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January 22, 2020

The Honorable Jay Clayton
Chairman
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

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

Dear Chairman Clayton:

I appreciate this opportunity to offer my comments on this Proposed Rule. Proxy voting advice – a powerful tool in today’s governance industry – deserves a refresh. For far too long, proxy advisors have relied on a series of loopholes that have provided them certain exemptions. The Securities and Exchange Commission’s efforts, therefore, are well-suited to ensure proxy advisory firms are held accountable for the advice they provide.

In no other area might this additional accountability be needed more than the issue of ESG investing. I fully support greater scrutiny of the role of proxy advisory firms in the ESG ecosystem. Christopher Burnham, president of the Institute for Pension Fund Integrity, sheds additional light on this topic. He states:

“There is strong research indicating the power of proxy advisory firms to influence fund decisions on proxy votes, including decisions related to ESG investments. However, there is very little research on whether these ESG policies, as advocated by these proxy advisor firms, enhance shareholder returns. This deserves further scrutiny of shareholders are to be protected, particularly as the leading two firms, Institutional Shareholder Services (ISS) and Glass Lewis, have adopted the strategy of environmental activists in an attempt to shape the policies of global businesses.”¹

As Mr. Burnham points out, with little evidence to support their advice, proxy advisors are advocating non-financial agendas. This certainly puts shareholders in harm’s way. Thankfully, the Commission can protect them by finalizing this Proposed Rule.

The theme of ESG investments also raises another important issue that was included in this ruling. Robo-voting, the practice of institutions automatically relying on both proxy advisors’ recommendations and in-house policies without evaluating the merits of the recommendations or

¹ Burnham, Christopher, Institute for Pension Fund Integrity, “Re: File No. 4-725 – SEC Staff Roundtable on the Proxy Process (April 29, 2019), <https://www.sec.gov/comments/4-725/4725-5518739-185190.pdf>.

the analysis underpinning them, further complicates the tendency of proxy advisors to suggest an ideological, non-financial vote. If an investment manager takes an ISS or Glass Lewis recommendation as is without any further due diligence, then his or her shareholders are certainly not being protected. What is even more troubling is the speed at which shares are robo-voted. As the U.S. Chamber of Commerce and Nasdaq's fifth annual proxy survey discovered, "Corporations also reported a large percentage of shares were robo-voted within 24 to 48 hours of the time an ISS or Glass Lewis vote recommendation was released."² One would certainly find it difficult to argue that proper due diligence can be carried out in such a timeframe.

Having worked in employee and executive benefits and insurance for more than 20 years, my experience has allowed me to collaborate with companies large and small, as well as investors who are simply saving for retirement or implementing estate plans for substantial assets. The Commission's implementation of this proposed rule would help companies and investors of all stripes.

Thank you again for this opportunity and for your and your team's dedication to improving proxy voting advice.

Sincerely,

Paul J. Phelan
Practice Leader and Principal, Employee and Executive Benefits
Early, Cassidy & Schilling, LLC

Cc: The Honorable Robert Jackson, Jr.
The Honorable Hester Peirce
The Honorable Elad Roisman
The Honorable Allison Herren Lee

² Tripoli, Lori, Compliance Week, "More companies pointing finger at proxy advisory firms" (November 22, 2019), <https://www.complianceweek.com/surveys-and-benchmarking/more-companies-pointing-finger-at-proxy-advisory-firms/28089.article>.