January 30, 2020

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

Re: File No. S7-23-19 and File No. S7-22-19

Dear Ms. Countryman,

As a member of the SEC's Investor Advisory Committee (IAC), we recently voted in favor of a recommendation on the above-referenced SEC rule proposals on proxy advisors and shareholder proposals. That recommendation is available under "Recommendations of the Investor Advisory Committee" -- https://www.sec.gov/spotlight/investor-advisory-committee.shtml -- and has been separately filed as a comment on the above-referenced proposals.

This letter provides additional comments of our own as the SEC considers these important topics. While largely critical, they are not intended to undercut the SEC's efforts generally on the proxy system, which are important and should be pursued, as outlined in the IAC recommendation. Rather, these comments are offered in the hope that the SEC can use them in revising and re-proposing a more reasoned and defensible set of changes to improve the proxy system for all investors.

1. Large fund complexes are more important than proxy advisors in the proxy system, raise the same issues that appear to motivate the SEC proposals, and should be a priority for the SEC

The SEC's proposal on proxy advisors treats them as the most important actors in the proxy system outside of corporate managers. In fact, the largest fund complexes – Vanguard, BlackRock, Fidelity, etc. – now **control directly** more votes than the total votes that the major proxy advisors have ever been shown to have influenced with recommendations. Those complexes have in-house corporate governance staffs that engage with companies and oversee voting of shares on behalf of millions of Main Street investors. If one or both proxy advisors were shut down – and there is some risk that the SEC proposals may lead to just that result – corporate managers would continue to face the difficult and challenging task of convincing large fund complex governance staff to see strategy, policy and governance their way, just as they do today. The way those complexes vote will continue to have an outsized and growing influence on how shares are voted.

Large fund complexes have emerged because of and implicate the same conceptual and practical challenges raised by proxy advisors: economies of scale, collective action problems, rational inactivity by retail investors, agents **influencing** votes (in the case of proxy advisors) or **controlling** votes (in the case of fund complexes), and ample room for disagreement on matters of opinion relevant to corporate strategy, board composition, trade-offs between investor, manager and social interests, and the components of good governance. It was BlackRock and not ISS that pushed Exxon into disclosing long-term portfolio impacts of global climate change policies, including the globally agreed upon 2-degree scenario.[i] The SEC should, we believe, begin to focus more on the conflicts of interest, lack of transparency, and methods of opinion formation by large fund complexes. If self-regulation or better SEC enforcement of existing law can address those issues, then the SEC should not impose rules that are not well justified on fund complexes or proxy advisors. But if conflicts, lack of transparency, and debatable methodological choices are problems requiring

regulation, there is good reason to believe they are an even larger problem at large fund complexes than at proxy advisors.

For example, despite self-serving claims to the contrary, large complexes do not consistently disclose their engagements with corporate managers with any specificity. Nor do they invite comment from or otherwise survey their own investors when they form opinions about new governance topics. (They may have good economic reasons for not doing so, but the same is true of funds that rely on the proxy advisors, and about proxy advisors' own methods of arriving at recommendations.) However, large fund complexes do engage in private with influencers, academics and governance professionals from other organizations, including proxy advisors, and also with corporate manager trade group representatives and law firms and proxy solicitors representing corporate managers.

It is true that funds within large complexes are governed by the Investment Company Act and SEC rules governing disclosures and conflicts, and advisers to the funds are governed by the Investment Advisers Act and related rules. But those statutes have limited application to governance activities at the complex level, and there is no straightforward framework at the complex level for the SEC (or investors) to understand, monitor or guide the management of conflicts of interest that arise from voting or governance activities that are distinct from flows into or out of a given fund. Assets (and therefore votes) controlled by the largest complexes are growing rapidly, while votes influenced by proxy advisors are as a result declining over time.

In sum, the SEC's quixotic focus on proxy advisors ignores bigger corporate governance challenges mounting under its nose. To an economically informed but politically uninformed observer, the SEC's emphasis is just as hard to explain as its exceedingly slow and mild efforts to politely ask a private monopolist to do a better job of counting shareholder votes correctly.[ii] From a political perspective, the SEC's apparently irrational proposals are more understandable. Corporate manager trade groups have been pushing for changes such as those in the SEC rule proposal for years. In the process their lobbyists have misspent millions of investor dollars obtained in the form of corporate membership fees, paid by corporate managers without shareholder knowledge or consent to fund campaigns designed to attack investor interests. But the SEC's focus is not justifiable from a policy or cost-benefit perspective, and is also politically risky for the agency, as it will leave the SEC embarrassingly behind the curve when the influence of large fund complexes becomes too politically and financially obvious to ignore. John Bogle saw the coming challenges, and so wrote before he passed away.[iii] The SEC would do well to pay his words the attention they deserve.

