GRAHAM L. COPLEY

Houston, Texas

December 13, 2019

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

Re: File No. S7-22-19

Ms. Countryman:

Thank you for this opportunity to offer my thoughts on the Commission's newly proposed rule concerning the role of proxy advisory firms, "Amendments to Exemptions from the Proxy Rules for Proxy Voting Advice".

Having formerly served as a board member, chief executive of a publicly-traded company, and global head of research for a multi-national financial institution, I know too well the biases of these firms. As such, I applaud the Commission's efforts to ensure proxy advisors are more accountable and transparent.

This is primarily an issue of mandate versus emotion and altruism.

The current mandate of the proxy advisory firms is to provide unbiased advice on how funds should vote with respect to company shareholder motion, with the sole focus of what is in the best interest of the marginal/average investor associated with the average fund and its goals. The proxy advisory firms can make only one recommendation. It would be impractical and very confusing to make more than one recommendation and base the various recommendations on assumptions around fund styles and investment principles.

Today, the only common goal that applies to the median fund is to make maximum investment gains for its fund holders, whether they be institutions or individual pension or other investors. Consequently, the proxy advisory firms must only provide voting advice which they believe will help the company concerned maximize its return to shareholders during the period for which the vote is applicable, generally the subsequent 12 months.

As ESG becomes a larger question and a center for debate beyond corporate governance, there is clearly a temptation to take a view on the E and S components of ESG as they appear in investor questions and activist debates, leading to motions brought before corporate shareholders. With no common agreed basis for measuring either of the E and S components within ESG, despite a desire to have one, the proxy advisory companies must look at these motions, as they arise, only through the lens of what will maximize shareholder returns.

777 S. Mayde Creek Drive | Suite 47 | Houston, TX 77079

Despite a growing concern about the environment and increasing public pressure to do something, it is not the job of proxy advisors to opine on what constitutes a good or bad E or S strategy, unless it can be tied directly to financial performance. An excellent editorial from the Wall Street Journal on November 10 sheds additional light here. It reads, "Union funds are opposing the new SEC rules on proxy firms despite advocating more corporate transparency of… climate policies." The irony is deafening.

The ESG debate lies in the hands of regulators, fund managers, and investors. Today there is no role to play for the proxy advisors, although this may change. Regulators can change the game by putting empirical values on climate change factors, such as a "carbon tax" structure, or a schedule of fines for companies failing to meet certain environmental or sustainability goals. At that point, a value can be put on ESG action, and the proxy firms will be able to comment and advise. This is because there should be a direct link to corporate financial performance and financial risk. Regulators could also ask the proxy firms to provide separate ESG advice, qualified with respect to the primary goal of maximizing shareholder returns.

For example: "While we believe that a vote for this proposal will improve accountability on greenhouse gas emissions for Company A, we believe that it will most likely negatively impact financial performance for the next 12 – 24 months." Any qualitative comment that the proxy advisors make about less tangible shareholder proposals must be placed in the context of the primary mandate – shareholder returns.

Fund managers are already responding by creating ESG, low carbon, no commodity, and other focused funds and indices. Within these funds, they choose to own companies that meet certain standards, and, by definition, they do not have to adhere to a proxy advisory company's advice with respect to a shareholder vote on issues that fit the mandate of the fund.

Investors then have the choice of what to own, either through these new funds or through individual stocks. If they choose to own broad funds with the only focus of maximizing investment returns, they need those fund managers to take a more active role in shareholder votes to make sure that their goals are being met. They need the proxy firms to focus on the same goals. Until and unless regulation and oversight changes – to ensure that the proxy advisors are sticking to their mandates – fund managers have a heightened responsibility to ensure that they are following their mandates and not delegating responsibility without due process and increased oversight themselves.

The large index funds and ETF providers have a loud voice because of the assets they control, but they are less interested and motivated by individual stock performance and corporate payouts to shareholders. The index is the index and reflects the value of the stocks in the index. A focused, vocal attack on the energy sector, for example, by a senior executive at a large index fund might drive energy stocks lower. The "index", however, does not underperform.

GRAHAM L. COPLEY

Houston, Texas

There is the potential for a major conflict of interest here if proxy advisors put pressure on senior executives of index providers to “do what is right” in their minds. This is not how the process should work. Neither should climate and other activists be allowed to influence the proxy advisors.

Finally, if the SEC does not reign in the proxy advisors, institutional investors will see their costs go up, as they will have no choice but to invest to “check” the basis for ISS and Glass Lewis’ recommendations. If they know that ISS and Glass Lewis have an empirical and consistent base, they will not have to spend the money, unless it is on corporate governance items specific to their fund mandates.

The Commission should be commended for taking up this important issue. It has been far too long since these rules have been examined.

Sincerely,

Graham L. Copley
Former Board Member
Macquarie Securities USA

777 S. Mayde Creek Drive | Suite 47 | Houston, TX 77079