December 27, 2021

Vanessa A. Countryman
Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: Amendments to Exemptions From the Proxy Rules for Proxy Voting Advice, 86 Fed. Reg. 67,383 (Release No. 34–93595; File No. S7–17–21).

Dear Secretary Countryman:

Better Markets[1] appreciates the opportunity to comment on the above-captioned rule proposal ("Release" or "Proposal") noticed for public comment by the Securities and Exchange Commission ("SEC" or "Commission"). The Proposal would repeal the most objectionable aspects of the final rule regarding proxy advisory firms promulgated in 2020 (the "2020 Final Rule").[2] Specifically, it would remove conditions for reliance on important exemptions, conditions which require that 1) proxy advisory firms provide copies of their advice to registrants who are the subjects of that advice at the time the advice is disseminated to clients, and 2) that proxy advisory firms provide clients with the registrants' written responses to their advice, if any.

These provisions were the result of a fatally flawed and highly irregular rulemaking process that was successfully driven by, and for the benefit of, corporate managers, despite a lack of evidence indicating any harm to investors or other interests the SEC is charged with protecting, or any other indication of any market failure requiring correction. Accordingly, we support the

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1 Better Markets is a non-profit, non-partisan, and independent organization founded in the wake of the 2008 financial crisis to promote the public interest in the financial markets, support the financial reform of Wall Street, and make our financial system work for all Americans again. Better Markets works with allies—including many in finance—to promote pro-market, pro-business, and pro-growth policies that help build a stronger, safer financial system that protects and promotes Americans' jobs, savings, retirements, and more.

2 Amendments to Exemptions From the Proxy Rules for Proxy Voting Advice, 85 Fed. Reg. 55,082 (Sept. 3, 2020). Better Markets also commented on the original rule proposal, which we fully incorporate by reference herein. Better Markets Comment Letter on Amendments to Exemptions from the Proxy Rules for Proxy Voting Advice (Feb. 3, 2020), https://bettermarkets.org/wp-content/uploads/2021/07/Amendments_to_Exemptions_From_the_Proxy_Rules_for_Proxy_Voting_Advice_Release_Number_34-87457.pdf.

SEC's proposal to rescind these provisions.

BACKGROUND

Proxy advisory firms primarily serve institutional investors (most of whom in turn invest and manage the savings and retirement nest eggs of Americans) and registered investment advisers. Institutional investors own between 70-80% of the market value of U.S. public companies,[3] which means their engagement and corporate suffrage has a significant impact on the policies and governance of those public companies. Registered investment advisers manage and invest on behalf of other investors or investment companies, such as mutual funds, that also handle the savings of millions of everyday Americans.

These institutional investors and advisers are asked to process or otherwise vote on tens of thousands of proxies each year. In order to process these proxies and exercise their corporate suffrage rights efficiently, either directly or on behalf of their clients, they retain the services of proxy advisory firms. Proxy advisory firms provide research and analysis on matters subject to shareholder vote, craft voting guidelines to meet the policies and investment goals of institutional investors and advisers, and "make[] voting recommendations to their clients on specific matters subject to a shareholder vote, either based on the [proxy advisory firm's] own voting guidelines or on custom voting guidelines that the client has created."[4] Proxy advisory firms also maintain certain electronic platforms and other administrative capacities to help institutional investors and investment advisers cast and track their votes.[5]

As recognized by the SEC, proxy advisory firms serve shareholders' interest by providing them valuable information and facilitating their corporate engagement. Before proxy advisory firms became prominent, shareholders would typically follow "the Wall Street Rule," which was to either vote with management or sell their stock.[6] Proxy advisory firms have leveled the playing field by increasing access to information and enabling timely and effective shareholder engagement. Proxy advisory firms are a market-based solution to a market-born problem: the volume and frequency of proxy statements make it economically inefficient for each institutional investor or investment adviser to conduct their own analysis and create their own voting platforms.[7] The efficiencies gained are even more pronounced for small and medium-sized institutional investors who have even fewer resources to conduct the required analysis to be able to satisfy their fiduciary duty toward their client, *i.e.*, savers and retirees. Proxy advisory firms fill this gap by either entering into a contractual agreement that stipulates their obligations toward their clients—institutional investors and investment advisers—or complying with the statutory

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3 Amendments to Exemptions From the Proxy Rules for Proxy Voting Advice, 84 Fed. Reg. 66,518, 66,519 (Dec. 4, 2019) ("2019 Proposal").