2. Under the SEC's own sensible guidance on economic analysis, the SEC may not add substantive economic analysis to a final rule release, but where necessary should add it in a re-proposed rule release

As discussed below and in the IAC's recommendation, we believe the SEC's economic analyses for these proposals in the rule releases are insufficient and fail to adhere to the SEC's own self-adopted and published guidance on the topic. We want to emphasize that – consistent with that guidance – it would be an arbitrary and indefensible process failure for the SEC to propose a rule, include fundamentally lacking economic analysis in the release, and then, having that lack pointed out to the SEC, fail to republish the proposal with the analysis included, but instead proceed to adopt a rule, even if better or more compliant economic analysis is included in the final rule release. The reason is straightforward: the economic analysis is necessary for the public to understand the purposes and fit between the rule proposal and its intended effects. For economic analysis to be added belatedly in a final rule release as a kind of rationalization and decoration does not comply with the SEC's own self-adopted guidance on how and when economic analysis should be used and included in rule releases.

In particular, here, if the SEC were to determine (for example) that the current proposal to permit company manager review of proxy advisor recommendations was unworkable, and to modify it in some material way to make it more workable, it should re-propose that rule, and include compliant economic analysis to support the revised proposal. The reason is that any direct regulation of communications by proxy advisors to their clients will impose material compliance costs. For the public to evaluate such a revised proposal, its costs would need to be compared to the expected benefits of the regulation. Yet currently the release does not contain any reliable information about the possible benefits of such a regulation, as discussed more below and in the IAC's recommendation.

3. The SEC's economic analyses for the rule proposals does not comply with its own guidance for economic analysis

In addition to shortcomings noted in the IAC recommendation cited at the outset, the SEC's economic analysis in the two rule releases is materially deficient in several additional ways, when measured against the SEC's own guidance on the topic. They include failure to develop reliable estimates of the compliance costs of the proposals, including by using inconsistent estimates, ignoring contrary evidence known to the SEC, failure to state candidly the limits of the evidence relied upon, misplaced and unjustified emphasis on majority-approved shareholder proposals, and inconsistent statements about the ability of the SEC to estimate relevant quantities.

a. Failure to develop reliable quantified estimates of cost savings of the proposed rule, of the value of excluded shareholder proposals, or of the net effects of the proposed rule

A full quantified cost-benefit analysis would not likely be possible for the full package of proposed regulatory changes. One of us has in his scholarship (at length) discussed the challenges of presenting fully quantified cost-benefit analysis of financial regulation. [iv] What follows should not be understood as suggesting that the SEC cannot act unless it can achieve the impossible.

Here, however, the SEC used inconsistent estimates, ignored data in its possession, misanalysed the data it has, and failed to include in its analysis simple and predictable expectations about how its proposal will work in practice. By ignoring and not presenting other estimates that were known to the SEC and which were at least as reliable as but inconsistent with the estimates it did present, it has likely misled the public and possibly itself about the likely impact of its proposed rule changes. The SEC should resolve the inconsistencies, focus on the full range of reliable estimates, re-analyze them, and republish the results, consistent with the SEC's own guidance regarding economic analysis, which requires that rule releases "**clearly address contrary data**."[v]

i. Use of inconsistent and unreliable estimates

In its economic analysis, it relies primarily on an unverified estimate of $150,000 per shareholder resolution from a trade group representing not corporations but regional financial services firms.[vi] This estimate is unreliable and its use is unaccountable for several reasons. First, it comes from an advocacy organization which does not purport to have access to actual costs of handling a shareholder proposal. In its economic analysis, the SEC also notes an estimate from the Society for Corporate Governance, an organization with members with direct access to information about costs of handling resolutions. But that estimate was – as the SEC acknowledges only much later in a footnote to the paperwork burden analysis in its release – based solely on what the Society's executive director called "anecdotal conversations" between the Society and its members,[vii] and so is also not a reliable source.

