



December 20, 2021

Via Electronic Submission: rule-comments@sec.gov

Ms. Vanessa Countryman, Secretary
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-1090

**Re: Amendments to the Federal Proxy Rules Governing Proxy Voting Advice;
File Number S7-17-21**

Dear Ms. Countryman:

Managed Funds Association¹ (“MFA”) appreciates the opportunity to provide comments to the Securities and Exchange Commission’s (“SEC” or “Commission”) proposal, “Proxy Voting Advice,” Exchange Act Release No. 93595 (November 17, 2021) (“Proposal”).² MFA supports the Commission’s efforts to further develop the regulatory framework relating to proxy advice under Rule 14a-9 of the Securities Exchange Act of 1934 (“Exchange Act”). As fiduciaries, when our members make proxy voting determinations on behalf of clients, and use proxy voting advice to assist them in making these proxy voting determinations, they have a strong interest in receiving timely and cost-efficient advice. Likewise, it is critically important for our members to receive independent proxy advice, unimpeded by issuer-imposed pressures or uncertain liability. Therefore, MFA supports the Commission’s Proposal, which if finalized, would alleviate unnecessary delays, costs, and legal uncertainty created by the 2020 amendments to Rule 14a-9.

MFA Supports Removal of Rule 14a-2(b)(9)(ii) Conditions

MFA supports the Commission’s proposal to amend Rule 14a-2(b)(9) under the Exchange Act and rescind the conditions of Rule 14a-2(b)(9)(ii).³ Fund managers and other investment advisers have significant holdings in many public companies and may consider voting determinations in thousands of shareholder proposals each year, most of which occur in a very short period. Fund managers often engage proxy advisory firms to assist them in making voting determinations in accordance with their proxy voting policies and procedures pursuant to

¹ Managed Funds Association (“MFA”) represents the global alternative investment industry and its investors by advocating for regulatory, tax and other public policies that foster efficient, transparent, and fair capital markets. MFA’s more than 150 members collectively manage nearly \$1.6 trillion across a diverse group of investment strategies. Member firms help pension plans, university endowments, charitable foundations, and other institutional investors to diversify their investments, manage risk, and generate attractive returns over time. MFA has a global presence and is active in Washington, London, Brussels, and Asia.

² *Proxy Voting Advice*, Exchange Act Release No. 34-93595 (Nov. 17, 2021), 86 F.R. 67383 (Nov. 26, 2021).

³ We also support the proposal to delete the safe harbors and exclusions from the Rule 14a-2(b)(9)(ii) conditions in paragraphs (iii), (iv), (v) and (vi) of Rule 14a-2(9).

Rule 206(4)-6 of the Investment Advisers Act of 1940. Proxy voting advice provides fund managers with a timely and cost-efficient, detailed assessment of many issuer shareholder proposals that assist managers in fulfilling their obligations on behalf of their clients. Timeliness of the advice is critical because shareholder meetings occur within a brief period, and managers have limited time to receive advice and make their voting determinations.

However, Rule 14a-2(b)(9)(ii) of the Exchange Act, in its current form, disrupts the preparation and delivery of proxy voting advice to fund managers and increases compliance costs by requiring proxy advisory firms to provide proxy voting advice to each issuer at the time such advice is disseminated to its clients, while also requiring the firm to disclose an issuer's response to the proxy voting advice to clients in a "timely manner" before the relevant shareholder meeting. Proxy advisory firms may engage with hundreds of issuers regarding thousands of shareholder proposals during a critical shareholder season, and additional compliance burdens not only muddle the timely delivery of materials to fund managers making it difficult to use the advice in advance of a shareholder meeting, but also increase compliance costs which get passed on to clients.

MFA applauds the Commission's proposal to alleviate investor concerns that "Rule 14a-2(b)(9)(ii) conditions . . . impose increased compliance costs on [proxy advisory firms] and impair the independence and timeliness of their proxy voting advice,"⁴ by rescinding the Rule 14a-2(b)(9)(ii) conditions. Such a rescission will help facilitate the provision of timely proxy voting advice and alleviate unnecessary compliance burdens and costs.

MFA Supports Removal of Note (e) to Rule 14a-9

MFA strongly supports removing the examples of material misstatements or omissions relating to proxy voting advice found in paragraph (e) of the Note to Rule 14a-9. While we believe that it is important to ensure that proxy voting advice contains all material information and is not misleading, we suggest that the examples in Rule 14a-9 extend beyond material, factual information, subjecting proxy advisory firms to the threat of litigation in cases where issuers may disagree with the analysis and voting recommendations regardless of the presence or absence of factual errors.

As such, the mere threat of litigation inclines proxy firms to use fewer independent methodologies, source their analysis with fewer inputs, or conform more of their recommendations to those supported by issuers. Further, heightened legal risk contributes to higher legal and compliance burdens and costs for proxy advisory firms, which are passed onto clients. Higher costs could cause some fund managers to reduce their use of proxy voting advice or limit the number of proxy votes in which they participate, limiting the Commission's efforts to enhance shareholder engagement and participation in shareholder votes.

⁴ 86 F.R. at 67385.

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MFA commends the Commission's proposal to delete Note (e) from Rule 14a-9, as the language created ambiguity concerning the nature and scope of Rule 14a-9. If removed, proxy advisory firms will have more legal certainty in preparing their proxy voting advice and can provide robust analysis in the final advice without potential for litigation.

MFA appreciates the opportunity to provide these comments in response to the Proposal. If you have any questions about these comments, or if we can provide further information, please do not hesitate to contact Caleb Gunnels or the undersigned at [REDACTED].

Respectfully Submitted,

/s/ Jennifer W. Han

Jennifer Han
Executive Vice President, Chief Counsel & Head of Regulatory Affairs