4 2019 Proposal at 66,519.

5 2019 Proposal at 66,520.

6 George W. Dent, Jr., *A Defense of Proxy Advisors*, 2014 Mich. St. L. Rev. 1287 (2014).

7 Recommendations of the SEC Investor Advisory Committee Relating to SEC Guidance and Rule Proposals on Proxy Advisors and Shareholder Proposals (Jan. 24, 2020) ("IAC Report"), https://www.sec.gov/spotlight/investor-advisory-committee-2012/sec-guidance-and-rule-proposals-on-proxy-advisors-and-shareholder-proposals.pdf.

obligation to act in the best interest of their clients if they are themselves registered investment advisers.

Ultimately, proxy advisory firms provide shareholders with independent advice and analysis that is not tainted or spun by the inherently biased management of a company.[8] The recommendations that proxy advisory reports produce can improve corporate performance even when the recommended positions fail to win shareholder approval.[9] Proxy advisory firms have empowered investors enough that management often seeks to defuse an issue in the interest of the shareholders before (or after) a shareholder vote. At a minimum, the enhanced shareholder engagement that proxy advisers facilitate often forces the management to better explain the rationale for its decisions.[10]

Given these developments, it is no surprise that corporate management finds proxy advisory firms to be a thorn in their side. Silencing proxy advisory firms has been on the wish-list of corporate management and their trade associations and lobbying organizations for years. For example, the Business Roundtable's goal has been to regulate-to-death the proxy advisory firms.[11] The Chamber of Commerce's financial regulation priorities list includes the "reform" of proxy advisory firms as a top priority.[12] This has been a priority for them dating back at least to 2014.[13] The American Securities Association—a lobbying group entirely funded by the financial industry—offered this false narrative in its Corporate Governance issues section: "Unfortunately, over time proxy advisory megafirms have exploited Main Street investors by prioritizing a conflict-ridden political agenda over the retirement security of millions of Americans."[14] The Center for Executive Compensation—a lobby group created to defend current executive compensation practices—has written multiple briefs and reports calling for heightened regulation of proxy advisory firms.[15] These efforts, while largely opposed by investors and investor advocates as more fully detailed below, finally culminated in the 2019 Proposal, followed by the errant 2020 Final Rule.

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8 *See* Stefano Feltri, *Why CEOs and Regulators Clash With the Duopoly of Proxy Advisory Firms,* ProMarket (2019), https://promarket.org/2019/11/21/why-ceos-and-regulators-clash-with-the-duopoly-of-proxy-advisory-firms/.

9 George W. Dent, Jr., *A Defense of Proxy Advisors*, 2014 Mich. St. L. Rev. 1287, 1295 (2014).

10 George W. Dent, Jr., *A Defense of Proxy Advisors*, 2014 Mich. St. L. Rev. 1287, 1295 (2014).

11 *See* Business Roundtable's Policy Priorities, Promoting Responsible Shareholder Engagement (last accessed Dec. 16, 2021), https://www.businessroundtable.org/policy-perspectives/corporate-governance/promoting-responsible-shareholder-engagement.

12 *See* U.S. Chamber of Commerce's, Capital Markets & Financial Regulation (2020), https://www.uschamber.com/sites/default/files/soab_20priorities_capitalmkts.pdf.

13 *See* Tom Quaadman, *What Color is That Smoke?—Proxy Advisory Firms Need Oversight,* U.S. Chamber ofCommerce (2014), https://www.uschamber.com/above-the-fold/what-color-smoke-proxy- advisory-firms-need-oversight.

14 American Securities Association, Issues (last accessed Dec. 16, 2021), https://www.americansecurities.org/issues.

15 *See* Center for Executive Compensation, *Policy Brief on Proxy Advisory Firms* (2017), https://execcomp.org/Docs/c17-13_DuffyBill_PB_Updated_12_2017.pdf.

COMMENTS

The Release sets forth ample justification for the Rule and shows clearly that it will serve investors and the public interest. It will address widespread concern that the new obligations or conditions set forth in the 2020 Final Rule impose unwarranted compliance costs and diminish the independence of proxy voting advice.[16] Our comments focus on the unfounded criticisms of the Proposal and the serious defects that marred the 2020 Final Rule, which further justify this corrective action by the SEC.