ii. Failure to base estimates on data known to the SEC

The SEC calls the anecdotal estimate from the Society – which is 2/3rds lower than the main estimate used by the SEC, i.e., $50,000 per resolution – a "lower bound" without explanation, but for reasons discussed next, that anecdotal estimate, too, is higher than a reliable estimate of marginal cost savings would indicate. Not noted in the SEC's economic analysis, but buried in a footnote in the paperwork burden analysis,[viii] is a much lower figure, based on direct company information: "A July 2009 survey of Business Roundtable companies, in which 67 companies responded … indicated that the average burden for a company associated with printing and mailing a single shareholder proposal is 20 hours with associated costs of **$18,982.**" While this much lower estimate may not comprehensively reflect all costs, it is a relevant datum for estimating cost savings, and is at least in tension with the SEC's assertion that $50,000 is a "lower bound" on costs.

Yet another estimate for average costs per resolution is also $50,000 – again, substantially below the $150,000 used by the SEC in its main economic estimates. That estimate comes from a source that the SEC should have been aware of – the SEC itself, and was also based on an actual survey of companies.[ix] The choice of the $150,000 estimate over the SEC's own estimate of $50,000 is particularly unaccountable.

iii. Misanalysis of cost savings estimates

A further problem that the SEC acknowledges, but does not reflect in its cost savings estimates, is the SEC's use of what only purports to be **an average estimate**, **not a marginal estimate**. That is, it purports to take total costs for all resolutions and divide them by the number of resolutions. But true cost savings will be marginal, not average, and should be significantly below an average cost per resolution. For large S&P 500 companies overall, it is unlikely that the new requirements will result in zero shareholder proposals being includable in a given proxy statement (in part because of likely sponsor reactions to the rules, discussed below). All fixed costs of handling proposals generally will remain. The only reduction in costs will be the variable costs of a single newly excludable proposal per company.

Yet another problem with the cost savings estimates is that the SEC assumes that all shareholder proposals generate comparable costs, and so eliminating any subset of proposals would generate comparable cost savings. But in fact some proposals generate more costs, because they are plausibly excludable under a number of judgmental grounds specified in Rule 14a-8. Those proposals generate more costs, because companies routinely hire expensive outside law firms to seek no-action relief from the SEC to back-stop their exclusion. But the only proposals excludable under the new rules would be those that otherwise could meet the requirements of Rule 14a-8, and would not fall within the subset of proposals likely to generate the highest costs. Most of the proposals that would be newly excludable under the revised rules would not have required time-consuming treatment from expensive law firm lawyers. Because no-action relief costs inflate the total costs of handling shareholder proposals overall, they inflate the average cost savings used by the SEC for a category of proposals which by definition would be includable but for the new rules. The **newly excludable proposals would create significantly lower cost savings than overall average cost estimates would suggest**.

iv. Failure to reflect predictable results of the rule proposal

Finally, as the SEC acknowledges in a footnote,[x] but does not reflect in its cost savings estimates, proposals that might theoretically be excluded by virtue of higher resubmission thresholds will nonetheless be includable at some other company. Currently, few sponsors attempt to bring the same proposal at multiple companies, and have ample ability to switch proposals from company to company. Many social and

environmental proposals – which are the primary types of proposals that would be excludable by the new rules, according to the SEC's own analysis – are equally applicable to multiple companies within (and sometimes across) industries. If sponsors respond rationally to the new rules, there will be little overall reduction in social cost from the changes. They will simply shift costs among companies. This should be noted in the SEC's economic analysis, which should be focused at least initially on social costs and benefits, and not solely on the distribution of costs and benefits.

In sum, instead of using an unverified and likely inaccurate estimate from a trade group with no apparent expertise or direct knowledge of true average costs, the SEC could build more reliable marginal cost savings estimates from ground up, combining time estimates for receiving, reviewing and printing more than one proposal per proxy statement, as compared to printing only one proposal, and then adjust them down to reflect the points made above. If it did so, the purported cost savings per excluded resolution would be significantly lower than $150,000 per resolution. Acknowledging that the cost savings from the proposed rule are low would then be likely to result in a negative net cost-benefit analysis bottom line, and lead the SEC to rework its proposal. By definition shareholders who bring these proposals are willing to incur as much or greater costs to do so than it costs companies to resist them. To this social loss (the inability to bring these proposals) should be added the value to shareholder who vote to support them, which under the current rule are significant in number. The net bottom-line is likely to imply a significant welfare loss from the proposed rule, while the release's presentation unaccountably suggests the opposite.

