



February 3, 2020

Re: Proposed Rule

**File No. S7-22-19**

Release No. 34-87457

**Amendments to Exemptions from the Proxy Rules for Proxy Voting Advice**

Vanessa Countryman, Secretary  
Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549-0609

Dear Secretary Countryman,

Thank you for the opportunity to comment on File No. S7-22-19: Amendments to Exemptions from the Proxy Rules for Proxy Voting Advice. **The proposed rule changes outlined in File No. S7-22-19 should not be adopted.**

**Mission and Process**

The proposed rule changes in File No. S7-22-19 should never have moved forward, albeit with the narrow 3-2 Commission vote. The rules changes purport to protect investors, which is arguably the most important mission of the SEC. But most investors, particularly those that the SEC says (on page 10 of File No. S7-22-19) it is “especially” interested in protecting, investment advisers that use proxy advisory firms, don’t agree that these rules changes protect them --and they don’t want the changes. Perhaps if the SEC’s own Investor Advisory Committee had been rigorously consulted in advance, we would not now be confronting these proposed rule changes. Now that the Investor Advisory Committee has had an opportunity to weigh-in, we know that the Committee has expressed extreme displeasure with the proposal, by a healthy 2 to 1 margin, (voting 10 to 5).

**Here’s why the proposed rules changes should not move forward.**

- The rules changes purport to protect investors. But most investors that use proxy advisory firms don’t agree. And they don’t want the changes.
- The arguments for the changes expose foundational problems in corporate disclosure and SEC enforcement that must first be addressed.

- The changes are unfair to the small set of advisors targeted and would set a dangerous precedent if enforced on other advisors.

Let's look at the issues and SEC File No. S7-22-19 says in more detail.

### **Foundational Problems**

According to SEC File No. S7-22-19, "It is vital that proxy voting advice be based on the most accurate information."

I absolutely agree that all advice including proxy voting advice should be based on the most accurate information.

Unfortunately, the most accurate information isn't always available – it is highly dependent on the truthfulness and forthrightness of corporate reporting/disclosure – and underpinning that, SEC enforcement.

But SEC enforcement of corporate disclosure has not been robust and corporate reporting/disclosure cannot be relied upon. Here are some examples:

- Without robust enforcement, some boards and management teams have adopted a lax attitude toward disclosure. A major utility board member told me that if they had to disclose on a certain matter, "we'd just make something up." Companies change/update information in the proxy from year to year without flagging the change/update. Companies untruthfully claim independence of committees or board members.
- Information provided by corporations on board member attendance is a key piece of information used by investors voting their proxies. As such, proxy advisory firms use this information in providing information to their clients. But currently corporations can report whatever they'd like related to board member attendance because enforcement of this required information is not reviewed nor is its accuracy enforced by the SEC *at all*.
- "The widespread practice of earnings management" is well-known and the subject of much research and related reports. The enforcement of financial statement accuracy is weak. Consider the details of the so-called London Whale disclosures. As the PCAOB has found, auditors are often conflicted and sloppy. Corporations continue to bury information in footnotes and as Andy Fastow points out earnings manipulation continues post-Enron. Yet financial statement accuracy is vital to determining votes on many matters.

I support everyone working from accurate information. Proxy advisors are reliant on corporate disclosures. The investing public relies on the SEC to ensure the disclosures are accurate.

Of course, proxy advisors need to use accurate information. But for them to have a chance of using accurate information, the SEC needs to adopt strong enforcement of corporate reporting and disclosure -- and corporations need to step up their efforts and cleanse their cultures, their boards and their compensation performance metrics to ensure production of more accurate information. It makes no sense to engage in asking corporations to verify information back to the proxy advisor, which investors can't be sure were accurate in the first place.

Before rules related to the proxy advisors are considered, the SEC needs to restore confidence in the accuracy of corporate reporting.

As a footnote here, I observe that the SEC itself utilized pertinent statistics from proxy advisor ISS in its File No. S7-23-19 economic analysis.

In contrast, the SEC has used a poorly designed research study which has been evaluated (and criticized) by members of the Investor Advisory Committee in their comments.

### **Fairness and Precedents**

Many individuals, often attorneys, provide advice on proxy voting matters. Working for corporations, they craft responses, for example, in the proxy that are used to influence shareholders' votes. If proxy advisory firms are subject to new standards, shouldn't the advisors hired by corporations that provide advice to shareholders in the proxy in the form of corporate recommendations on proxy matters be subject to the same transparency tests?

Perhaps attorneys advising companies should be required to ensure the information they provide is accurate by checking their statements in advance with the shareholder proposer and conducting audits of the information on which they rely?

A perception of unfairness pervades when certain proxy information advisors may say what they will – but proxy advisory firms hired by investors are held to strict account.

### **Counting the votes**

The need for accurate information before voting is vitally important. But after the votes come in, we are still left with no assurance of the accuracy of the vote counts themselves. The SEC has continued to drag its feet by not addressing the issues of proxy plumbing and the accuracy of the vote counts. This must be addressed.

Before the SEC moves forward on any proposed rules changes impacting proxy advisory firms, the SEC should address the foundational problems of inaccurate corporate disclosure, the issues of fairness and applicability to other advisors, and the issues of vote counts (proxy plumbing).

Please let me know if I can answer any questions.

Sincerely,



Eleanor Bloxham

CEO, The Value Alliance and Corporate Governance Alliance

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