Much of the criticism of the current Proposal, inside and outside of the SEC, focuses on the fact that the SEC proposed to rescind provisions of a rule less than a year after the rule was finalized with, according to opponents of the Proposal, little justification for the change.[17] However, the mere fact that the current SEC is proposing to rescind parts of a rule that was only recently finalized under prior leadership does not mean the current Proposal is flawed. In fact, it was the rulemaking process that led to the 2020 Final Rule that was highly irregular and, in fact, corrupted.

There were at least two fatal flaws with the process that led to the 2020 Final Rule: first, the 2020 Final Rule sought to solve a problem that did not exist, as the SEC did not cite any credible evidence that there was any sort of market failure or other issue in the market for proxy advice that justified its heavy-handed approach. Second, the 2020 Final Rule was the result of a hopelessly corrupted public engagement process, as it was revealed that several of the purported letters from the few "investors" who claimed to want a rule addressing proxy advisory firms were

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16 As explained in the SEC's Fact Sheet, the 2020 Final Rule also amended Rule 14a-9, which prohibits false or misleading statements, by adding Note (e). That Note sets forth examples of material misstatements or omissions related to proxy voting advice. Specifically, it provides that the failure to disclose material information regarding proxy voting advice could be misleading. This addition sparked concern among investors and others that Note (e) might increase proxy advisory firms' litigation risks, which could impair the independence and quality of their proxy voting advice. The Proposal would also neutralize this harmful aspect of the 2020 Final Rule by rescinding Note (e) to Rule 14a-9, while still affirming that the rule applies to material misstatements of facts contained in proxy voting advice.

17 Commissioner Hester M. Peirce, Dissenting on Proxy Advice Proposal (Nov. 17, 2021) ("The Commission lacks a sound basis for seeking to amend a brand new rule. Nothing has changed since we adopted the rule, and we have not learned anything new. The release takes a stab at justifying the rewrite, but we might as well simply acknowledge that the political winds have shifted."), https://www.sec.gov/news/statement/peirce-proxy-advice-20211117; Commissioner Elad L. Roisman, *Too Important to Regulate? Rolling Back Investor Protections on Proxy Voting Advice* (Nov. 17, 2021) ("I found the proposal lacks many of the due process and procedural protections that usually guide Commission rulemakings. It does not squarely answer the question of why we would peel back our existing rules….Nor does the proposal answer the question why now, before these rules have even taken effect."); Ike Brannon, *The SEC's Curious Handling Of The Proxy Advisor Rule Undermines Its Independent Status*, Forbes (Nov. 17, 2021), https://www.forbes.com/sites/ikebrannon/2021/11/17/the-secs-curious-handling-of-the-proxy-advisor-rule-undermines-its-independent-status/?sh=20f40b363ed4.

actually fraudulent. In light of these serious flaws in the process that led to the 2020 Final Rule, it is not only in the public interest to revise the rule but also entirely consistent with all of the canons of rational rulemaking for the SEC to revisit the rule.

I. THE 2020 RULE SOUGHT TO "CORRECT" A PROBLEM THAT DID NOT EXIST

It is a basic principle of administrative law (not to mention of good governance) that "an agency regulation must be designed to address identified problems."[18] Similarly, an agency is obligated to "examine the relevant data and articulate a satisfactory explanation for its action including a 'rational connection between the facts found and the choice made;'" moreover, the agency will be considered to have acted arbitrarily and capriciously (that is, unlawfully) if it "entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise."[19] The 2020 Rule fails in all of these respects, starting at the beginning with the SEC's failure to identify an actual problem for the 2020 Rule to solve. In fact, the contrived nature of the 2020 Rule was obvious even prior to the release of the 2019 Proposal, when the only sustained push for that rulemaking came from corporate managers and their allies, rather than the investor-clients of proxy advisory firms who are supposedly the beneficiaries of the rule.[20]

These problems were pointed out early in the rulemaking process by the SEC's own Investor Advisory Committee ("IAC"), which released a set of recommendations concerning the initial 2019 Proposal in early 2020.[21] The IAC noted a number of serious flaws in the rulemaking and pointed out that the 2019 Proposal gave an unbalanced presentation of the value of proxy advisory firms. For example, it largely ignored the very real value proxy advisors provide to their clients (and to the market as a whole as an independent check on the entrenched power of corporate management), while focusing heavily on unfounded speculation that proxy advisory firms "may" cause certain other problems.[22] Moreover, the IAC Recommendation pointed out

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18 *New York Stock Exch. LLC v. Sec. & Exch. Comm'n*, 962 F.3d 541, 556 (D.C. Cir. 2020).

19 *Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43, (1983).