b. Failure to consider impact of proposed rule regarding shareholder proposals that receive large but less than a majority of votes

The SEC's analysis of its proposed rule on shareholder proposals draws on a single year's voting outcomes (2018) and focuses arbitrarily throughout on **majority-approved proposals**.[xi] The arbitrariness of this focus is easy to see once one recognizes that shareholder proposals are almost never binding, that majority approval has no legal significance, and that many majority-approved proposals are not implemented, while many approved by less than a majority are implemented.[xii] While majority approval does appear to have an independent effect on manager behavior – presumably because of the norm of majority approval in our society – so too do shareholder proposals that receive a high but sub-majority vote, such as 40%. There is nothing in the majority voting threshold that warrants focusing entirely on majority-approved proposals while not analyzing proposals that achieve high but sub-majority votes.

For example, resolutions brought by shareholders of oil and gas companies on climate change risks often received below 5% favorable votes when first introduced beginning in the 1990s, but now receive substantial, and even majority shareholder votes, and have been adapted by numerous companies, even those where the resolutions were not approved by a majority of shareholders. As noted by Commissioner Lee in her dissenting statement, shareholder "proposals requesting the expensing of stock options [were often brought] before this was required by GAAP."

Indeed, researchers have "predict[ed] and f[ou]nd that the likelihood of implementation is increasing in the degree of shareholder pressure," and have documented "**a positive relation between the percentage of votes cast in favor of the proposal and the likelihood of implementation**," both above and below the majority-vote threshold.[xiii] As a peer-reviewed article in the leading finance journal notes, "Improving democracy inside firms, so that **shareholder proposals that fall short of the majority threshold pass, would be value-increasing.**"[xiv]

By ignoring proposals that achieve high but sub-majority levels of shareholder support over several years in most of its analyses, the SEC rule proposal does not consider important effects that its rule proposal would

have on matters that routinely receive enough shareholder support to be implemented by managers, despite failing to achieve majority approval from shareholders.

The SEC should re-analyze and re-present the findings in the release to focus on the effect of the rule proposals on shareholder proposals that have obtained high but sub-majority favorable votes over time, such as 25%, 33%, and 45%. The SEC should acknowledge that proposals that reach those levels are more likely to be implemented by management of companies than proposals that fail to reach those levels, and reflect their absence in its qualitative economic analysis and bottom-line evaluation of the proposals. The SEC should more clearly identify for the public how many resubmitted proposals obtain those levels of support before reaching any conclusions about the impact of the new resubmission thresholds over time.

c. Internally inconsistent statements about ability of the SEC to estimate relevant quantities

Compliant, good faith economic analysis uses consistent estimates of relevant quantities. The SEC's proxy advisor and shareholder proposal releases are internally inconsistent with respect to how able the SEC was to provide quantitative estimates of the costs of the rule proposals, and what those estimates are.

In section III of the proxy advisor release, the SEC says that it has no information to quantify important categories of costs, and does not attempt to present any quantification of costs imposed by the rule. However, section IV of the same release provides quantitative estimates of compliance costs resulting from increased paperwork that the rules would create. Additional paperwork is a part of compliance costs. Compliance costs are a relevant cost for economic analysis. As a result, the two sections are inconsistent.

Similarly, in the shareholder proposal release, the estimated cost savings from fewer resolutions in the SEC's economic analysis and the paperwork analysis are materially inconsistent. In one place, the SEC uses $150,000 as the per-resolution cost savings associated with fewer shareholder proposals. In the same release, the SEC uses 312 hours at an assumed rate of $400/hour for an implied estimate of $124,800 as the per-resolution cost savings associated with reduced paperwork due to fewer shareholder proposals. The difference of $25,200 per resolution represents a 20% difference. Neither of these estimates are reliable, for reasons discussed above, but no one could believe that they are consistent.

The SEC should revise and republish the rule proposals to take into account in its general economic analysis the quantities it has identified for purposes of its paperwork analysis. At a minimum, the quantities identified in its paperwork analysis provide a lower bound on the size of costs the proxy advisor proposal will create, and an upper bound on the cost savings that the shareholder resolution proposal will create, each of which should inform the overall cost-benefit analysis in the rule proposals.

