



550 W. Washington Blvd, Suite 900 Chicago, IL 60661  
T 312.575.9000  
F 312.575.0085  
segalmarco.com

February 3, 2020

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

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

Dear Secretary Countryman:

Segal Marco Advisors (“Segal Marco”) appreciates the opportunity to provide comments to the Securities and Exchange Commission (the “Commission”) regarding its proposal to amend the shareholder resolution process proposed through the Securities Exchange Act of 1934 (the “Exchange Act”) Release No. 87457, “Amendments to Exemptions from the Proxy Rules for Proxy Voting Advice” (the “Release”) dated November 5, 2019. We commend the Commission for reviewing aspects of these rules: however, as discussed in further detail below, we have concerns about the changes proposed in the Release (the “Proposed Amendments”). These include a concern if adopted as currently written, the Proposed Amendments would be unduly burdensome on *proxy voting advice businesses* (also referred to in the Release as “proxy advisory firms” or “proxy advisors”) without improving the quality of proxy voting advice. We further worry that the Proposed Amendments would not benefit the investing public, but rather would give further influence and control to corporate management of the very companies to which the proxies relate, thus leading to further consolidation in the industry. Moreover, we are of the view that there should be a more thorough analysis to determine whether there is sufficient evidence to support the need to adopt such Proposed Amendments in the first place. Finally, we believe that the SEC’s concerns about proxy voting advice businesses do not apply to Segal Marco because its proxy services are distinct from firms, like ISS and Glass Lewis, which actually provide advice to clients about how to vote at shareholder meetings. Despite being named in the Release, Segal Marco should not be deemed a proxy voting advice business, as defined by the Proposed Amendments.

We urge the Commission to reconsider the Proposed Amendments and either take no further action or, if moving forward with final rules, narrowly tailor the Proposed Amendments to address more closely the Commission’s concerns about proxy voting advice, and exclude firms from the scope of the rule if they do not provide proxy advice, such as Segal Marco.

## **Background**

Segal Marco<sup>1</sup>, a registered investment adviser under the Investment Advisers' Act of 1940 (the "Advisers Act"), provides proxy vote execution, reporting, and other services to private and public pension funds, in its capacity as fiduciary under the Employee Retirement Income Security Act of 1974 ("ERISA") and similar state laws. Our clients hire us because they lack in-house capacity and desire specialized expertise to cast proxy votes, particularly during the compressed time period of April through early June. Our experience and resources allow our clients to satisfy their fiduciary duties to their participants and beneficiaries in a cost-effective way.

We do not provide voting recommendations to our clients, with extremely limited exceptions. In other words, there is no advance communication, written or oral, setting forth our recommendation on how to vote at a meeting on our clients' behalf. We determine how to vote, using the proxy voting guidelines adopted by each client, as well as research purchased from multiple sources, and submit those votes electronically on behalf of the client. Our clients do not review the votes before they are cast. Only after all votes have been cast within a given calendar year do clients receive annual reports detailing how we voted on every ballot item. These reports allow clients to provide feedback to us on our application of the guidelines, which can then be incorporated into the voting guidelines, as necessary.

In this sense, we act as a *proxy voting agent* rather than as a *proxy voting advice business*. Consequently, since our clients do not receive recommendations or a pre-populated ballot prior to our execution of their votes, we believe that our services would not fall within the definition of "solicitation" contained in the proposed Rule 14a-1 because. Rule 14a-1(l)(1)(iii), as currently drafted, would be inapplicable to our business because Segal Marco does not offer any "communication... reasonably calculated" to influence our client's voting decision.

Our clients' 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. Chairman Clayton has recognized the Commission's responsibility to such investors: "Actually, the direct retail money is small but, you know, channeling after mutual funds or other things, it's a lot. And so at the Commission, we should be looking at that audience when we're making decisions."<sup>2</sup> We believe that if adopted as proposed, there would be significant negative effects on us (and fiduciary proxy voting agents such as us) and more significantly, our clients. In sum, we are concerned the Proposed Amendments would harm the small investors the Commission is focused on protecting, as discussed further below.

