment.

Suggestion: I am not sure what the parameters of federal regulations are. However, it seems unlikely that the categories and subcategories proposed will be all-inclusive for a substantial length of time. For example, I am filing proposals this year asking companies to report on shares and voting power awarded to all employees by employee category. I am not sure the current scheme covers that. Even it does, I am sure other possibilities are not. Therefore, it may be helpful for the rule, if legally permissible, to allow staff to create additional categories or subcategories based on proposals filed each year through a Staff Legal Bulletin or some other mechanism that is less burdensome than formal rulemaking.

Disclosure would be required as to how fund securities lending, if any, affected proxy votes. This would shed light on the degree to which funds (and covered managers) recall securities to vote the accompanying proxy or leave them out on loan. In addition, this may force funds to consider their fiduciary responsibilities more fully around proxy voting yielding similar benefits to those outlined previously due to data-tagging and ordering.

The requirement that funds post their proxy record on their website is essential because many investors and potential investors explore fund websites but not the Commission's EDGAR system. However, the SEC rule should go considerably further to encourage competition between funds around proxy voting and to help educate beneficial and retail investors, as discussed below.

Institutional investment managers report their say-on-pay voting record annually using Form N-PX. Section 951 of the Dodd-Frank Act requires "institutional investment managers" subject to the reporting requirements of section 13(f) of the Exchange Act to disclose their say-on-pay votes annually. The SEC estimated 7,550 managers with investment discretion over approximately $39.79 trillion in section 13(f) securities. The say-on-pay reporting requirements should compel many managers to take their fiduciary duties more seriously and vote more conscientiously, many for the first time. Again, this requirement would benefit investors, society, and the environment by helping to address issues at the source rather than as corporate externalities.

Recommendations

N-PX Reporting Frequency

Questions 75-80. More frequent reporting would be better. We live in an age where information travels at near the speed of light, but we cannot find out how funds voted on an issue until often about 14 months after the fact. That just seems inexcusable. Most shareholder meetings are held in the Spring or Fall. *N-PX filings should be required at least twice a year* so that proxy voting and analysis can be performed more frequently. The issues we face are not static. More feedback is needed to fine-tune proposals and proxy voting policies.

Website Availability of Proxy Voting Records

Questions 86-88. As indicated in the release, "most funds make their proxy voting records available to shareholders upon request but do not provide this information on their websites." The rulemaking is on the right track by requiring proxy voting records to be publicly available on (or through) their websites free of charge in a human-readable format. However, requesting such records "through" company websites is not good enough. Many beneficial owners and retail investors will not take that extra step. Those records should be posted and readily available.

To save costs, allow website postings (publicly accessible through prominent links) to be sufficient. Requesting delivery by mail takes more effort from both parties. Most beneficial owners have access to the internet either at the office, home, or other venues.

Website availability would be the least expensive mechanism for funds to update their votes frequently. Although my July 9, 2019,[11] rulemaking petition requested real-time reporting of proxy votes through N-PX filings, subsequent discussions have led me to believe such a requirement would be burdensome and that most funds would object. Therefore, I recommend fund reporting be required on fund websites or linked contractor's site be updated in something close to real-time, preferably soon after votes are cast but no later than five business days after the meeting date for which votes are cast.

Real-time proxy voting disclosure by funds would allow easy comparison of voting records when writing the news, making investment decisions, or voting proxies. That can change voting behavior. For example, I used to work for the State of California. Over my long career, I held many departments to protect public health, finances, build a cooperative economy, and protect human rights and the environment.

Part of my retirement was in a program titled Savings Plus. I examined how proxies were voted. Many state employees ensure fair elections, workplace safety, human rights, fair employment,

[11] https://www.sec.gov/rules/petitions/2019/petn4-748.pdf

worker rights, environmental protection, and transparency. Yet, the contractor hired by our defined contribution plans was voting against everything we worked for during our jobs.[12]

Because voting records were not available, few if any of my fellow employees were even aware of this issue. In part, because I researched the votes, the contractor was changed. People should not have to count on having a shareholder advocate in their midst who subscribes to an expensive proxy voting database service who can research the votes. Everyone should easily see how their funds are voted within a few days of voting.