4. So-called retail investor "survey" results on proxy advisors and shareholder proposals reported in the media and summarized in comments by others are misleading and unreliable, except in establishing that most retail investors are not well informed about the topics

Media reports have noted a press release touting the results of a "survey" of retail investors about proxy advisors and shareholders proposals.[xv] The SEC should be more than cautious in relying on any of the "results" in these reports or the underlying "study."[xvi] In fact, the "study's" most important finding – which rings true to us – is generally buried in or missing from the media reports and in the "study" write-up. That finding is that **more than 70% of respondents say they are either "not informed at all" about these topics or are only "slightly informed."** In other words, retail investors simply do not seem to know much about the topics, and therefore the rest of the supposed survey results should be treated accordingly. (Even

the 70% figure is likely too low; people have a well-known tendency to have misleadingly inflated opinions of their financial knowledge.)

A further reason to be highly skeptical about the "study" is that the underlying "survey" instrument is in fact a tool of persuasion – a "push-poll," in the jargon of political science. It is filled with examples of leading and loaded questions – precisely the kinds of questions that research on surveys suggests will generate biased and misleading results.[xvii] Examples of how the survey questions produce predictable bias include:

- Respondents are asked, for example:

  > "What is your level of knowledge about each of the potential issues? - ***Proxy advisor `reports contain errors***."

  The "study" asserts that such a question is part of a survey which presents "its descriptions of these issues and policies in a comprehensive, even-handed and objective manner." Presumably the idea is that this is a neutral question that does not prejudge whether proxy advisor reports contain errors. Yet the question contains the flat apparent assertion that they do. A respondent who either knows nothing about the topic, or is only "slightly informed" about the topic, could not but be biased by the very question itself, into believing that the asserted but unproven premise of the question is in fact true.

  To illustrate, the study's questions can be compared to this hypothetical survey question: "What is your knowledge level about the following issue? ***Antonin Scalia lied in his judicial opinions***." The very question suggests that Scalia in fact lied. Whether he did or not, the question leads the reader to think that he did. Any resulting answers will reflect that biasing impact. A more even-handed and objective survey question would be along the lines of "Some assert that Scalia lied; others say he never lied. How knowledgeable are you about that question?"

- Other Spectrem survey questions are similar, and contain the following assertions:
  - ***"Proxy advisors suffer conflicts of interest***."
  - ***"Proxy advisors refuse to engage issuers***."
  - ***"Proxy advisors lack transparency***."
  - ***"Proxy advisors enable "Robo-Voting***."

  Still other questions are structured in the following way: "How concerned are you about …" Then the "survey" inserts a negative descriptor of a possible problem with proxy advisors. The natural result will be to bias the respondents into thinking these "problems" are in fact true. Examples include:
  - "How concerned are you about proxy advisors **lacking transparency** in their recommendation process?"
  - "How much do you support the SEC adopting changes to **address the issue of inadequate transparency**?"
  - "How concerned are you with **errors within proxy advisor reports**?"
  - "How concerned are you with the **lack of engagement** from proxy advisors and companies?"

  Again, consider an analogous question: "**How concerned are you about Republican members of Congress routinely engaging in extortion?**" One could substitute Democratic in the same question if one wants. Either way, the question is not "even-handed and objective." It leads the

person hearing the question to think that the topic of the question is true, when it has not been shown to be.

- Another question in the survey is "To what extent do you support the SEC allowing **companies to review and provide feedback to proxy advisory firms**?," which misleadingly implies that companies already cannot review and provide feedback to proxy advisory firms. In fact, proxy advisors already do provide ways for companies to review and provide feedback.

- The survey also contains this sweeping and unqualified assertion: "Proxy advisory recommendations impact proxy voting for public companies – swinging a vote result by up to 25%." While "up to" makes this statement trivially true, the 25% figure is at best tendentious, and contrary to the findings of academic research nowhere noted in the survey.[xviii] Even if that research is not the last word on the topic, the idea that the flat statement contained in the "survey" is even-handed or objective is clearly wrong.

Additional problems with the "survey" include:

- When asking if respondents "agree" with elements of the SEC's proposed rules, it does not follow best survey practices of using a Likert scale with multiple categories (e.g., strongly agree, somewhat agree, neither agree nor disagree, somewhat disagree, strongly disagree). As a result, anyone who does not completely disagree gets classified as supporting the "reform" in question.