20 Michael T. Cappucci, *The Proxy War Against Proxy Advisers*, Harvard Law School Forum on Corporate Governance (Nov. 27, 2019) ("If proxy advisory services were really as riddled with errors, transparency problems, and conflicts as their critics allege, one might expect their clients to be leading the charge for reform. After all, they are the ones paying for the supposedly faulty research and it is their shareholder value that is being harmed. But institutional investors and asset managers are not complaining."), https://corpgov.law.harvard.edu/2019/11/27/the-proxy-war-against-proxy-advisors/.

21 Recommendations of the SEC Investor Advisory Committee Relating to SEC Guidance and Rule Proposals on Proxy Advisors and Shareholder Proposals (Jan. 24, 2020) ("IAC Report"), https://www.sec.gov/spotlight/investor-advisory-committee-2012/sec-guidance-and-rule-proposals-on-proxy-advisors-and-shareholder-proposals.pdf.

22 IAC Report at 5 ("We recommend the SEC cite **evidence** of a problem of the kind that might be addressed by the key elements of the proxy advisor proposal.").

that the SEC failed to identify any true market failure requiring correction.[23] Further, what little evidence the SEC did present to support the notion that there were problems with proxy advisory firms actually tended to show the opposite. For example, while the SEC justified the 2019 Proposal by speculating that proxy advice could contain material errors of fact, in reality the data the SEC actually presented showed that there were possible factual errors in a vanishingly small number of proxy adviser reports—just 0.3%. Furthermore, that data showed that none of those errors was shown either to be material or to have affected the outcome of the vote.[24]

That there was no justification for the regulation was further underscored when the comments started coming in. Ultimately, the comments were overwhelmingly against the provisions of the 2020 Final Rule that would be rescinded by the Proposal, by a margin of three-to-one.[25] Even more salient was that "there was almost universal opposition from investors, the supposed beneficiaries of this rulemaking."[26] This investor opposition came from a variety of different types of investors and other proxy advisory firm clients, as well as groups that represent those entities. For example, it came from large institutional investors, such as CalPERS, which argued that "[i]nstead of providing us with more useful and reliable information, the Proposed Rule would make the process more complicated and expensive for clients/customers that use proxy advisor research services without materially improving the quality, quantity, or timeliness of information."[27] The opposition also came from state securities administrators who, despite being generally supportive of "greater transparency in the provision of proxy voting advice," opposed the rule because it "would make it more costly and difficult for shareholders to cast informed votes."[28] Opposition also came from investment advisers, who argued that the 2019 Proposal would undermine "the ability of investment advisers to continue to vote proxies in their clients' best interest," consistent with their fiduciary duties.[29] And it even came from religious groups, including Benedictine monks and nuns, who invest to fund their spiritual endeavors, and who expressed concern that the proposed rules would "undermine the voice of investors and

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23 IAC Report at 4 ("We recommend that the [proxy adviser] actions clearly identify a market failure or other need for the proposed rules.").

24 IAC Report at 5.

25 Commissioner Allison Herren Lee, *Paying More For Less: Higher Costs for Shareholders, Less Accountability for Management* (Jul. 22, 2020), https://www.sec.gov/news/public-statement/lee-open-meeting-2020-07-22.

26 Commissioner Allison Herren Lee, *Paying More For Less: Higher Costs for Shareholders, Less Accountability for Management* (Jul. 22, 2020), https://www.sec.gov/news/public-statement/lee-open-meeting-2020-07-22.

27 CalPERS Comment Letter on Amendments to Exemptions from the Proxy Rules for Proxy Voting Advice 1 (Feb. 3, 2020), https://www.sec.gov/comments/s7-22-19/s72219-6744092-207880.pdf.

28 NASAA Comment Letter on Amendments to Exemptions from the Proxy Rules for Proxy Voting Advice 1 (Feb. 3, 2020), https://www.sec.gov/comments/s7-22-19/s72219-6742428-207766.pdf.

