Bricklayers & Trowel Trades International Pension Fund

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January 31, 2020

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

Re: File S7-22-19

Dear Secretary Countryman,

The Bricklayers & Trowel Trades International Pension Fund (IPF), representing over $1.5 billion in assets under management are writing to share their concerns about potential changes to the shareholder resolution process proposed by the Commission in Exchange Act Release No. 87457, "Amendments to Exemptions from the Proxy Rules for Proxy Voting Advice" (the "Release"). In our view, the changes proposed in the Release (the "Proposed Amendments"), for which the Commission has not established any need, would impose substantial burdens on proxy advisors without improving the quality of proxy voting advice, put a thumb on the scale for management, increase consolidation in the industry and undermine corporate governance. We urge the Commission not to adopt the Proposed Amendments.

Background

The IPF utilizes Segal Marco as proxy advisory and they vote execution services. The IPF is also an active shareholder through the Trowel Trades Large Cap Equity Index Fund. We utilize the services of Segal Marco as we lack in-house capacity for proxy voting, which involves complex analysis, requires technological expertise and occurs primarily during a compressed time period of April through early June. These resources allow us to satisfy our fiduciary duties to our participants and beneficiaries in a cost-effective way.

Those participants and beneficiaries are working people, the "Main Street" investors of whom Chairman Clayton often speaks. Like most Americans, they invest for retirement not by picking individual stocks, but through institutions like pension funds.

The Proposed Amendments

The Proposed Amendments would:

1. Define proxy advisor recommendations as "solicitations," within the meaning of the Commission's rules governing proxy solicitation; and
2. For proxy advisors wishing not to prepare and file at least one proxy statement on EDGAR for every meeting for which it makes recommendations, establish a burdensome system of mandatory pre-review(s) by companies of recommendations and compelled distribution of company disagreements.

The Commission has failed to satisfy the most basic elements of the economic analysis required under the Commission's own guidance[1] and judicial precedent[2] to support the Proposed Amendments. The Release:

- Does not clearly establish a need for the Proposed Amendments;
- Does not identify, analyze or weigh the benefits proxy advisors provide, which would be impaired by the Proposed Amendments;
- Does not show that the Proposed Amendments are well-tailored to address the problems they purport to address; and
- Does not identify, analyze or weighed the potential negative economic impacts of the Proposed Amendments.

As well, defining proxy voting advice as a form of proxy solicitation is at odds with the purpose of the proxy rules. Accordingly, we believe that the Commission should not adopt the Proposed Amendments.

The Release Does Not Take Into Account the Benefits Provided by Proxy Advisors

The Release gives short shrift to the benefits proxy advisors provide, downplaying those benefits and emphasizing the poorly-supported concerns that, in the Commission's view, justify the Proposed Amendments. This one-sided discussion violates the 2012 Guidance's mandate that "[t]he release should evaluate the costs and benefits even-handedly and candidly."[3] The Release notes that institutional investors "must manage the logistics of voting in potentially hundreds, if not thousands, of shareholder meetings and on thousands of proposals that are presented at these meetings in each year, with a significant portion of those voting decisions concentrated in a period of a few months."[4] The remainder of the Release, however, consists of a litany of problems companies have raised.

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[1] https://www.sec.gov/divisions/riskfin/rsfi_guidance_econ_analy_secrulemaking.pdf ("2012 Guidance").

[2] See cases discussed in 2012 Guidance, at 13, n.34.

[3] 2012 Guidance, at 14.

[4] Release, at 7.

Proxy advisors make it possible for fiduciaries like us to fulfill their fiduciary obligations under ERISA and similar statutes to vote proxies in a value-maximizing way. They work with clients to formulate their approach to various issues on which they are asked to vote, in proxy voting guidelines, and to update those guidelines in response to changes in empirical evidence, market practice and company behavior. They supplement clients' internal capacity, both in terms of expertise and workload. Proxy advisors provide a perspective that is independent of company management, directors and dissident shareholders/shareholder proposal proponents, all of whom have concrete, and often financial, interests in the outcomes of votes. Finally, proxy advisors play a key role in the corporate governance ecosystem, enabling shareholders to use their voting rights to hold management accountable and improve corporate governance.

The analysis in the Release does not assess the extent to which these functions would be impaired by the Proposed Amendments or weigh those impacts against the benefits the Commission claims would result from those changes.

The Release Does Not Adequately Analyze the Potential Negative Impacts of the Proposed Amendments

The Proposed Amendments are likely to have many negative impacts on our proxy advisors, the independence of proxy advisors, the market for proxy advisory services, and the corporate governance of public companies. The Release mentions some of these impacts, seeking comment on them, and ignores others entirely. What the Release does not do is weigh all of these negative impacts against the small and uncertain benefits of the Proposed Amendments.