Encourage Funds to Announce Votes in Advance of Meetings

All funds claim to vote their proxies conscientiously in their client's "best interest." *Pensions & Investments (P&I),* "Winning over proxy voters,"[13] editorialized that pensions have a fiduciary duty to announce their proxy votes in advance of annual meetings if doing so is likely to influence the vote. The same logic applies to all significant funds. If funds believe their votes enhance value, why hesitate to disclose those votes to influence others?

I recommend the SEC encourage funds to announce their votes in advance of meetings by including the website addresses where such announcements can be found on Investor.gov, the SEC's education website.

The following is a partial list of funds that consistently announce their votes at least several days before most meetings.

- Calvert[14]
- Christian Brothers Investment Services[15]
- New York City Comptroller[16]
- Norges Bank[17]
- Trillium Asset Management[18]

Many more funds would announce their votes in advance if their votes were publicized. That publicity effort should begin on Investor.gov where investors turn to learn about the proxy process and how they can be more involved.

Background

Corporations have facilitated the most dynamic economic growth in history. But, like many Americans, I do not want my investments to encourage short-termism or adverse externalities,

[12] https://www.corpgov.net/2014/08/savings-plus-transparent-proxy-voting-needed/
[13] Barry Burr, “Winning Over Proxy Voters,” *Pensions & Investors*, May 12, 2014. https://www.pionline.com/article/20140512/PRINT/305129997/winning-over-proxy-voters.
[14] https://vds.issgovernance.com/vds/#/MTY0MQ==/
[15] https://cbisonline.com/eu/wp-content/uploads/sites/3/2021/11/proxy-voting.svg
[16] https://comptroller.nyc.gov/services/financial-matters/pension/corporate-governance/proxy-voting-dashboard/
[17] https://www.nbim.no/en/the-fund/responsible-investment/our-voting-records/
[18] https://www.trilliuminvest.com/esg/advocacy-policy

like dark money in politics or climate change that puts at risk earth's salubrious environment. I want to vote my proxies conscientiously, but I do not want to spend a lot of time doing so.

Data-tagged N-PX filings, combined with more rapid disclosure of proxy votes on fund websites, would lead to competition among funds, based not only on historical costs and returns to investors but also on how proxies are voted. It would help me and others invest in funds aligned with our own values. I could also compare how funds vote their proxies at individual companies and use that information to guide my votes.

Index Fund Investors Can Switch

A common myth is that we cannot enlist index funds to address short-termism and externalities, like dark money and climate change. The following is the central point of an academic study:

> Our key insight is that although index funds are locked into their investments, their investors are not. Like all mutual fund shareholders, investors in index funds can exit at any time by selling their shares and receiving the net asset value of their ownership interest. This exit option causes mutual funds – active and passive – to compete for investors both on price and performance. While the conventional view focuses on the competition between passive funds tracking the same index, our analysis suggests that passive funds also compete against active funds. Passive fund sponsors therefore have an incentive to take measures to neutralize the comparative advantage enjoyed by active funds, that is, their ability to use their investment discretion to generate alpha. Because they cannot compete by exiting underperforming companies, passive investors must compete by using "voice" to prevent asset outflow.[19]

Fiduciary obligations are complicated. "Mutual funds' fiduciary duties require them to vote in a manner that benefits their investors, not each company that they hold in their portfolio." (p. 34, footnote 19) For example, holding both target and bidder might lead to a different vote than holding only one.

> Delaware law provides shareholders with the right to vote their shares as they see fit and does not impose any obligation on shareholders to vote unselfishly or to further the economic interests of the corporation. (p. 42, footnote 19)

Since fiduciary standards are weak, better enforcement is unlikely to force better stewardship on many issues important to investors, including economic issues.

Given that funds operate within such a weak legal framework, it is vital that individuals, Mr. and Ms. 401(k), have at least some ability to influence how significant indexed funds vote their proxies. As I discuss, public opinion is likely to have more impact on proxy voting than fiduciary duty.