29 Investment Adviser Association Comment Letter on Amendments to Exemptions from the Proxy Rules for Proxy Voting Advice 1 (Feb. 3, 2020), https://www.sec.gov/comments/s7-22-19/s72219-6742881-207804.pdf.

produce more management-friendly votes."[30]

In other words, throughout the rulemaking process, even before there was a rule proposal to speak of, it was clear there was no reliable evidence that any of the problems the Final Rule purports to address even existed in the first place. The SEC heard this from its own advisory committee and from a diverse set of actual investors who were the ostensible beneficiaries of the Final Rule. Finalizing a rule to solve a problem that does not exist, while ignoring evidence of the problems the rule itself would create, presented by the very people the rule is designed to benefit, is not only bad rulemaking, it is unlawful. The Administrative Procedure Act requires, at a minimum, that an agency identify a ***real problem*** to be solved, consider the actual evidence before it, and then provide a cogent analysis plausibly showing the rule will address the problem to be solved.[31] Because the SEC failed ever to identify a real problem, the Final Rule was fatally flawed from the outset. In light of the severe evidentiary flaws that infected the rulemaking, it is entirely appropriate for the SEC to revisit the rulemaking and jettison those provisions for which there is not, and never was, any factual or legal basis.

II. THE RELEASE WAS CRAFTED AND PROMOTED ON THE BASIS OF A DEMONSTRABLY FRAUDULENT PUBLIC ENGAGEMENT AND COMMENT PROCESS

The SEC would be well-justified in revisiting the 2020 Final Rule based solely on the lack of evidence underpinning the rulemaking. However, the issues with the rulemaking went even further, as it was also infected throughout with misleading and even fraudulent comment letters. The genesis of the rulemaking was a November 15, 2018 SEC roundtable on various proxy voting issues.[32] The SEC solicited public comments on the various topics raised at the roundtable, including issues related to proxy advisory firms, and received over 18,000 responses.[33] When the SEC announced the proxy advice proposal at an open meeting on November 5, 2019, then-Chair Jay Clayton highlighted several letters from investors that purported to raise concerns about proxy advisory firms:

"Some of the letters that struck me the most came from long-term Main Street

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30 Benedictine Coalition for Responsible Investment Comment Letter on Amendments to Exemptions from the Proxy Rules for Proxy Voting Advice 3 (Feb. 3, 2020), https://www.sec.gov/comments/s7-23-19/s72319-6742786-207815.pdf; Sisters, Servants of the Immaculate Heart of Mary of Monroe, Michigan Comment Letter on Amendments to Exemptions from the Proxy Rules for Proxy Voting Advice (Feb. 3, 2020), https://www.sec.gov/comments/s7-23-19/s72319-6734162-207613.pdf.

31 *See New York Stock Exch. LLC v. Sec. & Exch. Comm'n*, 962 F.3d 541, 556 (D.C. Cir. 2020); *Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43, (1983).

32 Securities and Exchange Commission, StatementAnnouncing SEC Staff Roundtable on the Proxy Process (July 30, 2018), https://www.sec.gov/news/public-statement/statement-announcing-sec-staff-roundtable-proxy-process.

33 Securities and Exchange Commission, Comments on Statement Announcing SEC Staff Roundtable on the Proxy Process (last accessed Dec. 16, 2021), https://www.sec.gov/comments/4-725/4-725.htm.

> investors, including an army veteran and a Marine veteran, a police officer, a retired teacher, a public servant, a single mom, a couple of retirees who saved for retirement, all of whom expressed concern about the current proxy process. ***A common theme in their letters was the concern that their financial investments—including their retirement funds—were being steered by third parties to promote individual agendas***, rather than to further their primary goals of being able to have enough money to lessen the fear of "running out" in retirement or to leave money to their children and grandchildren.[34]"

Moreover, in the 2019 Proposal itself, in a section discussing the rationale for the changes, the Commission claims that "[i]n recent years, registrants, ***investors***, and others have expressed concerns about the proxy voting advice business" and it cites nine letters supposedly from investors.[35] As Better Markets explained in our response to the 2019 Proposal, we examined these letters of support from purported "investors" and we found that three were submitted by an individual who identified his affiliation as "Chairman, Advisory Council, Main Street Investors Coalition;" one was submitted by a "Member" of the same advisory council at the same entity; one was submitted by someone affiliated with an organization called "60 Plus Association;" one was submitted by someone affiliated with an entity called "A Coalition of Growth Companies;" one was submitted by someone affiliated with an organization called "Institute of Pension Fund Integrity;" and finally two were submitted by supposedly unaffiliated individuals.

