RECEIVED
JAN 22 2020
OFFICE OF THE SECRETARY

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

Re: File No. S7-22-19- SEC Rule Change on Proxy Advisory Firms

January 15, 2020

Dear Ms. Countryman,

I am writing in response to a request for comments related to the SEC's proposed rule changes on November 5, 2019 regarding proxy advisory firms.

My name is Al Murray. I served three terms as mayor of the historic city of Tustin, California (pop. 82,000). I retired last year. I have also served as a Tustin City Council member, chairman of the Orange County Fire Authority, and board president of the Association of California Cities —Orange County. And I spent 33 years on the Irvine, Calif., police force.

On November 5, SEC Chairman Clayton described the rule changes as a "modernization of regulation" to adjust for the increasing influence that proxy advisory firms have, and my comments in this letter take the proposed modernization into account.

***

In my service to my fellow citizens, I have learned to respect those who work hard and often just get by. I want those people to have a decent retirement after decades of work. For that reason, I am particularly concerned about public pension liabilities – and about the recent poor performance of pension funds, especially in my home state.

I am a fisherman, and, while success in fishing is often a matter of luck, it is also an activity that, most of all, requires concentration. You need to keep – in the words of the great civil rights documentary series of 30 years ago – your "eyes on the prize." It is the same way with investing retirement assets. I don't want the people who are managing the money to get diverted. It is hard enough to produce decent risk-adjusted returns by using solid, time-tested financial criteria. But when retirement fund managers start using ideological, political, and social criteria, I get worried.

This worry – I would actually call it "alarm" – is why I am taking the unusual step of writing you a comment letter. The Securities and Exchange Commission is potentially addressing the growing power of two private companies that have become very powerful as a result of the unintended consequences of regulation that the SEC approved back in 2003 and two staff letters the next year. I realize that those letters were withdrawn in 2018, but the damage was already done.

These two proxy advisory firms -- Institutional Shareholder Services (ISS) and Glass Lewis (GL), account for 97 percent of the market for proxy advisory services. And research has shown that PA firms have a powerful impact on the voting of corporate proxies, especially by managers of state and local pension funds and mutual funds.

In its action on August 21, 2018, the Commission appeared to have taken an initial step to curb the power of these firms. For example, it made clear that voting advice provided by proxy advisory firms constitutes a "solicitation" under federal proxy rules. This appropriately subjects proxy advisors to additional scrutiny and responsibility. The advisors will be subject to anti-fraud rules concerning statements that are false or misleading. They will have to quickly correct mistakes or misleading information that they transmit. And they will have to take more steps to show the public how they make their recommendations.

All well and good, but with these proposed rule changes I would like the SEC to go further in giving additional scrutiny and responsibility to these proxy advisory firms. Your work is not done.

***

Proxy advisory firms are promoting a certain way of investing that is not necessarily the most profitable way of investing. The proxy advisory firms want to mold the policies of businesses in a way that meets their own goals and are non-financial. The common term is "ESG," for environmental, social, and governance standards.

Now, I have nothing against those three causes. As a fisherman and a former member of a fire authority in the part of the world that is subject to terrible wildfires, I know the importance of good environmental policies. As an African American – and as an American, period – I stand for social justice. Finally, I want to see all companies subscribe to good corporate governance. But, of course, issues involving each of these ESG categories are subject to personal interpretation.

I have no problem with an individual investor saying, "I won't invest in that company because, while it's not breaking any laws, it is in a business that I think is harmful to the environment." Or saying that he or she won't invest in tobacco stocks or in companies based in a state with policies that might be harmful to the voting rights of immigrants. These are personal decisions.

Where I draw the line is when someone – say, a pension fund board member – makes those ESG decisions for me. Even worse is when one of two big firms is hired by a pension fund to make recommendations on how that fund should vote on important proxy matters that involve ESG.

It is my strong belief that pension funds should stick to the knitting – that is, they should use only financial criteria to make financial decisions.

One of your commissioners, Hester Peirce, made this point in a speech in 2017:

"An individual investor is certainly free to make trade-offs to risk lower returns for whatever other interest she may have. The problems arise when those making the investment decisions are doing so on behalf of others who do *not* share their ESG objectives. This problem is most acute when the individual cannot easily exit the relationship. For example, pension beneficiaries often must remain invested with the pension to receive their benefits. When a pension fund manager is making the decision to pursue her moral goals at the risk of financial return, the manager is putting other people's retirements at risk."

There is significant research showing that ESG investing sacrifices risk-adjusted returns. I am no economist, but this makes sense to me. If an investor has 1,000 stocks to choose from, then she has more options for finding the best investments than if she has 800 stocks in a universe that's been pared down through ESG criteria (or ANY criteria, for that matter).

***

Let me cite a real-life California example with which I am all too familiar: CalPERS, the largest public-employee pension system in America. In July, CalPERS reported its performance for the year ending on June 30, 2019. Its overall return was just 6.7%; that compares with 8.1% if an investor simply split his assets between a low-cost S&P 500 index fund and a similar index fund for bonds. The CalPERS returns for the past five years are even worse.

But what really alarms me is the stock portion of the CalPERS portfolio. For the year ending June 30, its returns were just 6.1% while S&P index funds returned 9.7%. The stock is most affected by its philosophy towards ESG.

ESG investing is not the only reason for the poor returns, of course, but, as an example of the dangers, CalPERS's own investment advisors told the board that divestment of tobacco stocks had cost retirees billions, but the board refused to change its policies.

I would like to see the SEC issue clear rules on ESG investing – or any other kind of investment decision-making that distracts pension-fund boards, managers, and advisors from the task at hand, which is providing the best risk-adjusted returns for retirees. My understanding is that the Department of Labor has issued such guidelines for private pension funds that fall under its jurisdiction through ERISA.

Some might say that these sorts of rules may be beyond the scope of the SEC's current concern with proxy advisors. I disagree. Those advisors serve as a kind of conveyer belt, bringing the ideology of ESG to powerful funds, which in turn apply pressure through proxies to change the policies of corporations.

***

The SEC needs to ensure proper oversight of the proxy advisors. The proposed rule changes on November 5 are a step in the right direction, and I hope they are ratified on a permanent basis. These advisors have too much power, and they must be forced to act as true fiduciaries, held responsible for advice that harms members of pension funds, just as I have been held responsible for my decisions as a mayor and a police officer. One of those harms is the sacrificing of higher returns on the altar of a subjective concept of social responsibility.

The exact mechanisms the Commission uses are not within my expertise. What I can tell you, as someone who has devoted his life to public service, is that millions of Americans depend on the choices you will make.

Fixing the proxy advisory problem is not just a narrow financial regulatory matter. It is something that affects real people who depend, especially, on public pension funds for a decent retirement. You have the opportunity to help these people. Please do not fail them.

Sincerely,

Al Murray
Tustin, California