Fisch argues that index fund investors can switch, and some can. However, many employer-sponsored 401(k) and other plans provide few choices. As Strine argues, Main Street investors are often "forced capitalists." For example, less than 8% of company-sponsored retirement

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[19] https://ssrn.com/abstract=3192069

plans offer an ESG fund option, even though 74% of plan participants want one. This disparity may stem from a belief ESG funds perform more poorly. However, Lipper data finds performance and costs are equal to non-ESG funds.[20]

As big data allows for more rigorous research of financially material ESG risks, many more funds will incorporate such analysis into capital allocation decisions. Long gone are the days of Graham and Dodd when intangible assets represented a small portion of corporate value. "Intangibles have grown from filling 20% of corporate balance sheets to 80%, due in large part to the expanding nature, and rising importance, of intangibles, as represented by intellectual capital vs. bricks-and-mortar, research and development vs. capital spending, services vs. manufacturing, and the list goes on."[21]

As Commissioner Pierce notes, ESG-influenced investments and voting recommendations are often based on insufficient evidence.[22] Real-time disclosure of proxy votes in sortable databases on the internet would facilitate a mountain of research.

Too many 401(k) plan administrators take little or no initiative to investigate potential conflicts or breaches of fiduciary duty. They do little or nothing to ensure shares are voted in the best interest of program participants.[23] Very few attempt to determine what participants believe to be in their interests with respect to proxy voting policies.

Most employers do not even know they have fiduciary duties.[24] Therefore, many do not make proxy voting policies or records available to participants. Like index funds themselves, the only tool "forced capitalists" might have is "voice." However, Main Street investors need information about how their funds vote before they can voice concerns over possible incongruities with public statements, be incentivized to switch to funds that are more aligned with their values, or ask for more options if funds reflecting their values are unavailable to them.

Disintermediating Voting at the Index Fund Giants

Caleb N. Griffin argues the "best interests" standard for proxy voting is "little more than a fiduciary fig leaf when it comes to promoting accountability." Griffin critiques many proposed solutions and provides insight as to how investors could influence the Big Three index funds, viewing the central concern as "the disconnect between how index funds vote their shares and the actual preferences and interests of their individual investors."[25]

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[20] Jeff Benjamin, "ESG Options Scarce in 401(k)s," March 18, 2019, *InvestmentNews*, https://www.investmentnews.com/article/20190316/FREE/190319951/esg-options-scarce-in-401-k-plans.

[21] Christopher P. Skroupa, "How Intangible Assets Are Affecting Company Value in the Stock Market," November 1, 2017, *Forbes*, https://www.forbes.com/sites/christopherskroupa/2017/11/01/how-intangible-assets-are-affecting-company-value-in-the-stock-market/#29b45ad62b8e.

[22] Commissioner Hester M. Peirce, "Scarlet Letters: Remarks before the American Enterprise Institute," June 18, 2019, https://www.sec.gov/news/speech/speech-peirce-061819.

[23] For example, see James McRitchie, "Savings Plus: Transparent Proxy Voting Needed," August 19, 2014, *Corporate Governance*. https://www.corpgov.net/2014/08/savings-plus-transparent-proxy-voting-needed/.

[24] One survey asked 1,000 defined contribution executives if they were fiduciaries: 49% said no; 6% did not know. Based on their duties, all were fiduciaries. Even 48% of executives from plans with $500 million or more in assets thought they were not fiduciaries. "No excuse for fiduciary ignorance," *Pensions & Investments*, February 19, 2018. https://www.pionline.com/article/20180219/PRINT/180219902/no-excuse-for-fiduciary-ignorance.

[25] https://ssrn.com/abstract=3365222

Griffin's analysis arrives at three alternatives or a combination thereof: 1) Allow investors to select representatives who vote their beliefs; 2) survey investors every one to five years on their beliefs, which could then be incorporated into voting policies; and 3) survey investors on key proxy issues to be used in voting fund shares.

John Wilcox of Morrow Sodali, a global consultancy in corporate governance, has similar ideas for more say. In a letter[26] to the SEC regarding the Roundtable on the Proxy Process, he writes,