Further investigation into these entities and individual comment letters reveals that they actually represent the views of corporate interests, not investors. The Main Street Investors Coalition has—according to an informed observer— "nothing to do with mom-and-pop investors. The group is actually funded by big business interests that want to diminish the ability of pension funds and large 401(k) plans—where most little guys keep their money—to influence certain corporate governance issues."[36] The "60 Plus Association," as discussed further below, is funded by corporate supporters of more stringent proxy adviser regulation. The third entity, "A Coalition of Growth Companies," seems to be a tagline included in the letterhead of a business association called "American Business Conference,"[37] which promises to "provide its members with unparalleled access to: Cabinet Officers and top Administration policymakers; Members of Congress; Commissioners and staff of the SEC and other regulatory agencies; Key media and Opinion leaders."[38] The fourth entity, "Institute of Pension Fund Integrity," according to an

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34 *See* Statement of Chairman Jay Clayton on Proposals to Enhance the Accuracy, Transparency and Effectiveness of Our Proxy Voting System (Nov. 5, 2019) (emphasis added), https://www.sec.gov/news/public-statement/statement-clayton-2019-11-05-open-meeting.

35 2019 Proposal at 66,520n.24.

36 *See* Andrew Ross Sorkin, *What's Behind a Pitch For The Little-Guy Investor? Big Money Interests*, N.Y. TIMES (July 24, 2018), https://www.nytimes.com/2018/07/24/business/dealbook/main-street-investors-coalition.html.

37 *See* American Business Conference Comment Letter on Proxy Process Roundtable (Sept. 25, 2018) (letterhead including tagline "A Coalition of Growth Companies"), https://www.sec.gov/comments/4-725/4725-4226796-172989.pdf.

38 American Business Conference, About ABC (last accessed Dec. 16, 2021), http://americanbusinessconference.org/about-abc.php.

informed and recent profile of the organization and its leader, appears to be a "dark-money lobbying group" that frequently publishes information that is "rife with errors and seemingly self-serving data."[39] And, as we further write below, the two individuals cited have denied, on the record, that they even wrote the letters attributed to them.

It gets even worse. On November 19, 2019, just two weeks following then-Chair Clayton's statements and the Commission's vote to release the 2019 Proposal, a Bloomberg article appeared that cast grave doubts on the authenticity of dozens of comment letters submitted to the SEC, including the seven comment letters highlighted by Chairman Clayton.[40] The article included the appalling revelation that those seven letters, along with at least nineteen additional letters in the comment file, were either fraudulent or materially misleading with respect to the identities of the signers. According to the article, several people denied ever signing the letters that bore their names; several people were prevailed upon to sign their letters without any understanding of the issues they were supposedly addressing; and numerous signers were people with close connections to 60 Plus which is funded by corporate supporters of the 2019 Proposal. As further reported in the article, those signers included former employees of 60 Plus; a contractor for the group; and friends and relatives of the President of the organization—none of whom disclosed their connection to 60 Plus in their letters.

Accordingly, the 2020 Final Rule was based not only on a woefully incomplete record but also on a thoroughly corrupted record. At no point in the rulemaking process did the SEC cite any actual, credible evidence of a problem even arguably necessitating the rule. Moreover, the record was largely comprised of a series of disingenuous if not fraudulent letters from ardent corporate foes of proxy advisory firms masquerading as Main Street investors. Quite apart from and in addition to the affirmative merits of the Proposal, the 2020 Final Rule deserves to be dismantled on the basis of its unusually profound substantive and procedural defects. The SEC is entirely justified in revisiting and revising the 2020 Final Rule.

CONCLUSION

We hope these comments are helpful as the Commission finalizes the Proposal.

Sincerely,

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39 *See* Alicia McElhaney, *The Dark-Money Lobbying Group Going After Pension Funds*, Institutional Investors (April 2019), https://www.institutionalinvestor.com/article/b1f3bld0jg586l/The-Dark-Money-Lobbying-Group-Going-After-Pension-Funds.

40 Zachary Mider and Ben Elgin, *SEC Chairman Cites Fishy Letters in Support of Policy Change*, Bloomberg (Nov. 29, 2019), https://www.bloomberg.com/news/articles/2019-11-19/sec-chairman-cites-fishy-letters-in-support-of-policy-change?sref=mtQ4hc2k; *see also* Better Markets Letter to the SEC on Fraudulent Comment Letters (Dec. 9, 2019), https://bettermarkets.org/wp-content/uploads/2021/07/Fraudulent_comment_letters_-_Letter_to_SEC_12-9-19.pdf.

Stephen W. Hall
Legal Director and Securities Specialist

Jason Grimes
Senior Counsel

Better Markets, Inc.
1825 K Street, NW
Suite 1080
Washington, DC 20006
(202) 618-6464

[redacted]

http://www.bettermarkets.org/