There is no question that significant additional costs would result from imposing a requirement that proxy advisors allow companies to review recommendations, possibly twice, during an already-busy time of the year. The timing of the pre-review process would require that research and recommendations be produced more quickly after company proxy statements are filed, which could only be accomplished with more research staff. As well, the pre-review and response process, and the provision of company responses to clients, would impose substantial administrative burdens that could not be absorbed by current administrative staff.

Those costs cannot now be estimated with any precision. It is difficult to predict how often companies would provide feedback, how voluminous and complex such feedback would be and how much time it would take to prepare responses.[5] The extent of that burden largely depends on companies' decisions whether to use corporate funds to challenge proxy voting advice, which are out of proxy advisors' control.

Given the likely magnitude of these costs, proxy advisors would not likely be able to absorb them all and would likely end up passing along at least some of the increased costs to clients.[6] The pre-review process is also likely to inject delay. As a consumer of proxy advisor research, Segal Marco's ability to analyze ballot items on behalf of shareholders such as IPF depends on

[5] See Release, Question 30, at 62.

[6] See Release, at 119.

the timely receipt of such research, which we fear would be precluded by the Proposed Amendments. We also have a keen interest in the integrity of that research and are thus wary of any effort to advantage management's viewpoint.

We disagree with the Commission's claim that by "promot[ing] accuracy and transparency in proxy voting advice," the Proposed Amendments "could lead to an increased demand for voting advice from proxy voting advice businesses," thereby increasing competition.[7] As discussed above, we do not believe that the Proposed Amendments would improve the quality of proxy advice, and the additional burdens they would impose would almost certainly lead to costs being passed along to clients, shrinking the overall market for proxy advisory services. The Commission's analysis of anticompetitive effects of the Proposed Amendments is compromised by its emphasis on these unlikely possibilities. In light of the lack of demonstrated need for additional regulation and the poor fit between the Commission's ostensible objectives and the measures proposed in the Release, the Proposed Amendments thus would burden competition without serving the Exchange Act's purposes.

Another potential negative impact of the Proposed Amendments would be to advantage the viewpoints of corporate management. Given the small rate of factual errors, the pre-review process seems designed to give management more time to press its case, which it has already had ample opportunity to do in the proxy statement, while mandating that proxy advisors provide substantive feedback, even if management has raised the same issues multiple times. The entire process of pre-review and distribution of company responses would be triggered only by voting recommendations inconsistent with those made by management, imposing disproportionate burdens on such recommendations and illustrating that the Proposed Amendments are not content-neutral. That the Commission pats itself on the back for "leav[ing] the content of proxy voting advice entirely within the proxy voting advice business's discretion,"[8] citing its restraint as evidence that the independence of proxy advice would not be impaired by the Proposed Amendments, shows just how extreme the company position in this debate has become. Investors that submit shareholder proposals and receive unfavorable recommendations from the proxy advisors would not be provided with the same pre-review courtesy outlined for corporate management. Such a bias in management's favor would not benefit proxy advisory firms' clients such as us.

Proxy Voting Advice Should Not Be Defined as Solicitation

The Release proposes to amend Rule 14a-1(l)(1)(iii) to define "solicit" and "solicitation" as including "[a]ny proxy voting advice that makes a recommendation to a shareholder as to its vote, consent or authorization on a specific matter for which security holder approval is solicited, and that is furnished by a person that markets its expertise as a provider of such proxy voting advice, separately from other forms of investment advice, and sells such proxy voting advice for a fee."[9] The Commission argues that a proxy advisor "is conducting the type of

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[7] Release, at 110-111.

[8] Release, at 51 n.130; see also Release, at 108.

[9] See Release, at 136.

activity that raises the investor protection concerns about inadequate or materially misleading disclosures that Section 14(a) and the Commission's proxy rules are intended to address."

We disagree. Section 14(a) of the Exchange Act, and the federal proxy rules promulgated thereunder, are concerned with information provided to shareholders by parties with a stake in the outcome. Proxy advisors have no such stake, and, indeed, may recommend that two clients using different guidelines vote differently on the same proposal. Accordingly, defining proxy voting advice as solicitation is inappropriate.

The SEC's job is to protect investors and maintain well-functioning markets. We urge the SEC to protect the market mechanism tools available for shareholders to ensure that companies are transparent and accountable. It does not benefit the economy, companies or the capital markets to diminish these fundamental rights.

Robert Arnold
Trustee

Matthew Aquiline
Trustee