- There is no reporting of response rates or completion rates – we have no way of knowing how representative those who completed the survey are relative to those to whom it was offered or those who began it but did not complete it. These are basic elements of a reliable survey report.

In sum, neither the SEC nor anyone else should rely on the Spectrem "survey." One may usefully put the "survey" into the same category as the bogus and misleading "**Main Street investor" letters** touted by the SEC Chair at the meeting approving the proposed rules. These letters seem to have been part of the basis on which the SEC adopted the rule proposals, and yet turned out to be fake in both substance and origin – something that one widely read Wall Street wag called "**only-somewhat-fraudulent**."[xix]

5. The SEC's rule release does not discuss "regulatory failure" as a justification for proxy advisor proposal

At least one of our fellow IAC members, who did not support the IAC recommendation on these proposals, has said he believes the proposal regarding proxy advisors addresses a "regulatory failure" rather than a "market failure." His claim is that the SEC's own guidance (in the past) gave investment advisers a "free pass" on fiduciary duties as applied to voting, if they outsourced their voting decisions to proxy advisors, and that free pass has undermined private markets from their ordinary functioning, and has resulted in votes that do not further shareholder value.

We do not believe that that is a fair characterization of relevant law, and there is no reliable evidence that voting recommendations from proxy advisors generally or on average reduce shareholder value. But even if those claims were true, what is not debatable is that such claims are not included in the SEC's rule release. Nor does the economic analysis include the possibility of a regulatory failure in its baseline. Nor do the rule proposals in any straightforward way address such an asserted regulatory failure. Nor do the releases provide evidence that voting recommendations do not favor shareholder interests, nor do they provide evidence that

the summer guidance adopted by the SEC on this topic has not addressed any possible consequence of such an asserted regulatory failure.

Regardless of what the proposals are meant to address, whether market or regulatory failure, the current proposal and release does not clearly explain how they relate to any kind of failure in the current voting system, as the IAC's recommendations also emphasize.

6. Public comment period too short and arbitrarily timed

Finally, as do a majority of commenters who have commented on the timing in the rule proposals, we believe that the 60-day public comment period for the two releases is too short to allow for reasoned discussion and comment of what concededly are novel and complex rule proposals on topics of great importance and concern to investors. The comment period is the shortest possible comment period for a non-emergency rule proposal, and shorter than other rule proposals made close in time to these proposals,[xx] despite these proposals being long and complex. The comment period straddled the holiday season. Despite the majority of commenters who have commented in the timing of the comment period requesting an extension, the SEC has not extended the comment period. Based on these facts, if the SEC arbitrarily and capriciously wanted to leave as little time for constructive engagement in the issues raised by the proposals, by either the public or the IAC, it would have done nothing differently than it has.

Together, the above-reference SEC proposals have the potential to dramatically reshape how investors interact with and influence public companies and each other. At an absolute minimum, the Commission should ensure before moving forward that it has offered a fair and balanced presentation of the issues at stake. The current proposals fail to meet that standard, for the reasons discussed here and in the IAC recommendation. For these reasons, we urge the Commission to withdraw these proposals and reconsider them in light of these and the many other critical comments that have already been filed. We hope these comments prove useful in helping the SEC achieve reasoned and defensible outcomes in its work on the proxy system.

Sincerely,

John C. Coates IV
John F. Cogan Professor of Law and Economics
Harvard Law School

Barbara Roper
Consumer Federation of America

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[i] https://www.blackrock.com/corporate/literature/press-release/blk-vote-bulletin-exxon-may-2017.pdf; https://www.washingtonpost.com/news/energy-environment/wp/2017/05/31/exxonmobil-is-trying-to-fend-off-a-shareholder-rebellion-over-climate-change/. Note we do not mean to criticize BlackRock for its efforts in this area, which seem to us entirely aligned with shareholder and social value, but merely to use the example as a way of driving home the misplaced focus of the SEC in responding to company complaints about shareholder voting. On index funds and their influence more generally, see John C. Coates, The Problem of Twelve, Working Paper, available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3247337.

[ii] For more on this important topic, see the SEC IAC's Recommendation on "proxy plumbing" and other aspects of the proxy system: https://www.sec.gov/spotlight/investor-advisory-committee-2012/iac-recommendation-proxy-plumbing.pdf.