> The concept of "pass-through voting" on matters relating to issuers has long been dismissed as impractical. It is not legally mandated because voting decisions for the silent majority are delegated to the fiduciaries who make investment decisions on their behalf. However, this hands-off approach is beginning to be questioned. In recent years stewardship codes have amplified the fiduciary standards that asset managers must meet in their oversight of portfolio companies, their governance policies and their proxy voting decisions. Even though there is currently no mandate for gathering feedback from the silent majority, the growing responsibilities of institutional investors and the availability of new technology are beginning to open the door to pass-through communications…
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> A case can be made that investors who delegate stock picking and proxy voting decisions to third-party professionals, while having no standing to vote at shareholder meetings, should have some means to voluntarily inform their fiduciaries about their views on issues affecting their investments. Indeed, both academics and regulators have recently raised questions about: (i) concentration and common ownership of stocks by index funds; and (ii) the exercise of voting power by ETFs without reference to the views of ultimate owners in managed accounts. These concerns combined with the growing popularity of collective investment vehicles will sooner or later give rise to private sector mechanisms for informal pass-through referendums on ETF's and indexers' voting policies. Pressure for such feedback mechanisms will surely increase as environmental and social concerns, shareholder activism and risk oversight feature more prominently in public discussions about corporate purpose and boardroom accountability.

Griffin and Wilcox define what "a say" could look like. Griffin entertains pass-through voting to a representative of each participant's choosing. Alternatively, both look to advisory votes to shape future fund votes and marketing. All their options would raise costs and would have to overcome resistance from both funds and investors. Will participants choose different representatives to vote for each issue based on expertise or values alignment? Will values and policy surveys "educate" investors on probable impacts and/or ask leading questions? Will participants be told how current funds vote and why? Close to real-time proxy vote disclosure would at least make a substantial body of core information available to facilitate such surveys and referenda.

The crux of the problem described by Griffin is:

> (I)ndex fund investors cannot even indirectly express their preferences by selecting a particular fund or a particular index fund provider that is more likely to vote in line with

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[26] John Wilcox, *U.S. Securities and Exchange Commission,* December 28, 2018. https://www.sec.gov/comments/4-725/4725-4840503-177168.pdf.

their interest and values, since the shares controlled by different individual funds are nearly always voted in the exact same manner and since the different index fund providers share very similar voting philosophies and priorities. (Griffin, p. 1)

Meeting Investor Proxy Voting Expectations

Griffin and Wilcox envision more significant input from investors into how funds vote their proxies.[27] That is undoubtedly an admirable goal, and I hope funds will facilitate such participation. In the meantime, an interim step would be to facilitate the ability of investors to confirm proxies are voted as they might expect based on fund names and/or advertising.

Funds with specifically advertised goals within the most prominent fund families frequently do not vote in harmony with those goals. Investors in Vanguard's FTSE Social Index Fund might expect it to be voting like a traditional SRI fund on ESG issues. Instead, fund families tend to vote all proxies the same. For example, "in 2015, Vanguard's many different investment funds voted in concert in all but six votes out of 100,000." (Griffin, p. 10)

Research by Morningstar highlights these discrepancies. One survey found "State Street's SHE voting record was the least aligned with its investment objective" of the three funds reviewed. "SHE is voting against the very initiatives that can help address gender inequality in corporate America."[28]

Another Morningstar survey found ESG funds from BlackRock, Vanguard, Fidelity Investments, and TIAA-CREF, among others, cast many votes that appear to conflict with an ESG focus, especially for funds specifically aimed at the environment. By way of contrast, among nine fund companies with a long-term ESG focus, not a single vote was cast against climate-change resolutions that garnered more than 40% of the shareholder vote.[29] Despite those seemingly conflicted proxy votes by significant indexed funds on their ESG funds, ESG resolutions see record support.[30]

Wide circulation of such discrepancies due to more frequent and sortable reporting of proxy votes may lead fund families to establish different voting policies for focused funds. In addition, competition within and between fund families will yield more attention on monitoring ESG and possibly other factors.

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[27] For an update, see Griffin's comments on the SEC's rulemaking proposal https://www.sec.gov/comments/s7-11-21/s71121-9374387-262127.pdf

[28] Madison Sargis, *Gender-Diversity Funds: How Strong Are Their Intentions?* April 1, 2019, https://www.morningstar.com/blog/2019/04/01/gender-intentional.html?cid=CON_RES0074 referencing research by Madison Sargis and Jackie Cook.

[29] James McRitchie, Morningstar Direct Uncovers ESG Hypocrites, *Corporate Governance*, March 20, 2019, https://www.corpgov.net/2019/03/morningstar-direct-uncovers-esg-hypocrites/ referencing Jackie Cook, When ESG Funds Don't Walk the Walk on Climate Change Votes, Medium, March 21, 2019, https://medium.com/the-esg-advisor/when-esg-funds-dont-walk-the-walk-on-climate-change-votes-46e28630caf.

