Filed Electronically:

Vanessa A. Countryman, Secretary
U.S. Securities and Exchange Commission
100 F Street, N .E.
Washington, D.C. 20549

Re: File No. S7-22-19 – Amendments to Exemptions from the Proxy Rules for Proxy Voting Advice

Dear Ms. Countryman:

Thank you for the opportunity to provide comment on the proposed change to the rules governing proxy solicitations. I have written on the subject of the proxy advising industry and invite the Commission to consider those views as outlined below.

I am a consulting economist with twenty years experience in public policy and a background in law and economics. I have Bachelors of Economics and Bachelors of Laws qualifications from the Australian National University and a Masters in Economics from Johns Hopkins University. I have held the position of Chief Economist at the Australian Chamber of Commerce & Industry and have experience working in government, financial markets and the energy sector.

Difficult questions continue to be asked about the performance of the duopoly that runs the proxy advising industry. These range from concern about the quality of service they deliver, the extent to which they are imposing unnecessary compliance burdens, to the inherent conflicts of interest in their business models. These issues have plagued the industry since its inception and have heightened relevance in light of recent proposals to reform the sector.

Modern portfolio theory effectively mandates that investment funds own a stake in the entire universe of publicly listed companies. Arising from these holdings are statutory and fiduciary obligations that require voting at company meetings. The scale of these obligations relative to the in-house capacities of institutional investors to assess their merits has led to the accidental rise of proxy advisory firms as key players in the corporate governance arena.

Proxy advisors provide tools to institutional shareholders to manage the obligation to vote on shareholder proposals at company meetings, which entails providing advice on substantive corporate governance issues. Analysis of the voting records of asset managers demonstrates the profound influence the industry can have on such decisions. A recent American Council for Capital Formation study found that where the two main proxy advisors recommend in favor of a proposal, large institutional investors will vote in line with their recommendations on average 80 percent of the time.

The genesis of the proxy advising industry is not difficult to understand given the onerous nature of requirements to vote at every company meeting in which an investment firm has an interest. BlackRock is the largest asset manager in the world with $6.3 trillion dollars in assets under management and voted on roughly half a million shareholder proposals in the 2017 proxy season. The corporate governance department at BlackRock consists of 31 staff,

reportedly the largest in the industry, which equates to roughly 16,000 proposals for each employee.

The crushing weight of these obligations not only generates an investment firm's need to outsource advice on proxy voting to third parties, but also a tendency to defer to the recommendations received. "Robovoting" by over-stretched asset managers has delivered proxy advisors outsized influence on corporate governance matters that was never envisaged by legislators.

The extent of concentration in the proxy advising market is extreme. Institutional Shareholder Services ("ISS") and Glass, Lewis & Co. ("Glass Lewis") together account for 97 percent of the market for proxy advice. Some studies have estimated that these two firms indirectly control 36 percent of proxy votes. Academics Nadya Malenko and Yao Shen estimate that a negative recommendation from ISS on Dodd-Frank mandated "say on pay" votes leads to a 25 percentage point drop in voting support. That measured impact likely understates the influence of ISS given that companies will alter their proposals to align them with the recommended policies of the proxy advisor.

Due to the influence of their recommendations, ISS and Glass Lewis have effectively been elevated to the status of de facto regulators of corporate governance standards. Despite having no direct stake in company performance, these companies--via their consulting service arms--have begun to dictate standards for corporate governance over and above existing legal requirements. At best, these obligations impose additional costs on companies and distract management from the core business of improving investor returns; at worst, there is a very real potential that proxy advisors foist governance standards on businesses that are at odds with the best interests of their shareholders.

Inaccuracies in proxy advisory reports and a lack of transparency in their methodologies have given rise to concerns about the analytical rigor that underpins the recommendations of the industry. ISS and Glass Lewis are viewed by many as effectively a black box. Workload pressures, poor quality control and offshoring of research activities to low-cost countries like the Philippines have led to repeated errors in analysis.

A 2015 survey of US Chamber of Commerce members exploring their relationships with proxy advisors revealed that only 25 percent "believed the proxy advisory firm carefully researched and took into account all relevant aspects of the particular issue on which it provided advice". The survey further demonstrated limited trust in the competence of the industry, with 84 percent of companies declaring that they monitored proxy advisor reports for "accuracy and reliance on outdated information".

Proxy advising is a low margin industry with a significant barrier to entry in the form of the requirement to provide global coverage of equity markets in order to meet the needs of globally-invested asset managers. Poor performance by market incumbents is unlikely to prompt either entry, or a credible threat of entry, that might otherwise act as a market discipline on the quality of the service provided.

But more than the de facto monopoly in place, the most fundamental problem with proxy advisors is they have no skin in the game. Poor corporate governance advice that has an adverse impact on shareholder value has no direct financial impact on the industry given they have no

stake in the profitability of the company. Demand for the services of proxy advisors is effectively mandated by legal obligations, rather than a function of its intrinsic worth. There is no financial incentive for proxy advisors to provide advice that increases company performance. It is unsurprising then that there is no evidence that the recommendations of the industry increase shareholder returns. This should be deeply troubling for investors.

The industry is also riddled with conflicts of interest as a result of the decision of ISS and Glass Lewis to branch out into the provision of corporate governance advisory services. The addition of those product lines puts proxy advisors in the inherently conflicted position of providing advice to companies on corporate governance issues on which they subsequently provide recommendations to institutional shareholders about how to vote at general meetings. As for-profit enterprises they have incentives to align themselves with the clients that deliver them the most revenue, which need not necessarily coincide with the interests of shareholders.

These conflicts are often undisclosed, insufficiently disclosed or improperly managed, all of which serves to further undermine confidence in the industry. The Chamber of Commerce's survey reported that companies that suspected a conflict of interest at a proxy advisory firm found one over 40 percent of the time.

Chamber members overwhelmingly supported the Corporate Governance Reform and Transparency Act, which required proxy advisor to register with the SEC, disclose conflicts of interest, and make publicly available their methodologies for developing proxy recommendations.

In the absence of a perfect alignment between the interests of shareholders and the proxy advising industry, the only constraint on their performance is the potential cost of reputational damage from inaccurate advice and recommendations that damage the value of companies. Extremely limited competition within the proxy advising industry means this a poor discipline on the sector's performance.

Regulatory intervention may be the only credible mechanism for ensuring that proxy advisors provide recommendations that align with shareholder interests. The SEC's proposed rule changes constitute further steps towards restoring confidence in the proxy advising industry and ensuring proxy recommendations are aligned with the long-run interests of shareholders and supportive of the efficient operation of global equity markets and the broader economy.

I welcome the opportunity to provide these comments on the proxy advising industry and am available to answer any queries in relation to this submission.

Yours Sincerely,

Burchell Wilson

Consulting Economist
Freshwater Economics