BMO Global Asset Management

Exchange House
Primrose Street
London EC2A 2NY

Tel: +44 (0)20 7628 8000
Fax: +44 (0)20 7628 8188

bmogam.com

The Honorable Jay Clayton, Chairman
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

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

Procedural Requirements and Resubmission Thresholds under Exchange Act Rule 14a-8 (File No. S7-23-19)

Dear Chairman Clayton,

I am writing to you on behalf of BMO Global Asset Management (BMO GAM), whose institutional and retail clients collectively represent over US$ 270 billion of assets. In addition, BMO GAM has been authorised to vote and/or engage in dialogue on behalf of a further 34 investment institutions with assets totalling over US$ 160 billion.

At BMO GAM, portfolio investment decisions are always made in the best interests of our clients. Supporting these investment decisions is the belief that prudent management of environmental, social and governance (ESG) issues can have an important impact on the creation of long-term investor value. The identification of financially material ESG issues forms part of our investment process, helping us to manage risk and support long-term returns. Beyond the management of opportunity and risk, we also see responsible investing and broader investment stewardship activities, including proxy voting at company meetings and direct engagement with companies, as part of our duty as an investor acting in the best interest of our clients, and as a participant in the global financial system. We believe that the work we do on advocating for better ESG performance and corporate governance practices improves the long-term performance of companies within our clients' portfolios and does not, as others have implied, impose a cost penalty for conducting these activities[1].

As we seek to best serve our clients through the effective execution of our stewardship activities, we are concerned with the proposals regarding the regulation of proxy advisers and additional restrictions to filing shareholder proposals, both of which will introduce overly burdensome requirements that will make our

[1] We have published a paper demonstrating this point: https://www.bmogam.com/us-en/individuals/news-and-insights/performance-with-principles-how-can-esg-investing-support-financial-returns/

stewardship commitments significantly more difficult to achieve and costly to deliver. We also consider that these proposals are looking to solve issues concerning either the accuracy of proxy advice or the usefulness of the shareholder proposal filling process that have either been misunderstood or grossly exaggerated. In this letter we wish to explain to you how we think that this is the case and would urge you to reconsider both sets of proposals.

BMO GAM's Comments on the Proxy Advice Proposal (S7-22-19)

The role of proxy advisers in our investment process and oversight procedures in place

It is our policy to vote at all shareholder meetings on behalf of our investment clients, and third-party clients where voting is requested. We apply a consistent philosophy and approach to corporate governance and the exercise of voting rights, as detailed in our Global Corporate Governance Guidelines[2]. These are reviewed annually to address developments in international governance practices and are based on overarching principles that we believe constitute good corporate governance practice.

As is common with other institutional investors of our scale, we vote these proxies with the assistance of proxy adviser firms, who provide us with administrative support, proxy research and implementation of our own in-house proxy voting policy. By means of example, we voted at over 11,000 company meetings in 2019 on a total of over 110,000 resolutions. We do not consider that our use of a proxy adviser out-sources our responsibility to exercise our votes in line with our clients' best interest. Conversely, we see them as a critical component in facilitating and executing our stewardship activity in a manner that is scalable, cost-effective and accurate.

We believe that we already have mechanisms in place to ensure the quality of research and accuracy of vote implementation by our proxy adviser, in line with the recently released SEC guidance[3]. This includes:

- We manually review proxy research content and the implementation of BMO GAM policies for a significant proportion of the meetings where we vote.
- We regularly audit the votes auto-executed under the voting policy to make certain that our voting policies are applied properly.
- We raise any issues we identify ahead of a shareholder meeting with the accuracy and completeness of proxy research and/or the correct application of our voting policies as soon as these are discovered and request immediate remedial action.

[2] https://www.bmogam.com/gb-en/intermediary/wp-content/uploads/2018/10/corporate-governance-guidelines-cgg.pdf

[3] https://www.sec.gov/news/press-release/2019-158

- We hold formal quarterly meetings with our proxy adviser, during which any issues, including the above, are raised on an ex-post basis and remedial actions and timelines are agreed for any systemic issues that may have resulted in the errors.
- We attend relevant annual policy roundtables hosted by our proxy adviser and provide input into their voting policy, their approach on engaging with issuers, and any proposed changes, all in an effort to ensure that they are guided by our views.