## **The Proposed Amendments**

The Proposed Amendments would:

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<sup>1</sup> Segal Marco Advisors is the trade name of Segal Advisors, Inc. (CRD# 114687 / SEC# 801-61280).

<sup>2</sup> Transcript, "Perspectives on Securities Regulation Featuring a Conversation With U.S. Securities and Exchange Commission Chairman Jay Clayton," Brookings Institution (Sept. 28, 2017) ([https://www.brookings.edu/wp-content/uploads/2017/10/es\\_20170928\\_securities\\_clayton\\_transcript.pdf](https://www.brookings.edu/wp-content/uploads/2017/10/es_20170928_securities_clayton_transcript.pdf)).

1. Define proxy vote 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 requiring pre-review(s) by companies, and other persons soliciting proxies, of recommendations, and distribution of company comments and counterpoints to these recommendations.

Although the Commission conducted an economic analysis to assess the impact of the Proposed Amendments, we believe that the analysis does not sufficiently satisfy the standards for rulemaking pursuant to the Commission’s guidance<sup>3</sup> and judicial precedent.<sup>4</sup> The Release:

- Applies the terms “proxy voting advice business” and “proxy solicitation” in an overly broad and inconsistent manner;
- Does not clearly establish a need for the Proposed Amendments;
- Does not adequately consider the benefits proxy advisory firms 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 weigh the potential negative economic impacts of the Proposed Amendments.

Accordingly, we urge the Commission to reconsider the Proposed Amendments and either take no further action or, if moving forward with final rules, narrowly tailor the Proposed Amendments to address more closely the Commission’s concerns about the accuracy and transparency of proxy voting advice, and exclude firms from the scope of the rule if they do not provide proxy advice or solicit proxy votes.

### **The Release Applies the Terms “Proxy Voting Advice Business” and “Solicitation” in an Overly Broad and Inconsistent Manner**

The Release defines a “*proxy voting advice business*” as any firm or person who sells or markets “*proxy voting advice*,” which itself refers to “the voting recommendations provided by proxy voting advice businesses on specific matters presented at a registrant’s shareholder meeting... along with the analysis and research underlying the voting recommendations...”<sup>5</sup> Based on these

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<sup>3</sup> Memorandum to Staff of the Rulewriting Divisions and Offices from the Division of Risk, Strategy and Financial Innovation and Office of General Counsel re: Current Guidance on Economic Analysis in SEC Rulemaking, at 1 (Mar. 16, 2012) [https://www.sec.gov/divisions/riskfin/rsfi\\_guidance\\_econ\\_analy\\_secrulemaking.pdf](https://www.sec.gov/divisions/riskfin/rsfi_guidance_econ_analy_secrulemaking.pdf) (“2012 Guidance”).

<sup>4</sup> See cases discussed in 2012 Guidance, at 13, n.34.

<sup>5</sup> See Release, at 8.

definitions, as well as the Commission's stated concerns about inaccuracies and lack of transparency associated with proxy voting advice, we believe that the Proposed Amendments, if adopted, should only cover a limited subset of the firms that provide proxy voting services. More specifically, we request that the Commission exclude from the Proposed Amendments any businesses that vote solely on behalf of clients, in accordance with such clients' preset voting guidelines, based upon third-party research. We understand that, by issuing the Proposed Amendments, the Commission is attempting to reduce inaccuracies and increase transparency related to the provision of proxy voting advice. These goals are admirable; however, these issues do not apply to proxy voting agent businesses that do not offer clients proxy voting advice. For this reason, proxy voting agents should be carved out of any version of the Proposed Amendments, if adopted.

