



International Bancshares
Corporation

January 23, 2020

Via email to rule-comments@sec.gov (Subject: File Number S7-22-19)

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

Re: RIN 3235-AM50, File Number S7-22-19, Request for Comment on Proposed Rule Regarding Amendments to Exemptions from the Proxy Rules for Proxy Voting Advice

Dear Secretary Countryman:

The following comments are submitted to the Securities and Exchange Commission (“SEC”) on behalf of International Bancshares Corporation (“IBC”), a publicly traded multi-bank financial holding company headquartered in Laredo, Texas. IBC holds five subsidiary banks serving Texas and Oklahoma with approximately \$12 billion in total consolidated assets. We appreciate the opportunity to provide input on the SEC’s proposed rule regarding amendments to exemptions from the proxy rules for proxy voting advice, as set forth in Release Number 34-87457.

The SEC’s proposed efforts to hold proxy advisory businesses more accountable, as well as enforce greater transparency in their voting recommendations and analyses, are both significant and sensible. Research shows that the recommendations of proxy advisory businesses have a significant impact on voting outcomes.¹ Additionally, the proxy advisory business is concentrated among five major firms. Investment advisers and other institutional investors often retain proxy advisory businesses to assist them in making their voting determinations on behalf of clients and to handle other aspects of the voting process.² Given these proxy advisory businesses’ potential

¹ Nadya Malenko, Yao Shen, *The Role of Proxy Advisory Firms: Evidence from a Regression-Discontinuity Design*, REV. OF FIN. STUD. Volume 29, Issue 12, 1 December 2016, pp. 3394-3427. One major proxy voting advice business, Institutional Shareholder Services, Inc. (“ISS”), reported that it had approximately 2,000 institutional clients. See *The ISS Advantage*, INSTITUTIONAL SHAREHOLDER SERVICES, available at <https://www.issgovernance.com/about/about-iss/> (last visited Sept. 20, 2019). Another major firm, Glass, Lewis & Co., LLC (“Glass Lewis”), reported that, as of 2019, it had “1,300+ clients, including the majority of the world’s largest pension plans, mutual funds, and asset managers, who collectively manage more than \$35 trillion in assets.” See *Company Overview*, GLASS LEWIS, available at <https://www.glasslewis.com/company-overview/> (last visited Sept. 20, 2019). Letter from Yves P. Denizé, Senior Managing Director, Teachers Insurance and Annuity Association of America (June 10, 2019) (“TIAA Letter”), at 3, 6, 7. Letter from Michael Garland, Assistant Comptroller, Office of N.Y.C. Comptroller (Jan. 2, 2019) (“NYC Comptroller Letter”), at p. 4 of enclosed statement before the Senate Banking Committee on Dec. 8, 2018. OPERS Letter, at 2. Letter from Gail C. Bernstein, General Counsel, Investment Adviser Association (Dec. 31, 2018) (“IAA Letter”), at 2.

² See generally GAO Report to Congress, *Corporate Shareholder Meetings—Proxy Advisory Firms’ Role in Voting and Corporate Governance Practices* (Nov. 2016) (“2016 GAO Report”); GAO Report to

to influence the voting decisions of investment advisers and other institutional investors, who often vote on behalf of others, there is concern about the risk of proxy advisory businesses providing inaccurate or incomplete voting advice (including the failure to disclose material conflicts of interest) that could be relied upon to the detriment of investors. Therefore, it is essential that proxy voting advice be based on the most accurate information reasonably available and that the proxy advisory businesses providing such advice be sufficiently transparent with their clients about the processes and methodologies used to formulate such advice. The SEC must protect investors by ensuring that information provided by proxy advisory businesses enables investment advisers to make informed voting determinations on investors' behalf. The SEC's proposed changes would bring needed transparency and accountability to proxy advisory businesses' actions with clearer reporting and operating guidelines and standards without curtailing their ability to perform useful administrative and advisory roles.

I. Response to Proposed Codification of the Commission's Interpretation of "Solicitation" under Rule 14a-1(l) and Section 14(a)

The SEC has long held that any "communication to security holders under circumstances reasonably calculated to result in the procurement, execution, or revocation of a proxy" is a solicitation and subject to the information and filing requirements of the proxy rules under Section 14(a).³ However, this interpretation is often ambiguous and riddled with extensively-used exceptions. IBC agrees with the SEC's proposed codification of the SEC's interpretation of "solicitation" to provide that proxy voting advice that makes a recommendation to a shareholder as to its vote, consent, or authorization on a specific matter for which shareholder approval is solicited, and that is furnished by a person who markets its expertise as a provider of such advice, separately from other forms of investment advice, and sells such advice for a fee will constitute a solicitation within the meaning of Exchange Act Rule 14a-1(l). IBC believes this will clarify who is subject to the information and filing requirements of the proxy rules under Section 14(a) and better protect investors from inadequate or materially misleading information. A person making a deemed solicitation is required to prepare a proxy statement with the information prescribed by Schedule 14A together with a proxy card in a specified format, file these materials with the SEC, and furnish them to every shareholder who is solicited.⁴ Any voting advice from a proxy advisory business who furnishes such advice only in response to an unprompted request for the advice will not be deemed a solicitation and, subsequently, will not be subject to the information and filing requirements of the proxy rules under Section 14(a). IBC believes the codification will enhance the quality and availability of information by creating uniform rules and leveling the playing field between information and advice that is distributed from a registrant company or a proxy advisory business. Furthermore, IBC believes the codification will make explicitly clear that the proxy

Congress, *Corporate Shareholder Meetings—Issues Relating to Firms that Advise Institutional Investors on Proxy Voting* (June 2007) ("2007 GAO Report"); see also *Commission Guidance Regarding Proxy Voting Responsibilities of Investment Advisers*, Release No. IA-5325 (Aug. 21, 2019) [84 FR 47420 (Sept. 10, 2019)] ("Commission Guidance on Proxy Voting Responsibilities"), at 5; Letter from Gary Retelny, President and CEO of Institutional Shareholder Services, Inc. (Nov. 7, 2018) ("ISS Letter"), at 1.

