

February 2, 2020

Vanessa A. Countryman
Secretary
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-1090

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

Dear Ms. Countryman,

I appreciate this opportunity to comment on the above-mentioned SEC rule proposal concerning proxy voting advisors.¹ I am currently a Professor of Law at Vermont Law School. Prior to joining academia, I was an Associate General Counsel at Fidelity Investments. My areas of research include the intersection of mutual funds (and other collective investment pools) and corporate governance.

In 2016, I testified before, and offered written testimony to the House Financial Services Committee, concerning proposed legislation targeted at Proxy Advisory firms,² in 2009, submitted comments to the SEC concerning facilitating shareholder director nominations,³ and have published scholarly articles concerning institutional investors and proxy voting more generally.⁴

In brief, because I believe the proposal is ill-conceived, and seemingly designed to further the interests of issuers, not investors, I support the letters submitted by ValueEdge Advisors, the Council of Institutional Investors, T. Rowe Price, and the joint letter of Harvard Law Professor John Coates and Director of Investor Protection at the Consumer Federation of America Barbara Roeper (both members of the SEC's Investor Advisory Committee).⁵

Despite the stated purpose of this proposed rule, if implemented, it will not improve the ability for institutional investors to obtain “more accurate, transparent, and complete information on which to make their voting decisions.” Furthermore, the entire approach by the Commission appears to be based upon a false sense of the power and influence of advisory firms. In *A Defense of Proxy Advisors*, Professor George Dent examined the “charges leveled against proxy advisors and the new regulations proposed by their critics.”⁶ His article concluded that complaints are “mostly unwarranted” as “market forces minimize any problems with proxy

advisors.” In addition, Professors Stephen Choi, Jill Fisch, and Marcel Kahan in *The Power of Proxy Advisors: Myth or Reality?* found “a substantial degree of divergence [in voting mutual funds] from ISS recommendations, refuting the claim that most funds follow ISS blindly.”⁷

I encourage the Commission to give great weight to the views of institutional investors who rely on proxy advisory services. Notably, on behalf of CII, an organization representing institutions with combined assets under management of \$4 trillion, Executive Director Kenneth A. Bertsch and General Counsel Jeffrey P. Mahoney strongly opposed the release “in its entirety.”⁸

Of concern to CII, other institutional investors, and corporate governance experts is the proposal’s requirement that proxy advisors submit their recommendations to *issuers* for review in advance of providing them to investors. In his letter on behalf of T. Rowe Price, William J. Stromberg wrote that “we cannot support the Proposal because from both our perspectives, we find it to be unnecessary and have significant concerns with its potential to do more harm than good to the proxy voting and engagement process.” T. Rowe Price specifically opposed “the proposed issuer review periods. They are unworkable within the current time constraints of the intensely seasonal proxy voting cycle, likely to compromise the independence of proxy research, and have the very real potential to diminish the time needed for registered investment advisers to fulfill essential fiduciary obligations related to proxy voting as clarified by recent Commission guidance.”

Furthermore, managers of capital from abroad also find the proposed rule unworkable for this same reason. For example, several international institutional pension funds with assets under management of more than \$1 trillion submitted a comment letter stating, “[W]e are concerned that the Proxy Advisor Rulemaking contemplates a requirement that proxy advisors share advance copies of their recommendations with issuers. Proxy advisors are agents of institutional investors, not of issuers. We do not believe a mandatory process for prior review by issuers of the work product of their agents, the proxy advisors, would be desirable or helpful to the proxy voting process.”⁹

Similarly, more than 60 financial economists and corporate governance experts submitted a brief letter focused in part on the advance submission requirement. “[W]e disagree with the following proposed remedies: 1) forcing proxy advisors to share their opinions with managers ahead of time and 2) treating opinions on proxies as proxy solicitations. By increasing the cost of opining on proxy statements such proposals will only discourage new entry into the proxy advisory market and exacerbate the problem of market concentration in this sector.”¹⁰

In conclusion, I recommend that the SEC to withdraw this rule proposal and before moving forward on a new proposal, hold roundtables where institutional investors, academics, and the public have sufficient notice and opportunity to comment on what could be done to strengthen

the proxy advisory business, and express in detail the tremendous negative impact these proposed changes would have on proxy voting by institutional investors.

Thank you,

Jennifer Taub

¹ Amendments to Exemptions from the Proxy Rules for Proxy Voting Advice, Exchange Act Release No. 87,457, 84 Fed. Reg. 66,518 (proposed rule December 4, 2019),

<https://www.govinfo.gov/content/pkg/FR-2019-12-04/pdf/2019-24475.pdf>

² Written Testimony of Jennifer Taub before the United States House of Representatives Committee on Financial Services, Subcommittee on Capital Markets and Government Sponsored Enterprises, “Legislative Proposals to Enhance Market Capital Formation, Transparency, and Regulatory Accountability,” May 17, 2016,

https://financialservices.house.gov/uploadedfiles/05.17.2016_cm_jennifer_taub_testimony.pdf

³ Letter to Ms. Elizabeth M. Murphy, Secretary, U.S. Securities and Exchange Commission from Jennifer Taub, re Facilitating Shareholder Director Nominations, File No. S7-10-09

August 13, 2009, <https://www.sec.gov/comments/s7-10-09/s71009-127.pdf>

⁴ See, e.g., Jennifer Taub, *Able but Not Willing: The Failure of Mutual Fund Advisers to Advocate for Shareholders’ Rights*, 34 J. Corp. L. 843 (2009); Jennifer Taub, *Money Managers in the Middle: Seeing and Sanctioning Political Spending after Citizens United*, 15 N.Y.U. J. Legis. & Pub. Pol’y 443 (2012); and Jennifer Taub, *Access to the Mutual Fund Proxy*, Harv. L. Sch. Forum on Corp. Gov. & Fin. Reg. Blog, Sept. 22, 2010, <http://blogs.law.harvard.edu/corpgov/2010/09/22/access-to-the-mutual-fund-proxy/>

⁵ Letters available at <https://www.sec.gov/comments/s7-22-19/s72219.htm>

⁶ 2014 MICH. ST. L. REV. 1287,

<https://digitalcommons.law.msu.edu/cgi/viewcontent.cgi?article=1102&context=lr>

⁷ 59 Emory L.J. 869 (2010), https://scholarship.law.upenn.edu/faculty_scholarship/331

⁸ Letter to Vanessa A. Countryman, Secretary, U.S. Securities and Exchange Commission from Kenneth A. Bertsch, Executive Director, and Jeffrey P. Mahoney, General Counsel, Council of Institutional Investors, re File No. No. S7-22-19, January 30, 2020, <https://www.sec.gov/comments/s7-22-19/s72219-6729687-207381.pdf>

⁹ Letter to Vanessa A. Countryman, Secretary, U.S. Securities and Exchange Commission from Margriet Stavast-Groothuis, Senior Advisor Responsible Investment, PGM Investments, et al., December 11, 2019, <https://www.sec.gov/comments/s7-22-19/s72219-6526572-200433.pdf>

¹⁰ Letter to Vanessa A. Countryman, Secretary, U.S. Securities and Exchange Commission from Anat Admati and Luigi Zingales, et al, re File Number S7-22-19 Corporate Governance Scholars against the SEC Proxy Advisory Reform, January 15, 2020, <https://www.sec.gov/comments/s7-22-19/s72219-6668185-203962.pdf>