We are also concerned because the Release names Segal Marco, and refers to our proxy voting agent business as a proxy voting advice business.<sup>6</sup> As discussed above, we believe that Segal Marco should not be characterized as a proxy voting advice business, because we do not provide voting recommendations to clients. We note that the Release does not mention similar businesses such as equity managers, despite the fact that they also vote proxies on behalf of shareholders. We feel that the Release applies the proxy voting advice business definition inconsistently by discussing Segal Marco, while omitting reference to businesses we view as being truly analogous to ours. We ask that the Commission remain conscious of clearly and consistently distinguishing between businesses that engage in selling and marketing proxy voting advice and those that do not, when applying and enforcing any version of the Proposed Amendments.

In addition, 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."<sup>7</sup> The Commission argues that a proxy advisory firm "is conducting the type of 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 voting agents, such as Segal Marco, have no such stake in voting and are bound by fiduciary obligations to cast votes in their clients' best interest and in accordance with those clients' voting guidelines. Proxy voting agents do not have discretion to deviate from a client's voting guidelines and implement their own agendas. The only reason why a proxy voting agent would vote differently for two separate clients on the same proposal is because the clients provide the proxy voting agent with two distinct guidelines that the firm must follow.

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<sup>6</sup> See Release, at 83-88.

<sup>7</sup> See Release, at 136.

Accordingly, it is our view that applying the term solicitation to proxy voting agents is inappropriate.

**The Release Does Not Make the Case That Additional Regulation of Proxy Advisors is Necessary or Establish the Requisite Economic Baseline**

According to the 2012 Guidance, the Commission must “[c]learly identify the justification for the proposed rule” and establish the economic baseline, “the best assessment of how the world would look in the absence of the proposed action.”<sup>8</sup> At the outset, it is important to note that proxy advisory service clients have not publicly called for further regulation of proxy advisors. Nor have our clients indicated that they are disappointed with the quality, transparency or completeness of our work. The impetus for rulemaking has come from companies, led by the very boards and management teams that have personal interests in matters on which proxy advisors make recommendations. That fact alone should give one pause.

The Commission frames the problem it is trying to solve as “the risk of proxy voting advice businesses providing inaccurate or incomplete voting advice (including the failure to disclose material conflicts of interest) that could be relied upon to the detriment of investors.”<sup>9</sup> Thus, the fundamental questions are whether material inaccuracies are prevalent in proxy voting advice, and whether proxy advisory firms fail to disclose conflicts of interest to their clients.

The Release contains numerous references to company claims that material inaccuracies, incompleteness and “methodological weaknesses” are unacceptably common in proxy advice. For example:

- Companies “remain concerned” about their limited ability to provide feedback that “might address errors, incompleteness, or methodological weaknesses in proxy voting advice.”<sup>10</sup>
- “[I]n recent years concerns have been expressed by a number of commentators, particularly within the registrant community, that there could be factual errors, incompleteness, or methodological weaknesses in proxy voting advice businesses’ analysis and information underlying their voting advice that could materially affect the reliability of their voting recommendations...”<sup>11</sup>
- Table 2 contains figures representing “Registrant Concerns Identified in Additional Definitive Proxy Materials”<sup>12</sup> derived from additional definitive proxy materials filed by registrants and categorizes them by type but does not make any effort to determine the validity of the concerns that purportedly involve factual errors.<sup>13</sup>

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<sup>8</sup> 2012 Guidance, at 5-6.

<sup>9</sup> Release, at 11

<sup>10</sup> Release, at 40; see also Release, at 102 (similar).

<sup>11</sup> Release, at 39.

<sup>12</sup> Release, at 96.

<sup>13</sup> As we discuss below, we believe that analytical errors, methodological concerns and policy disputes involve companies disagreeing with an approach to an issue, which is not the same as a factual error.

