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Via Electronic Mail

The Hon. Jay Clayton, Esq.
Chairman
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: File Number S7-22-19 | Amendments to Exemptions from the Proxy Rules for Proxy Voting Advice

Dear Chairman Clayton:

I am submitting these comments regarding the Securities and Exchange Commission's ("*Commission*") request for public comment on amendments to exemptions from the proxy rules for proxy voting advice (the *"Proposed Rule"*).[1] Thank you for your – and especially Commissioner Roisman's – leadership on this issue. As you know, it has been 27 years since the Commission's proxy solicitation rules were amended. Thus, for the viability of fair, honest, and informed markets, the time has come to hold proxy advisors more accountable. Given the pace of technological innovation, moreover, the need for investors who use proxy voting advice to receive more transparent information to make their voting decisions has never been more pressing.

I appreciate the opportunity to provide the following comments in strong support of the Proposed Rule.

[1] *See* Amendments to Exemptions from the Proxy Rules for Proxy Voting Advice, Securities Exchange Act Release No. 87457, November 5, 2019, https://www.sec.gov/rules/proposed/2019/34-87457.pdf.

**Automatic Voting ("*Robo-voting*")**

The harmful trend of automatic voting continues to grow. A Stanford University study found that, "for the average asset manager with $100 billion or more under management, the portfolio managers who make the investment decisions are involved in only 10% of voting decisions."[2] Therefore, 90% of the time, proxy advisors, who have zero accountability to shareholders, are the decisionmakers. Unfortunately, these decisionmakers far too often make decisions based on criteria irrelevant to their clients' responsibilities.

Robo-voting is also worrisome given how it affects, or better yet, influences, alternative asset managers who control significant amounts of capital. According to Timothy Doyle, general counsel and vice president of policy at the American Council for Capital Formation (ACCF):

> "There are institutions, especially in the quant and hedge fund space, that automatically and without evaluation rely on proxy firms' recommendations… This extends the power and impact of ISS and Glass Lewis policy recommendations and decreases the ability of companies to advocate for themselves or their businesses in the face of an adverse recommendation."[3]

In this light, I would like to respond to one of the questions in the request for comment section (number 44): "Should we require proxy voting advice businesses to disable the automatic submission of votes unless a client clicks on the hyperlink and/or accesses the registrant's (or certain other soliciting persons') response, or otherwise confirms any pre-populated voting choices before the proxy advisor submits the votes to be counted?" I respond unequivocally yes. This would foster further best practices in the industry, as well as protect the interests of many investors.

Additionally, the near universal voting alignment resulting from robo-voting curtails the rights of pensioners. As the Institute for Pension Fund Integrity (IPFI) states, "Robo-voting is a system that many public pension funds and institutional investors use… When ISS or Glass Lewis advances an ESG-related shareholder resolution that prioritizes a political, social, or environmental agenda over financial returns, the public retiree's interests have been disenfranchised due to robo-voting."[4] The SEC must intervene to protect pensioners' hard-earned and long-saved money from these social justice and anti-shareholder agendas. This environmental, social, and governance ("*ESG*") theme leads me to the second area on which I would like to comment.

**Specialty Reports**

I applaud the Commission's consideration of providing to reviewing parties the specialty reports used by proxy advisors as a vehicle to promote their bias toward ESG-related investments. The financial risks of these investments are clear. Furthermore, these reports respond to viewpoints

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[2] Donatiello, Nicholas E., Pitt, Harvey L., "Why the SEC Must Fix Our Broken Proxy System", Stanford Graduate School of Business, June 29, 2015, https://www.gsb.stanford.edu/insights/why-sec-must-fix-broken-proxy-system.

[3] Doyle, Timothy M., *The Conflicted Role of Proxy Advisors,* American Council for Capital Formation, May 2018, http://accf.org/wp-content/uploads/2018/05/ACCF-The-Conflicted-Role-of-Proxy-Advisor-FINAL.pdf.

[4] Institute for Pension Fund Integrity (IPFI), "Reforming The Proxy Advisory Firm Duopoly: An Analysis of Recent SEC Guidance and Its Implications for Public Pension Retirees", September 19, 2019, https://ipfiusa.org/2019/09/19/reformingtheproxyadvisoryfirmduopoly/.

of particular investors, rather than generating the best possible returns for all investors. This behavior does not comply with the proxy advisors' mandate.

In an analysis earlier this year, Nicolas Rabener, managing director of FactorResearch, offered, "The notion that companies that care about the environment, look after their employees, and exhibit good governance outperform is likely too good to be true."[5] Mr. Rabener makes an excellent point. With this in mind, the Commission should call for proxy advisors to fully disclose the policies and procedures that dictate their specialty reports. Investors of all stripes deserve full disclosure of what is driving proxy advisor recommendations.

ISS and Glass Lewis have long relied on their exemption from the federal proxy rules. As the *Wall Street Journal*'s editorial board opined last month, "Corporate governance is distorted when two privately held companies… have so much sway over shareholder votes and corporate policy."[6] The Proposed Rule, if implemented, will help swing the pendulum back in favor of not only investors nationwide, but also more accountable and transparent proxy voting advice going forward.

Sincerely,

Paul J. Foley

CC: The Hon. Allison Herren Lee, Commissioner
The Hon. Robert Jackson, Jr., Commissioner
The Hon. Hester Peirce, Commissioner
The Hon. Elad Roisman, Commissioner
Ms. Vanessa Countryman, Secretary

[5] Rabener, Nicolas, "ESG Investing: Too Good to Be True?", CFA Institute, January 14, 2019, https://blogs.cfainstitute.org/investor/2019/01/14/esg-factor-investing-too-good-to-be-true/.

[6] The Editorial Board, "The Proxy Protection Racket", The Wall Street Journal, November 10, 2019, https://www.wsj.com/articles/the-proxy-protection-racket-11573417818.