[30] Jackie Cook, 2019 On Track to See Record Support for U.S. Environmental, Social Proxy Votes, June 12, 2019, *Morningstar Direct*. https://direct.morningstar.com/research/doc/933160/2019-On-Track-to-See-Record-Support-for-U-S-Environmental-Social-Proxy-Votes.

Proxy Insight[31] compiles voting information from pre-disclosing funds, as well as from all funds filing annual N-PX forms. Its customers are large investment managers, activist investors, advisory firms, compensation consultants, investment banks, and academic institutions. Unfortunately, typical Main Street investors can ill afford to pay for access.

At the end of September 2018, Morningstar acquired Fund Votes,[32] which has long analyzed mutual fund and ETF proxy voting data on company resolutions and shareholder proposals. Morningstar wants to shine a light on how funds fulfill their stewardship role as significant owners of public companies. How funds vote their proxies is a big part of that, yet it is hard for investors and non-investors alike to find this information, much less make any sense of it. Morningstar promises to change that, but their data will likely be behind a paywall, inaccessible to Mr. and Ms. 401(k), except when their research gets covered by the press.

Public Opinion Drives Votes

Influence of Public Opinion on Investor Voting and Proxy Advisors (Renee Aggarwal, Isil Erel, and Laura T. Starks, July 2015)[33] found that investors have been voting less with the recommendations of management or proxy advisors and are more influenced by public opinion.

The researchers looked at all proxy proposals for Russell 3000 Index companies from January 2004 through November 2010. In addition, they reviewed voting records, the recommendations of Institutional Shareholder Services (ISS), and media coverage of executive compensation, as well as Gallup surveys of public opinion. From the abstract:

> Institutional investors vote corporate proxies on behalf of underlying investors and beneficiaries. We show a strong relation between this voting and public opinion on corporate governance (as reflected in media coverage and surveys), with similarly strong results for voting by mutual funds. We also find that proxy advisors' recommendations are associated with public opinion. Our results suggest that institutional investors and proxy advisors pay attention to the changing opinions of their beneficiaries and shareholders, as reflected in their voting decisions, and that the proxy voting process serves as a channel for the public to influence corporate behavior.

Several websites provide the general public with "a say" into how corporations should behave concerning ESG issues. The following are just a few examples:

- As You Sow[34]
- Center for Political Accountability[35]
- Change.org[36]
- Gender Diversity Exchange[37]

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[31] *Proxy Insight*. https://www.proxyinsight.com.
[32] Jackie Cook, *FundVotes*. https://www.fundvotes.com.
[33] https://ssrn.com/abstract=2447012
[34] https://www.asyousow.org.
[35] https://politicalaccountability.net.
[36] https://www.change.org.
[37] https://www.leaderxxchange.com/gender-diversity-exchange.

- Just Capital[38]
- Main Street Investors Coalition[39]
- Say[40]
- Shareholder Democracy Network[41]
- Stake[42]
- SumOfUs[43]

These internet sites create an important feedback loop that drives both public opinion and changes in proxy voting at an accelerated pace going forward. In addition, financial intermediaries, such as mutual funds will pay even more attention to public opinion in the future than they do today. Near real-time disclosure would reinforce that virtuous circle.

Giant Funds Could Compete to Shape Corporate Values

Some competition among large funds based on voting policies is already developing. Near real-time disclosure of proxy votes would increase that exponentially by stimulating debate and action around the social purposes of public companies.

Ryan Bubb and Emiliano Catan examined votes on 200,000 proposals and developed an interesting typology. (Bubb and Catan) Funds in the "Traditional Governance Party," including the Big Three (BlackRock, Vanguard, and State Street), support management at the highest rate of the author's typologies. Although these funds strongly support managers, they defend the right of majority shareholders to wrest control at annual meetings by supporting proposals such as those to declassify the board and reduce supermajority vote requirements.