However, it is important to note that while the Commission cites these companies' claims, it never assesses their validity or strength. For instance, the Commission does not address what an acceptable error rate would be.<sup>14</sup> Without such a reference point, it is not possible to characterize the current error rate as excessive. The Commission seemingly based its decision to establish the Proposed Amendments not on its own determination that proxy advisory service clients are receiving an unacceptably large amount of materially inaccurate or incomplete information, but rather on the mere existence of the "concerns" the Release repeatedly cites:

- "In light of these concerns, we are proposing to require that persons who provide proxy voting advice within the scope of proposed Rule 14a-i(1)(1)(iii)(A) include in such advice (and in any electronic medium used to deliver the advice) the following disclosures..."<sup>15</sup>
- "In light of these concerns, we are proposing amendments to the federal proxy rules that are designed to enhance the accuracy, transparency of process, and material completeness of the information provided to clients of proxy voting advice businesses when they cast their votes..."<sup>16</sup>

The Commission may not, under the 2012 Guidance and binding judicial precedent, abdicate its responsibility to establish the justification for a new rule in this way. Requesting comment about error rates only after proposing intrusive and costly rule changes puts the cart before the horse, so to speak. How can the Commission assert that the Proposed Amendments will protect investors and fulfill the Commission's other mandates, without determining whether a problem actually exists? How can the Commission decide whether an alternative is "reasonable" without knowing the extent of the problem it is supposed to solve? The Release asks "To what extent would the benefits of more reliable and complete voting advice being provided to investment advisers and other clients of proxy voting advice businesses benefit investors?"<sup>17</sup> It is impossible to provide a precise answer to this question without a full understanding of the current reliability of proxy voting advice.

In fact, a detailed examination of the sources cited by companies casts doubt on their assertions. The 2018 study sponsored by the American Council on Capital Formation ("ACCF"), cited by supporters of greater proxy advisor regulation, reviewed supplemental proxy materials filed in 2016, 2017 and most of 2018 by companies in response to proxy advisor recommendations, and found that 39 filings asserted factual errors.<sup>18</sup> In 2018 alone, Segal Marco voted on 32,793 ballot items at U.S. company shareholder meetings; 39 errors out of nearly three years of meetings (close to 90,000 ballot items) comes out to a .04% error rate, four in every 10,000 ballot items.

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<sup>14</sup> In our view, an error rate of zero in a business that extracts, parses and analyzes the quantity of data involved in providing proxy voting advice, is unrealistic.

<sup>15</sup> Release, at 30.

<sup>16</sup> Release, at 11.

<sup>17</sup> Release, at 118.

<sup>18</sup> Frank M. Placenti, "Are Proxy Advisors Really a Problem?" at 11 (2018) ([https://accfcorp.gov/wp-content/uploads/2018/10/ACCF\\_ProxyProblemReport\\_FINAL.pdf](https://accfcorp.gov/wp-content/uploads/2018/10/ACCF_ProxyProblemReport_FINAL.pdf)).

Similarly, the Release includes a Table<sup>19</sup> with slightly different (but still relatively small) figures of 24, 13 and 17 for factual errors in filings in 2016, 2017 and 2018, respectively.<sup>20</sup>

We are also skeptical of company claims of outright error. In our experience, what companies characterize as “error” is often a difference of opinion regarding application of standards in proxy voting guidelines. For example, our guidelines provide that in deciding how to vote on golden parachutes in connection with mergers or acquisitions, we consider whether accelerated vesting of stock awards is “excessive.” We may draw that line in a different place from where the subject company would draw it, and neither of us is committing an error. Likewise, companies argue that some things about their business, board, management team or compensation program are special and thus should not be evaluated using standard proxy voting guidelines. That claim does not involve error, but rather disagreement about the suitability of a particular guideline, or the use of guidelines more generally. The ACCF study is telling in this regard: it defines “serious disputes” as “problems...often stemming from the ‘one-size-fits-all’ application of the proxy advisor’s general policies.” An example given of an “analytical” error is use of “incongruent” (i.e., different from the company’s) peer group data.<sup>21</sup> This leads us to believe that these disputes almost always involve differences in judgment rather than factual error.<sup>22</sup>

