

February 3, 2020

Submitted electronically

Vanessa A. Countryman
Secretary
U.S. Securities and Exchange Commission
100 F St. NE
Washington, DC 20549

Re: File Number S7-22-19

Ladies and Gentlemen:

We submit these comments to express our support for the proposed rule amendments in Release No. 34-87457, *Amendments to Exemptions from the Proxy Rules for Proxy Voting Advice* (the “Proposing Release”). Based on our experience with proxy advisory firms, we believe these rule amendments, if adopted, will enhance transparency of conflicts of interest, promote accountability by these firms, and ensure that investors have access to more, and more accurate, information regarding the matters upon which they are entitled to vote. We appreciate the work the Commission has put into this matter.

As the Proposing Release points out, investment advisers making decisions on behalf of other investors (including retail investors) and other institutional investors control approximately 70-80% of the market value of U.S. public companies, and many of these institutional investors use the services of proxy advisors to assist them in making voting decisions. Researchers at George Mason University’s Mercatus Center have estimated that ISS and Glass Lewis together control 97% of the market for proxy advisory services.¹ Due to the significant influence ISS, Glass Lewis, and other proxy advisory firms wield, it is critically important to ensure that their voting recommendations are based on materially complete and accurate information, including with respect to potential conflicts of interest.

We would like to highlight a couple of specific concerns the proposed rule amendments help to address. First, not all proxy advisors provide companies with an opportunity to clarify or correct perceived factual, interpretive or methodological errors in reports in advance of providing those reports to clients. In some cases, companies are unable to view the proxy advisor’s report even after it has been provided to clients; only the voting recommendations are made available. This has been our recent experience with respect to Glass Lewis’s reports. For those proxy advisors that do provide an opportunity for advance review and comment, such as ISS, the review time is generally short and determined by the proxy advisor in its discretion. Furthermore, to the extent the company’s responses

¹ James K. Glassman and Hester Peirce, *How Proxy Advisory Services Became So Powerful*, Mercatus on Policy (June 2014), available at <https://www.mercatus.org/system/files/Peirce-Proxy-Advisory-Services-MOP.pdf>.

(including any disputes regarding the facts of the report) are not incorporated into the report, in our experience they generally are not communicated by the proxy advisor to shareholders.

When a proxy advisor's recommendations are based on information that is different from the subject company's public disclosures, it creates the risk that its clients are receiving information that is confusing at best and potentially misleading. For example, we have sought on more than one occasion to clarify that Charter has outstanding certain securities that are convertible or exchangeable into 11.5% of our Class A Common Stock and carry economic and voting rights on an as-converted basis. In both our proxy statement and in the Schedule 13D filed by the holder of these convertible or exchangeable securities, the holder's ownership is presented on an as-converted and as-exchanged basis. However, ISS reports our market capitalization based solely on the public float, which does not include the value of this 11.5% interest. Several times, we have requested ISS to include the full capitalization in its reports, but they have been unwilling to provide this clarification.

Another example: we have disputed the characterization of one of our board members as "overboarded" on the grounds that most of the companies on whose boards he serves are portfolio companies, so that a substantial portion of his job responsibilities include this board work. However, a proxy advisor consistently recommends votes against this director and has not clarified in its report that this arrangement is distinguishable from other, more general, overboarding situations where directors serve on multiple boards that are unrelated to the director's full-time employment.

We agree with the view expressed in the Proposing Release that providing companies with an opportunity to review and provide feedback on proxy voting advice will facilitate improved dialogue between proxy advisory firms and companies. We also strongly support the proposed rule permitting companies to request that proxy advisory firms provide a hyperlink or other analogous means of making a company's written statement regarding the proxy advice available to recipients of the proxy advice. While companies can communicate with shareholders through other means, the impact of a company's response to particular proxy voting advice, and the likelihood that it will be seen and considered by shareholders, is significantly increased when it is available in conjunction with the advice itself rather than in an unrelated location.

We also agree that the standards the proxy advisory firms use to evaluate annual meeting agenda items are not always transparent or fully disclosed to investors. The differences between proxy advisory firms' internal standards and the applicable listing standards or SEC rules are not always clearly conveyed. We share the Commission's concern that such omissions create a "risk that the clients may make their voting decisions based on a misapprehension that a registrant is not in compliance with the Commission's standards or requirements."² We support the proposed inclusion in Rule 14a-9 of additional guidance regarding the types of information that a proxy advisor may need to disclose to ensure that its advice is not misleading.

Finally, we note that proxy advisory firms engage in multiple related business activities, including the sale of governance and compensation advisory services to the public companies. Because of the obvious potential for conflicts of interest, we believe that it is important for the protection of

² Proposing Release at 70.

investors to require disclosure of such conflicts of interest when they arise. Therefore, we support the proposed amendments requiring such disclosures.

In sum, we support the rule amendments put forth in the Proposing Release. Together, we agree that these proposed amendments will “improve the overall mix of information available to the clients of proxy voting advice businesses”³ and facilitate better, more accurate disclosures by proxy advisory firms.

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We appreciate the opportunity to submit comments on the Proposing Release. If the Staff has any questions about this letter, please contact me at [REDACTED].

Sincerely,



Richard R. Dykhouse

³ Proposing Release at 54.