Egan-Jones
Proxy Services

February 3, 2020

Vanessa A. Countryman, Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549

Re: File No. S7-22-19

Dear Ms. Countryman,

Egan-Jones Proxy Services appreciates the opportunity to provide our comments to the Commission's Amendments to Exemptions from the Proxy Rules for Voting Advice (File Number S7-22-19). Established in 2002, the firm is a leading independent provider of proxy research, voting recommendations and voting services to a variety of institutional investors. Accordingly, the firm has firsthand experience with the existing framework and would be among those firms most impacted by the proposed changes.

We understand the need for better practices in our industry and congratulate the Commission's willingness to explore new options in the interest of protecting shareholders. However, we are concerned that the proposed new regulatory scheme would have many unintended consequences that are potentially enormously costly to both these same shareholders and the U.S. economy in general. We believe that the proposed rules should be reconsidered in view of these concerns.

We believe that implementation of the proposed rules in their current form would have several concerning aspects. Set forth below are four specific concerns.

I. Insufficient guidance on the validation of the source of data.

Our first concern is that the proposed system for working with companies to validate governance and information is not sufficiently defined. Currently we and other firms have a robust outreach program to company consultants and solicitors as well as detailed information on how to contact us on our webpage. Companies and other interested parties can also find sample reports, all our current methodologies and other relevant information on the firm's website. If we make a material error, which we generally define as impacting a voting recommendation or governance score, we make the correction, update and resend the proxy analysis and make any required changes for our voting clients. When we make a non-material error, such as a typo on a director's name or something similar, we are usually able to make a correction in this case too, but, of course, no votes would be impacted or need to be changed since this type of error doesn't impact the substance of votes. Currently, one point of contention here is if the error is in the proxy statement itself and the company doesn't wish to go through the expense, significant we are told, of updating and refiling their proxy or related material. The new rules seem to imply we will just have to take the company's word for the information, even if the proxy stays incorrect. We are concerned about how we will validate these data points if a company's filings are no longer the whole and correct story.

II. The ability of "bad actors" to "game" the system, primarily when it comes to proxy contests.

Our second concern is that while in most cases the companies, consultants, and lawyers charged with the creation of proxies and the various other documents used by our governance analysts and others in analyzing a proxy statement have the highest standards of professionalism and ethics, there are periodic examples in which that's not the case. We have over the years, noticed proxy statements that appear misleading or confusing as well certain deviations from the norm that could trip up either analysts or data collection systems, or both; for example, adding a "custom" column after the last column in the compensation table with a different or adjusted date range so total compensation numbers might appear to be lower. This is of course one simple and fortunately unusual technique that facilitates the possible misreading of a proxy. Since these new rules seem to take the conversation outside of the existing EDGAR ecosystem, the chances of being caught spreading mis-information, the ability to prove it was done and the penalties for doing so would seem to create adverse incentives for those who would be less than honest with both proxy advisory firms and investors. Of course, the incentives for engaging in such mischief when we are talking about tens if not hundreds of millions in compensation or acquisitions in the billions are obvious.

III. Enhanced legal risk will lower product quality.

Our third concern is heightened legal risk and the impact that may have on the ability of both ourselves and our competitors to provide our clients with an honest analysis of their proxy voting options. Like many market participants, we have experienced the threat of legal action by those who don't like what we may say in the past and know it is a risk to any publisher in any industry today. While that risk is currently focused primarily on issuers, the proposed rules expose proxy advisors to legal risk from multiple parties; for example, one could imagine a case in a proxy contest in which the other side took issue with a firm's advice. The rules' requirement that we deliver our review to companies a week before they are published would seem to increase this risk, as a company may seek to delay or even force a retraction before any client ever sees the report. Proxy advisors seem caught in the middle, with potentially no sides being satisfied and each side being inclined to litigate. The rules should clarify proxy firms' ability to require legal indemnification and other protections before sharing drafts with issuers and provide safe harbors from litigious third parties. Absent such clarifications, we are concerned that advisors may be forced to reconsider the costs and benefits of remaining as an advisor

IV. The burdensome and ever-increasing costs of complying with the many demands of this proposed regulation.

Our fourth concern is the prohibitive costs associated with these proposed regulations. Given the prescriptive nature of the currently proposed rules, it is clear that the regulations will only increase costs to both proxy advisors and their clients. For instance, our programming team has recommended a complete re-write of our existing internal platform to comply with the proposal and we are currently in the process of vastly increasing the data sets we pay for. Thus, we estimate that merely preparing for these possible new regulations has increased direct costs to the proxy business by 25 to 50% for 2020, and the year has just begun.

In conclusion, while the proxy advisory industry obviously demands an in-depth review by the Commission, a hasty adoption of what are effectively entirely new rules and business requirements has the potential to inflict major costs on proxy advisory firms and indirectly on companies, investment advisers, shareholders and other investors. We suggest, at a minimum, before implementing anything on the order of magnitude of the current proposed regulation, the Commission should implement an additional study and comment period of at least another 12 to 18 months. The additional study and comment period should focus on clarifying significant issues raised in this letter and the letters provided by other market participants.

Again, we appreciate the opportunity to provide comments to the Commission. Should you have any questions or would like any additional information, please contact the undersigned.

Sincerely,

Kevin E. McManus
Director of Proxy Services