Supporters of additional regulation point to the alignment between proxy advisor recommendations and shareholder voting behavior to cast aspersions on shareholders’ use of proxy advisors and argue that the need for reform is especially urgent.<sup>23</sup> Such arguments, which portray shareholders as being blindly led by proxy advisors, disregard the dynamic nature of the proxy advisor-client relationship. Proxy advisors do not unilaterally dictate the standards used to make voting decisions. After all, proxy advisors are hired to implement their clients’ view of how companies should be governed to maximize value creation. Shareholders provide feedback on guidelines and may switch guidelines (where a proxy advisor supports multiple policies), hire a proxy advisor to vote the shareholder’s own guidelines (where an advisor supports custom voting) or switch proxy advisors if its advisor’s views are out of step with its own. A high degree of alignment should be expected, rather than surprising.

Overall statistics on alignment are not illuminating because the vast majority of ballot items analyzed by proxy advisors are routine and, indeed, usually voted in accordance with management recommendations. Out of the 32,793 U.S. ballot items Segal Marco voted in 2018, 68% were uncontested director elections and 9.3% were votes to ratify the auditor. Shareholder proposals, the most contested category of votes, accounted for only 1.9% of U.S. ballot items we voted. Outside the United States, an even higher proportion of ballot items are routine, as

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<sup>19</sup> We note that this table is not discussed in the portion of the Release that sets out the problem the Proposed Rules are intended to solve, but instead appears in a section of the Release discussing the timing considerations associated with the proposed pre-review process.

<sup>20</sup> We are unable to confirm the validity of any of these factual errors due to the unavailability of the underlying data.

<sup>21</sup> Placenti, *supra* note 16, at 11.

<sup>22</sup> *See* Release, Question 24, at 60.

<sup>23</sup> *E.g.*, Comment of Paul Rose (<https://www.sec.gov/comments/s7-22-19/s72219-6429308-198569.pdf>)

shareholders must approve such mundane matters as approving the financial statements, appointing the chair of the annual general meeting and approving dividends.

In addition to claiming that proxy voting advice contains an excessive number of errors, the Commission also asserts that proxy advisory services clients do not “have an efficient and timely way to obtain and consider any response a registrant or certain other soliciting person may have to such advice.”<sup>24</sup> We disagree with this assertion. As the Release notes, companies can – and do – set forth their views on proxy advisor recommendations in supplemental proxy materials, and a shareholder can maintain standing searches for EDGAR filings on companies of interest and receive an alert as soon as a filing is made. Once they receive the proxy advisor’s recommendation, proxy advisor clients can also reach out to the company’s investor relations departments or its proxy solicitor, as identified in the proxy statement, to learn the company’s views. None of those avenues requires significant time or resources.

Although the case for regulation depends on the adequacy of current measures, the Commission did not properly address the forces currently shaping proxy advisors’ performance. In general, investment advisers have strong legal and financial incentives, including fiduciary obligations, to ensure that their work is of high quality. The competitive market for proxy advisory services also incentivizes proxy advice businesses to provide accurate and transparent services. It is relatively easy to switch proxy advisors; indeed Segal Marco has subscribed and unsubscribed from multiple service providers since it began voting proxies for its client in 1989. The Release acknowledges that “communication between proxy voting advice businesses and registrants may have improved over time.”<sup>25</sup> The Release dismisses these initiatives, justifying regulation with the conclusory assertion that “these existing practices may be inadequate to address registrants’ and others’ concerns” and that “many registrants remain concerned about [their] limited ability...to provide input.”<sup>26</sup> Registrants’ “perception” that existing opportunities for review are not “meaningful” is also cited.<sup>27</sup> The question for the Commission, though, is not whether companies view existing opportunities to provide feedback as ideal, but rather whether a market failure, in fact, exists.