³ 17 CFR 240.14a-1(l)(1)(iii); see *Adoption of Amendments to Proxy Rules*, Release No. 34-5276 (Jan. 17, 1956) [21 FR 577 (Jan. 26, 1956)], at 577; see also *Broker-Dealer Participation in Proxy Solicitations*, Release No. 34-7208 (Jan. 7, 1964) [29 FR 341 (Jan. 15, 1964)] ("Broker-Dealer Release"), at 341.

⁴ 17 CFR 240.14a-101 and 17 CFR 240.14a-3(a).

rules, which are intended to provide adequate notice and protection to investors, apply to proxy voting advice furnished by any person who markets its expertise as a provider of such advice for a fee. Consequently, any party attempting to sway or influence a registrant company's voting outcome should be subject to the same filing, disclosure, and accountability provisions. IBC believes the proposed rule accomplishes this cause.

II. Response to Proposed Amendments to Rule 14a-2(b)

IBC believes the amendment to the Exchange Act Rule 14a-2(b) conditioning the availability of existing exemptions from the information and filing requirements of the proxy rules in Rules 14a-2(b)(1) and 14a-2(b)(3) to include (i) enhanced conflicts of interest disclosure; (ii) a standardized opportunity for review and feedback by registrant companies and certain other soliciting persons of proxy voting advice before a proxy voting advice business disseminates its proxy voting advice to its clients; and (iii) the option for registrants and certain soliciting persons to request that proxy advisory businesses include in their proxy voting advice (and on any electronic medium used to distribute the advice) a hyperlink or other analogous electronic medium directing the recipient of the advice to a written statement that sets forth the registrant's or soliciting person's views on the proxy voting advice, will enhance the accuracy, transparency of process, and material completeness of the information provided to clients of proxy advisory businesses when they cast their votes. Proxy voting advice businesses typically rely upon the exemptions in Rule 14a-2(b)(1) and Rule 14a-2(b)(3) to provide advice without complying with the filing and information requirements of the proxy rules. The exceptions to the filing and information requirements of the proxy rules afforded to proxy advisory businesses' solicitations has led to major concerns regarding the adequacy of disclosure of any actual or potential conflicts of interest that could materially affect the objectivity of the proxy voting advice; the accuracy and material completeness of the information underlying the advice; and the inability of proxy voting advice businesses' clients to receive information and views from the registrant company, potentially contrary to that presented in the proxy advisory businesses' advice in a manner that is consistently timely and efficient. IBC believes the new conditions to using the exemptions from the information and filing requirements of the proxy rules will substantially alleviate these concerns by improving proxy voting advice businesses' disclosure of conflicts of interests that would reasonably be expected to materially affect their voting advice, reducing the likelihood of factual errors or methodological weaknesses in proxy voting advice with more effective measures, and ensuring that those who receive proxy voting advice have an efficient and timely way to obtain and consider any response a registrant company or certain other soliciting person may have to such proxy advisory businesses' advice. IBC believes these amendments will ensure that investment advisers, who often rely on the advice of proxy voting advice businesses, receive accurate, transparent, and materially complete information when they make their voting decisions. Moreover, IBC believes the amendment will enhance the overall mix of information available to clients of proxy advisory businesses as they assess voting recommendations and make determinations about how to cast their votes by providing a standardized opportunity for registrant companies and other soliciting persons to review and provide feedback to help identify factual errors or methodological weaknesses in the proxy voting advice businesses' analysis that could undermine the reliability of their proxy voting recommendations. Furthermore, IBC believes the more robust disclosures provided under the proposed amendments will allow clients of proxy

voting advice businesses to sufficiently understand the nature and scope of the interest, transaction, or relationship and assess the objectivity and reliability of the proxy voting advice they receive. IBC supports this proposed amendment.

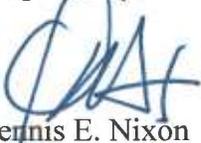
III. Response to Proposed Amendments to Rule 14a-9

With respect to the SEC's proposed change to Rule 14a-9, IBC believes it to be beneficial to include a list of examples in Exchange Act Rule 14a-9 of potentially material misstatements or omissions within the meaning of the rule. Depending upon particular facts and circumstances, the failure to disclose information such as the proxy voting advice business's methodology, sources of information, conflicts of interest, or the use of standards that materially differ from relevant standards or requirements that the SEC sets or approves can result in undesirable voting outcomes. IBC believes the new examples reduce the risk that, where such disclosures are omitted, clients of proxy voting advice businesses could make their voting determinations based on incomplete information regarding the basis of the proxy voting advice, or upon a misapprehension that a registrant company is not in compliance with applicable laws or regulations. IBC supports this proposed amendment.

IBC commends the SEC for addressing the concerns surrounding proxy voting advice received from proxy voting advice businesses. These proxy voting advice businesses have a tremendous influence over the future of America's companies and those who invest in them. The proposed rule advances the SEC's continued efforts to ensure strong markets and sound governance. Such reform will promote greater confidence in the investment process.

Thank you for this opportunity to share our views.

Respectfully,

A handwritten signature in blue ink, appearing to read "DENIXON", is written over the typed name of Dennis E. Nixon.

Dennis E. Nixon
President