[iii] John Bogle, Stay the Course (Wiley 2018).

[iv] See John C. Coates, Towards Better Cost-Benefit Analysis: An Essay on Regulatory Management, 78 Law and Contemporary Problems 1 (2015); id., Cost-Benefit Analysis of Financial Regulation: Case Studies and Implications, 124 Yale Law Journal 882 (2014-2015).

[v] Current Guidance on Economic Analysis in SEC Rulemakings, Memo dated March 6, 2012, available at https://www.sec.gov/divisions/riskfin/rsfi_guidance_econ_analy_secrulemaking.pdf at 14.

[vi] Id. at n. 272. For the trade group's membership, see https://www.americansecurities.org/about. The only evidence cited by the SEC from a specific issuer provides an estimate of cost per resolution that is much lower – 50% lower, in fact. See https://www.sec.gov/comments/4-725/4725-5879063-188728.pdf (letter from Exxon claiming a $100,000 cost per resubmitted proposal). Even that letter provides no specific data or verifiable evidence, and should not be taken at face value, since the company could have provided verifiable evidence on the cost to it of handling proposals.

[vii] https://republicans-financialservices.house.gov/uploadedfiles/hhrg-114-ba16-wstate-dstuckey-20160921.pdf at 8.

[viii] Rel. No. 34-87458 at n. 312.

[ix] See https://www.sec.gov/rules/final/34-40018.htm#foot98 at text accompanying note 97.

[x] Rel. No. 34-87458 at n. 270.

[xi] E.g., id. at 49. The SEC's economic analysis does present data on how often resubmitted proposals obtain levels of support at 25%, id. at 133-34, but this analysis is ignored earlier in the release where the "need" for the resubmission rule changes is stated.

[xii] Id. at 91.

[xiii] Yonca Ertimur, Fabrizio Ferri, & Stephen R. Stubben, Board of Directors' Responsiveness to Shareholders: Evidence from Shareholder Proposals, 16 J. Corp. Fin.. 53 (2010).

[xiv] Vicente Cuñat, Mireia Gine, & Maria Guadalupe, The Vote Is Cast: The Effect of Corporate Governance on Shareholder Value, 67 J. Fin. 1943 (2012).

[xv] See, e.g., Jeff Berman, Retail Investors Overwhelmingly Support Proposed SEC Proxy Changes: Survey, ThinkAdvisor (Jan. 10, 2020) at https://www.thinkadvisor.com/.

[xvi] The "study" and a spreadsheet containing the "survey" questions are available at the website of the Spectrem Group.

[xvii] See, e.g., L.A. Aday and L.J. Cornelius, Designing and Conducting Health Surveys: A Comprehensive Guide. (3d ed. Jossey-Bass 2006) at 213 (discussing loaded questions); Best Practices for Survey Research and Public Opinion, American Association for Public Opinion Research, available at https://www.aapor.org/Standards-Ethics/Best-Practices.aspx#best5 ("Question wording should be carefully examined for special sensitivity or bias."); Fowler FJ. Survey Research Methods. (3d ed. Sage 2002).

[xviii] See, e.g., Stephen Choi, Jill Fisch & Marcel Kahan, *The Power of Proxy Advisors: Myth or Reality?*, 59 EMORY L.J. 869, 905–06 (2010) (the impact of proxy advisory firms' voting recommendations on actual voting outcomes is far less than commonly attributed).

[xix] See, e.g., https://www.bloomberg.com/news/articles/2019-11-19/sec-chairman-cites-fishy-letters-in-support-of-policy-change; https://promarket.org/fake-letters-poisoned-the-debate-on-secs-new-rules-on-shareholder-votes-and-proxy-advisory-firms/; https://www.bloomberg.com/opinion/articles/2019-11-19/the-ordinary-investors-aren-t-real.

[xx] E.g., Filing Fee Disclosure and Payment Methods Modernization, available at www.sec.gov/rules/proposed/2019/33-10720.pdf, filed Oct. 24, 2019, comments due Feb. 25, 2020; Investment Adviser Advertisements; Compensation for Solicitations, available at www.sec.gov/rules/proposed/2019/ia-5407.pdf, filed Nov. 4, 2019, comments due Feb. 10,

2020. The variation in the comment periods shows that the decision to impose the short comment period for the proxy advisor and shareholder proposal rule proposals was intentional.