In our view, the economic analysis is inadequate because it fails to demonstrate that proxy advice businesses make excessive material errors and fails to consider such firms’ incentives to be accurate and transparent. In *American Equity Inv. Life Ins. Co. v. SEC*,<sup>28</sup> the US Court of Appeals for the District of Columbia Circuit held that the SEC’s economic analysis of a rule bringing certain insurance products within the coverage of the federal securities laws was inadequate because it did not measure the effect of the rule against an established baseline. The Commission had predicted that investors would make better decisions with additional disclosure, but did not assess “whether, under the existing regime, sufficient protections existed to enable investors to make informed investment decisions and sellers to make suitable recommendations to investors.”<sup>29</sup> The same shortcoming is present in the Release.

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<sup>24</sup> Release, at 27.

<sup>25</sup> Release, at 40.

<sup>26</sup> Release, at 41.

<sup>27</sup> Release, at 39.

<sup>28</sup> 613 F.3d 166 (D.C. Cir. 2010).

<sup>29</sup> *Id.* at 179.

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

We feel that 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."<sup>30</sup> 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."<sup>31</sup> The remainder of the Release, however, consists almost entirely of a litany of problems companies have raised.

Proxy voting agents, like Segal Marco, and equity managers enable their clients to fulfill their fiduciary obligations under ERISA and similar statutes to vote proxies in a value-maximizing way. We rely on proxy research to inform our voting and appreciate that the research provides a distinct perspective from that of corporate management. It is the distinct perspective that makes the research valuable. Aligning proxy research with corporate management's perspective would strip the research of its value. 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 adequately 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 Commission Has Not Shown That the Proposed Amendments Are Well-Suited to the Problem They Claim to Solve**

The Commission is required to analyze the economic benefits of a proposed rule, which "correspond to the justification for the rulemaking."<sup>32</sup> The Release falls short on this task because it does not demonstrate that the Proposed Amendments are well-tailored to accomplish the Commission's ostensible goals.

The Release makes the conclusory assertion that "[w]e believe that our proposed rule amendments would...establish effective measures to reduce the likelihood of factual errors or methodological weaknesses in proxy voting advice"<sup>33</sup> but presents minimal supporting evidence. As discussed above, our view is the bulk of disputes between companies and proxy advisors involve, not factual errors, but rather, disagreements over how to apply guidelines to a particular situation, the wisdom of following a particular guideline, and/or the use of guidelines in general.

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<sup>30</sup> 2012 Guidance, at 14.

<sup>31</sup> Release, at 7.

<sup>32</sup> 2012 Guidance, at 10.

<sup>33</sup> Release, at 27.

For example, a shareholder may have a policy to support an independent chairman, regardless of the company. A company may argue its lead director is sufficient. These are different perspectives, not factual differences. The pre-review process and mandatory distribution of company arguments are poorly designed mechanisms to address these kinds of disagreements. In the compensation peer group example provided by the ACCF, proxy advisors may consider different factors than companies do, as a matter of policy, in setting such peer groups.

As previously mentioned, we also believe that the Commission's concerns do not apply to proxy voting agent businesses, such as Segal Marco, because these firms do not provide proxy voting advice. Proxy voting agents are not responsible for formulating advice that may contain factual errors or methodological weaknesses. Consequently, it is our opinion that any proposed rules should not create greater obligations for proxy voting agent firms like ours.

### **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 proxy advisors, their clients and their ability to be independent, 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. The Release does not weigh all of these negative impacts against the small and uncertain benefits of the Proposed Amendments.

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 by hiring more research staff. Also, the pre-review and response process, and the provision of company responses to shareholders, would impose substantial administrative burdens that most shareholders could not be absorb with their current administrative staff.

The Release does not estimate those costs 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.<sup>34</sup> The extent of that burden would largely depend on whether companies would use corporate funds to challenge proxy voting advice, which is out of proxy advisors' control.