The "Shareholder Interventionist Party," typified by Institutional Shareholder Services, supports shareholder proposals and proxy contests more than the "Shareholder Veto Party," advised by Glass Lewis. The largest funds in the Interventionist Party are Dimensional Fund Advisors, OppenheimerFunds, and John Hancock Group. The most significant Veto Party members are Franklin Templeton, Columbia Funds, and Charles Schwab. "The Shareholder Intervention Party supports shareholder proposals at a rate of 84%, compared to only 49% for the Shareholder Veto Party." "In contrast, the Shareholder Veto Party supports management proposals at a rate of only 59%, compared to 72% support for the Shareholder Intervention Party."[44] (Bubb and Catan 24)

Like Domini and Calvert, a few funds score highly on both dimensions of fund preference. "Our framework shows that these socially responsible fund families are *extreme* in their shareholder rights orientation, as expressed through their votes." (Emphasis added, Bubb and Catan 26) It may be a mistake to dismiss such funds as extreme. Even though socially responsible investing (now often termed sustainable impact investing) or SRI funds represent only a tiny proportion of

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38 https://justcapital.com.
39 https://mainstreetinvestors.org.
40 https://www.say.com.
41 https://www.shareholderdemocracy.com.
42 https://www.yourstake.org/start/.
43 https://www.sumofus.org.
44 https://ssrn.com/abstract=3124039

all investments, significant index funds are moving into that market. One out of every four dollars under professional management in the United States, $12.0 trillion was invested according to SRI strategies as of year-end 2017. That represents 38% between 2016 and 2018.[45]

The sample period for Bubb and Catan was 2010 – 2015. Given growing pressures from the press, social media, and applications outlined above, a similar study undertaken soon could yield significantly different results. In his 2018 letter,[46] BlackRock CEO Larry Fink advised corporations to have "a sense of purpose." "A company's ability to manage environmental, social and governance matters demonstrates the leadership and good governance that is so essential to sustainable growth, which is why we are increasingly integrating these issues into our investment process."

Fink's 2019 letter clarified that "purpose is not the sole pursuit of profits but the animating force for achieving them." Fink also included the following in his 2019 letter,

> In a recent survey by Deloitte, millennial workers were asked what the primary purpose of businesses should be – 63 percent more of them said "improving society" than said "generating profit."[47]

While all three of the largest funds have launched ESG funds to appeal to consumer demand, their proxy voting practices have not moved as quickly to reflect ESG concerns. That is probably because voting records remain largely invisible to the investing public.

> In the 2017-2018 season, asset managers supported, on average, 42% of climate proposals and 28% of political disclosure proposals. A clear pattern of leaders and laggards, with the largest asset managers showing the least support on key climate and political disclosure votes. For example, BlackRock and Vanguard supported only 23% and 33% of climate proposals, respectively; both voted against 100% of resolutions calling for greater disclosure of corporate political expenditures.[48]

Lack of support for climate and political disclosure proposals conforms with a characterization of the Big Three as leaders of the Traditional Governance Party. State Street has been the most supportive of both climate change and political disclosure reports of the Big Three. Maybe that has something to do with their creation of the "Fearless Girl"[49] statue, initially facing down the Wall Street Bull statue. Was Fearless Girl merely a publicity stunt to support the launch of the Gender Diversity Index (ticker symbol SHE)? Was it aimed at diverting attention from a $5

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[45] "Sustainable investing assets reach $12 trillion as reported by the US SIF Foundation's biennial *Report on US Sustainable, Responsible and Impact Investing Trends,*" The Forum for Sustainable and Responsible Investment, October 31, 2018. https://www.ussif.org/files/US%20SIF%20Trends%20Report%202018%20Release.pdf.

[46] Larry Fink, "Larry Fink's 2018 Letter to CEOs: A Sense of Purpose," *BlackRock*. https://www.blackrock.com/corporate/investor-relations/2018-larry-fink-ceo-letter.

[47] Larry Fink, "Larry Fink's 2019 Letter to CEOs: Purpose & Profit," *BlackRock*. https://www.blackrock.com/corporate/investor-relations/larry-fink-ceo-letter.

[48] Kimberly Gladman, "Asset Manager Climate Scorecard 2018," *50/50 Climate Project*. https://5050climate.org/wp-content/uploads/2018/09/FINAL-2018-Climate-Scorecard-1.pdf.

[49] "Fearless Girl," *Wikipedia*, Last modified February 28, 2019. https://en.wikipedia.org/wiki/Fearless_Girl.

million settlement[50] for allegedly underpaying women and employees of color, or was the statute a genuine commitment to diversity?