Given the steps already taken to ensure the quality and accuracy of our proxy adviser, as well as the relatively low error-rate (discussed below), we conclude that any additional regulatory action to further improve accuracy is unnecessary and will at best provide marginal improvements that are disproportionate to the cost that will be imposed on proxy advisers, investment managers and ultimately our clients.

The influence of proxy advisers has been exaggerated

We consider that the level of influence that proxy advisers have to impact voting on individual proposals at company meetings has been overstated within the SEC's own analysis. To this point we note that of ISS' 200 largest clients, 88%[4] apply their own custom policy recommendations and do not follow or apply the ISS benchmark recommendations.

Beyond the specific recommendations that proxy advisers make we also consider it to be inaccurate to conclude that investors themselves follow these recommendations blindly rather than taking them under advisement as part of their own decision-making process. An illustration of this point is that in 2019 ISS recommended against 13% of say on pay at top 3000 US companies, whereas the actual failure rate was 2%.

Our view is that to suggest that proxy adviser recommendations are a driver of vote outcomes confuses correlation with causation and that investors continue to exercise their own judgement on what is in the best interest of their clients, irrespective of specific vote recommendations. In fact, ISS clients' influence the development of ISS' benchmark policy through their policy consultation process, further emphasising this point.

The level of errors within their research has been inaccurately reported

We note that the SEC is "concerned about the risk of proxy voting advice businesses providing inaccurate or incomplete voting advice"; however, we would contest that the current error-rate within proxy research is significant proportional to the very substantial regulatory burden that would be introduced to improve it further. As an illustration of this we would point out that of 6,498 US company meetings that ISS analysed in 2019, only 48 recommendation changes resulted from correcting errors (0.73%)[5].

[4] https://www.issgovernance.com/file/duediligence/20200115_Client_Factsheet_Supplement.pdf

[5] See footnote 4.

The proposal for company review is impractical, will reduce direct engagement between companies and investors and compromise independence of proxy research

Our view is that the company review regime as detailed in the proposal will be impractical and, in some instances, not possible to implement when the actual time taken to do so is properly accounted for[6] or taking into account the timing of company meetings within a year condensed into the Spring proxy season[7]. It is unclear from the proposal whether proxy advisers would be required to submit only their benchmark research for company review or all of the research and vote recommendations that they produce, being either multiple off-the-shelf bespoke policies or the custom policy implementations for hundreds of their clients. If the requirement is intended to allow company review of all of a proxy advisers' output, then this would increase the workload for companies and proxy advisers exponentially. We would also have concerns that proprietary and confidential research that has been produced exclusively for ourselves would need to be shared outside our existing proxy adviser / client relationship.

On the area of timing, we would stress that given the highly concentrated nature of proxy season, there is already significant time pressures when proxy research is received and how long before client vote deadline decisions are needed to be made. By allowing companies such a long review window prior to publication (between 9 and 13 calendar days in total when the proposed number of business days are calculated), this will further condense the time that we have to review all of the information available and directly engage with companies to be sure that the decision that best meets our clients' interests is reached.

We also have concerns that the company review process would seriously compromise the independence of the research and recommendations that proxy advisers produce. We note that under FINRA Rule 2241 stock analysts are restricted from sharing their recommendations with companies, with any review (as authorised by their legal department) limited to the factual content of their work. Given this precedent and that the issue looking to be solved is factual accuracy, rather than matters of opinion, it is unclear why proxy advisers should be obliged to share their complete reports including their conclusions and recommendations, as opposed to just those parts containing just factual information.

As an alternative to the current proposals we would suggest that information be shared with companies *concurrently* with when it is published to clients and that companies only receive the factual information contained with these reports, rather than the conclusions and recommendations. We think that this would overcome some of our concerns whilst providing an additional mechanism where errors can be identified and corrected.

[6] Reference is made here to the comments from Glass Lewis that has detailed false assumptions and inaccurate calculations that have been made as part of the cost-benefit exercise: https://www.sec.gov/comments/s7-22-19/s72219-6617071-202957.pdf

[7] Of all the meetings of the 3,053 U.S. companies that BMO GAM voted in 2019, 2,312 (76%) took place during Q2.