Given the likely magnitude of these costs, proxy advisors are likely to pass along increased costs to their clients.<sup>35</sup> Such higher costs would disproportionately impact smaller clients, like pension fund clients who have outsourced proxy voting specifically to achieve cost-effectiveness. The Release does not assess the possible effects on such smaller clients that lack in-house staff with expertise on proxy voting and corporate governance matters.

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<sup>34</sup> See Release, Question 30, at 62.

<sup>35</sup> See Release, at 119.

The pre-review process is also likely to inject delay in a shareholder's ability to exercise its rights. As a consumer of proxy advisor research, Segal Marco's ability to analyze ballot items depends on 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 wary of any effort to advantage one side's viewpoint.

In Exchange Act rulemaking, the Commission must consider, whether a proposed rule will promote efficiency, competition and capital formation, and is prohibited from adopting any rule that "would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act."<sup>36</sup> Ironically, critics of proxy advisors bemoan the industry's concentration<sup>37</sup> but promote regulations that are likely to increase it. The Proposed Amendments could impair competition in the market for proxy advisory services. That increased concentration could increase the pricing power of the remaining proxy advisors, which would not serve their clients' interests.

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.<sup>38</sup> As discussed above, we do not believe that the Proposed Amendments would improve the quality of proxy advice, and the increased pricing power resulting from shrinking the overall market for proxy advisory services would almost certainly lead to higher costs being passed along to consumers of proxy voting advice, such as Segal Marco. 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 is that the pre-review and comment process would unduly influence the outcome of a proxy vote in favor of corporate management's agenda. 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. The Commission claims to be "leav[ing] the content of proxy voting advice entirely within the proxy voting advice business's discretion,"<sup>39</sup> citing its restraint as evidence that the independence of proxy advice would not be impaired by the Proposed Amendments. In actuality, this position favors companies because investors that

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<sup>36</sup> 15 U.S.C. sections 78c(f), 78w(a)(2)..

<sup>37</sup> See, e.g., Comment of Congressman Bryan Steil, at 1 (<https://www.sec.gov/comments/s7-22-19/s72219-6616198-202955.pdf>)

<sup>38</sup> Release, at 110-111.

<sup>39</sup> Release, at 51 n.130; see also Release, at 108.

submit shareholder proposals and receive unfavorable recommendations from the proxy advisors would not be provided with the same pre-review courtesy prescribed to corporate management.

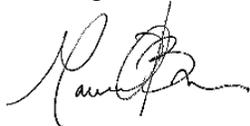
Such a bias in management's favor would not benefit proxy advisory firms' clients. We and our clients value independence,<sup>40</sup> and would not necessarily view additional management opportunities to present their side of things as a benefit. Additionally, we and our clients would not benefit from the requirement suggested in the Release<sup>41</sup> that vote execution be disabled if a company has submitted a response until a shareholder clicks on the company's hyperlink. Such compelled consumption of information by shareholders goes far beyond the mandatory distribution by proxy advisors and would impose unacceptable burdens on shareholder.

Systematically advantaging management would limit shareholders' ability to hold management accountable and undermine corporate governance standards. The right of shareholders to vote on important matters such as director elections, executive compensation, mergers/acquisitions and governance arrangements provides a crucial counterweight to management's substantial power. A vast literature supports the value of shareholder intervention and governance improvements obtained through votes on both management and shareholder proposals. The Release, however, does not grapple with this potential impact.

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Segal Marco appreciates the opportunity to weigh in on this important issue. Please contact me with any questions at [REDACTED] or [REDACTED].

Best regards,



Maureen O'Brien  
Vice President, Corporate Governance Director

cc: Hon. Jay Clayton, Chairman  
Hon. Robert J. Jackson, Jr., Commissioner  
Hon. Allison Herren Lee, Commissioner  
Hon. Hester M. Peirce, Commissioner  
Hon. Elad L. Roisman, Commissioner

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<sup>40</sup> We note that in other contexts, such as equity analysis, independence is highly valued and protected through rules precluding company interference.

<sup>41</sup> See Release, Question 44, at 66.