The original intent may not matter. Reality has a way of catching up to statements made to bolster public relations. Just as the words "all men are created equal" in the Declaration of Independence arguably became more revolutionary than the war those words sparked, the Big Three may soon be held accountable for their statements.

"Fearless Girl" may have marked an inflection point for State Street, which voted against 400 directors in 2017 for lack of diversity.[51] According to Rakhi Kumar, global head of asset stewardship and ESG with State Street:

> The investor demand is there. But typically who do CEOs and CFOs hear from? They hear from analysts on quarterly calls, where the time horizons are very different. I'm not on quarterly calls because we're long-term investors and we're looking at long-term risks. We've published papers, we've sent letters, and we've talked about these issues at conferences for years. But we're still trying to pivot management's views to the long-term and that's very challenging.[52]

State Street asserts Fearless Girl has inspired 300 companies to hire female directors as part of its gender diversity asset stewardship programs in the U.S., U.K., Australia, Japan, Canada, and continental Europe. As a result, according to State Street, the percentage of companies in the Russell 3000 Index without female directors has dropped from 24 to 16 percent since the end of 2016.[53]

According to Broadridge, institutional investor support for social and environmental proposals increased from 19% in 2014 to 29% in 2018.[54] That is a clear trend. Real-time proxy voting disclosure would be one way for the Big Three to demonstrate their votes reflect their public statements and ensure inflows continue. According to ISS, "Disclosure on ESG issues is only beginning to gain prominence among U.S. companies; therefore, given the right targeting, there is ample room for these types of proposals to gain additional support."[55]

Some assume giving beneficial owners a say in how their funds vote will decrease focus on ESG issues since retail shareholders typically vote with management. According to *ProxyPulse*,

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[50] Sarah Cascone, "A Bunch of Bull? Wall Street Firm Behind 'Fearless Girl' Settles Gender Discrimination Suit," *artnet news*, October 10, 2017. https://news.artnet.com/art-world/fearless-girl-settles-gender-discrimination-suit-1110587.

[51] Emily Chasan, "After Fearless Girl, State Street Puts Men-Only Boards on Notice." *Bloomberg*, July 26, 2017. https://www.bloomberg.com/news/articles/2017-07-26/after-fearless-girl-state-street-puts-men-only-boards-on-notice.

[52] Ben Ashwell, "SSGA's Kumar warns companies on ESG progress," *Corporate Secretary*, August 21, 2018. https://www.corporatesecretary.com/articles/esg/31324/ssgas-kumar-warns-companies-esg-progress.

[53] "State Street Global Advisors Reports Fearless Girl's Impact: More than 300 Companies Have Added Female Directors," press release, *BusinessWire*, September 27, 2018. https://www.businesswire.com/news/home/20180927005518/en/State-Street-Global-Advisors-Reports-Fearless-Girl's.

[54] "2018 Proxy Season Review," *Broadridge*. https://www.broadridge.com/report/2018-proxy-season-review.

[55] Kosmas Papadopoulos, "The Long View: US Proxy Voting Trends on E&S Issues from 2000 to 2018," *Harvard Law School Forum on Corporate Governance and Financial Regulation*, January 31, 2019. https://corpgov.law.harvard.edu/2019/01/31/the-long-view-us-proxy-voting-trends-on-es-issues-from-2000-to-2018/.

a joint publication of Broadridge and PwC, retail shareholders supported ESG proposals at a rate 12% lower than institutional shareholders. Hence, such groups have tangible evidence to support their position. To take a more specific example, retail shareholders support initiatives to disclose political spending at a rate 8% lower than institutional investors.[56]

Others point to evidence that investors increasingly want to positively impact the world and earn an excellent financial return. For example, funds categorized as low sustainability led to net outflows of more than $12 billion, whereas those classified as high sustainability led to net inflows of more than $24 billion. "Investors have a strong belief that better globe ratings positively predict future returns. We also find suggestive evidence of non-pecuniary motives, consistent with altruism or warm glow."[57]

As I have argued elsewhere, an increased number of people no longer view the economy as outside our sphere of influence. Our values – our efforts as individuals, as members of organizations (such as corporations), and public opinion- are the main drivers in creating the future. Public opinion is moving in the direction of investing *with* our values and our dreams, instead of *despite* our values and desires.[58] People want their investments to have a positive impact even before they collect personal financial gains.