These proposals would increase barriers to entry and ultimately lead to a monopoly

Given the global nature of our voting activities, currently only two proxy advisers, ISS and Glass Lewis, can deliver the scale that we require to executive our voting activities across all of our holdings per fiduciary duty to our clients. Amongst other things this is due to the significant barriers to entry that are already in place. By significantly increasing the regulatory burden on proxy advisers through increasing litigation risk and making their production cycle less efficient we think that the SEC is only increasing these barriers to entry further.

In turn our expectation is not only will these proposals lead to an increase in costs by proxy advisers to mitigate the need for additional liability insurance and headcount, but that this duopoly may soon become a monopoly, potentially further increasing costs. If there is an increase in cost for investment managers, then this would ultimately be passed onto our own clients. As investors committed to good stewardship in our portfolios and to fulfilling our fiduciary duties to our clients, we would not scale back on our voting activity and will continue voting in accordance with our guidelines at the shareholder meetings of all US companies where we have holdings.

BMO GAM's Comments on the Procedural Requirements and Resubmission Thresholds under Exchange Act Rule 14a-8

Our view is that the shareholder proposal process has made a positive impact on improving the ESG performance and corporate governance practices at U.S. companies, which in turn has led to us being invested in higher quality assets on behalf of our clients. As examples of this, climate scenario disclosure, classified board structures and proxy access were all the subject of shareholder proposals in the early stages of their adoption, but today we see their voluntary adoption by many companies as they gain acceptance by the broader market. Accordingly, we have concerns that the proposed changes to the process that will make it more difficult to submit and sustain proposals and therefore discourage this pattern in the future.

The current regime does not impose an inappropriate burden on companies

Firstly, we would note that the actual number of shareholder proposals that are voted on each year is relatively small, generally representing less than 2% of voting items at US shareholder meetings – with only 13% of Russell 300 companies receiving a shareholder proposal on average.

We would also point out that even if a shareholder proposal is passed by majority support, in most instances it is non-binding in nature, with the discretion on how and whether to act on the proposal remaining entirely with the company itself. We have seen this approach recently with "written consent" proposals passed at certain 2019 AGMs, such as Nuance Communications. Following consultation with shareholders decided that lowering the threshold to call special meetings was more effective at delivering the increase in shareholder rights that investors requested through supporting the original proposal.

Finally, we would argue that rather than being a cost to companies, the shareholder proposal process provides them an opportunity or platform to present their position on a specific subject to all investors. It also provides companies an avenue through which to engage directly with investors. As we have noted elsewhere[8], the withdrawal rate on all shareholder proposals reached a record high in 2019, with nearly half that were filed not included on the final ballot. This is further evidence that companies are more willing to engage proponents and negotiate terms, recognising that the filing process can facilitate co-operation and progress.

Shareholder proposals should not be stereotyped as addressing niche issues by special interest groups

We are concerned that by increasing the threshold for filing proposals beyond the current level of $2,000. This would result in many proposals that have, in previous years, received significant shareholder support, or even majority support, not appear on the ballot. We consider there to be growing acceptance in the investment community that proposals be judged on the merit of their content, irrespective of who it is that presents or files them. By means of example, shareholder proposals filled by so branded "Corporate gadflies,[9]" such as John Chevedden, Myra Toung, William Steiner, and James McRitchie, represented 32 out of the 52 shareholder proposals that received majority investor support in 2019.

In addition, we would highlight that the support for shareholder proposals on either environmental or social issues has never been higher, with an increasing recognition that these proposals are valuable in improving companies' risk management of these issues. For 2019 nearly half received significant support (defined as more than 30% votes in favour), which is an increase on the year before and a long way from the figures in 2010, when this was the case for only one in ten proposals[10].

Thank you for considering our views and should you wish to discuss this letter further then please do not hesitate to contact us.

David Sneyd
Vice President, Analyst, Responsible Investment

[8] https://www.bmogam.com/gb-en/intermediary/news-and-insights/2019-voting-season-review-us-and-canada/

[9] As commonly used in Charles M. Yablon, *Overcompensating: The Corporate Lawyer and Executive Pay*, 92 COLUM. L. REV. 1867, 1895 (1992); and Jessica Holzer, *Firms Try New Tack Against Gadflies*, WALL ST. J., June 6, 2011, http://online.wsj.com/article/SB10001424052702304906004576367133865305262.html.

[10] ISS Analytics