Large indexed funds are being targeted both by those who want corporations to maximize shareholder returns and those who want corporations to better reflect the full range of human values. What currently appears as two diametrically opposed positions may converge. As universal owners, investors in large indexed funds only profit from earnings that are not canceled out by a greater loss of consumer purchasing power, disproportionate costs imposed on other firms or society. In short, fund managers should support honest competition but not profiteering tactics that externalize costs on others.[59]

> Universal owners have a responsibility, derived from the duty of care, to oppose policies that create negative externalities, like pollution, and support policies that produce positive externalities, such as corporate education and training programs. In contrast to single firms who may find it advantageous to throw off the costs of pollution to society, universal owners will suffer the costs of cleanup through deteriorating infrastructures, higher taxes, and other costs to their other holdings.
>
> At the same time, universal owners are able to capture nearly the full benefit of positive externalities, like corporate training programs, because even if trained employees subsequently leave the firm where training occurred, they are likely to find new employment with another universally owned firm. Since the size and breadth of universal owner portfolios expose them to economy-wide risks and rewards, their programs must

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[56] Proxy Pulse™, "2018 Proxy Season Review," *Broadridge + PWC*, October 2018. https://www.broadridge.com/_assets/pdf/broadridge-2018-proxy-season-review.pdf.
[57] Samuel M. Hartzmark and Abigail B. Sussman, "Do Investors Value Sustainability? A Natural Experiment Examining Ranking and Fund Flows," October 12, 2018, *SSRN*. https://ssrn.com/abstract=3016092.
[58] James McRitchie, "Who Wants Impact Investing?" *Corporate Governance*, August 23, 2018. https://www.corpgov.net/2018/08/who-wants-impact-investing/.
[59] David Apgar, "Chasing Profits at Others' Expense Can Harm Investors," *Shareholder Democracy Network*, January 24, 2019. https://www.shareholderdemocracy.com/blog/2019/1/23/chasing-profits-at-others-expense-can-harm-investors.

increasingly be concerned with the long-term growth and economic efficiency of national and world economies.

Universal owners who want to maximize shareholder value will need to develop "public policy" positions to ensure a well-trained labor force, effective infrastructure, legal and regulatory environment, as well as monetary and fiscal policy. They want to ensure the corporate environment encourages efficiency and doesn't externalize costs.[60]

Large index funds hold competing companies over long time horizons. They could act as stewards of the commons and would be more likely to do so if pressured by fund participants. "Social pressure fueled by socially responsible investment funds and non-profit organizations and customer pressure from individual investors are critical in mitigating free-rider problems among asset managers and sustaining engagement practices. "[61]

Real-time proxy disclosure would help profit maximizers and more holistic investors focus their arguments on proxy voting fiduciaries. The market could play an indispensable role in facilitating debate over values, but only if proxy vote information is freely available in a structured, easily accessible, and sortable form to Main Street investors and Mr. and Ms. 401(k). Tepper and Hearn observe, "Capitalism without competition is not capitalism."

Competition matters because it prevents unjust inequality, rather than the transfer of wealth from consumer or supplier to the monopolist. If there is no competition, consumers and workers have less freedom to choose. Competition creates clear price signals in markets, driving supply and demand. If promotes efficiency. Competition creates more choices, more innovation, economic development and growth, and a stronger democracy by dispersing economic power. It promotes individual initiative and freedom. Competition is the essence of capitalism, yet it is dying.[62]

I urge the Commission to adopt its proposed rules, incorporating my suggested amendments as outlined above. Please do not hesitate to contact me if I can further assist. Thanks for your consideration.

Sincerely,

J. McRitchie

James McRitchie
Shareholder Advocate and Publisher

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[60] See brief review by James McRitchie of James P. Hawley and Andrew T. Williams, "The Rise of Fiduciary Capitalism: How Institutional Investors Can Make America More Democratic," *Amazon.com*, September 8, 2000. https://www.amazon.com/Rise-Fiduciary-Capitalism-Institutional-Democratic/dp/0812235630.

[61] George Serafeim, "Investors as Stewards of the Commons?" August 7, 2017, *SSRN*. https://ssrn.com/abstract=3014952.

[62] Jonathan Tepper with Denise Hearn, *The Myth of Capitalism: Monopolies and the Death of Competition*, Wiley, 2019, pp. xv-xvi.