



February 3, 2020

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

**Re: Amendments to Exemptions from the Proxy Rules for
Proxy Voting Advice 17 CFR Part 240; Release No. 34-87457; RIN 3235-AM50; File
No. S7-22-19**

Dear Ms. Countryman:

The Corporate Governance Coalition for Investor Value (the “Coalition”) was formed to provide a forum for the discussion of issues among its members to advocate for strong corporate governance policies, and federal securities laws that promote long-term value creation for investors. Coalition members represent American businesses of all sizes, from every industry sector, and geographic region. These businesses produce the goods and services that drive the American economy, employing and creating opportunities for millions of Americans, and serving the countless communities nationwide in which they operate.

The Coalition appreciates the ongoing work by the Securities and Exchange Commission (“SEC” or “Commission”) to bring more transparency and accountability to the proxy advisory industry. Accordingly, we strongly support the proposed rules issued by the SEC on November 5th entitled “Amendments to Exemptions from the Proxy Rules for Proxy Voting Advice.” (“Proposal”) If enacted, these rules would provide public companies with a long-overdue opportunity to correct errors and provide input on proxy advisor recommendations, require greater disclosure of proxy advisory firm conflicts of interest, and improve the overall quality of proxy advice that is received by institutional investors. More fundamentally, these rules would vastly improve the public company regulatory regime and make it more attractive for business to go and stay public.

Discussion

While the development and dispensation of proxy advice is an important function of our nation’s capital markets, today’s proxy advisory system is in dire need of reform. The industry is an oligopoly controlled by only two firms (Institutional Shareholder Services and Glass Lewis) that are riddled with conflicts of interest and have demonstrated a tendency to make significant errors in voting recommendations. ISS and Glass Lewis also largely operate within a ‘black box’ that makes it difficult for public companies – particularly small and midsize issuers – to navigate the current proxy advice system.

ISS and Glass Lewis have been demonstrated to ‘control’ up to 38% of the shareholder vote at companies¹, yet neither firm has any stake in companies for which they issue voting recommendations or a fiduciary responsibility to any shareholders. In recent years the SEC has recognized the glaring need to address deficiencies within the industry, holding several public roundtables and issuing guidance to clarify the obligations of proxy advisory firms and the institutional investors that rely on them. Notwithstanding these actions, serious problems remain within the industry and a formal Commission rulemaking is warranted.

Proposal

The Coalition supports several facets of the Proposal, including:

- A codification of past SEC interpretation regarding the definition of a proxy “solicitation” and its application to proxy advisory firms;
- Enhanced disclosure surrounding proxy advisory firm conflicts of interest;
- Allowing issuers the opportunity to provide input on vote recommendations, which will help ensure that the voting recommendations received by investors are accurate and include the total mix of information available; and
- The explicit application of the SEC’s antifraud rules to proxy advisory firms;
- Conditioning exemptions for proxy advisors on disabling automatic vote submissions on its voting platform where registrants have provided a response.

The Proposal would codify into a rulemaking the view of the SEC that the term “solicitation” under the federal proxy rules includes “any proxy voting advice that makes a recommendation to a shareholder as to its vote, consent, or authorization on a specific matter for which shareholder approval is solicited, and that is furnished by a person who markets its expertise as a provider of such advice, separately from other forms of investment advice, and sells such proxy voting advice for a fee...”² This is entirely consistent with longstanding SEC interpretation of the term “solicitation” and would provide a regulatory framework for proxy advisory firms that is consistent with other market participants subject to the SEC’s proxy rules.

The Coalition strongly supports aspects of the Proposal that would enhance conflict of interest disclosure from proxy advisory firms. The Proposal wisely conditions an exemption from the solicitation rules on proxy advisory firms providing specific disclosures regarding their material conflicts of interest. As the Coalition and others have pointed out previously, both ISS and Glass Lewis operate with significant conflicts of interest that can taint voting

¹ ISS 24.7% Glass Lewis 12.9% Source: Ertimur, Yonca, Ferri, Fabrizio, and Oesch, *David Shareholder Votes and Proxy Advisors: Estimates from Say on Pay (February 25, 2013)*.

² Proposal at 17

recommendations they provide. ISS has a corporate consulting business that issues corporate governance ratings on the same issuers for which ISS provides voting recommendations, while Glass Lewis is owned by two large Canadian pension plans that regularly take positions on corporate governance matters at public companies.

The Proposal would provide a meaningful shift away from the boilerplate-type disclosure regarding conflicts that ISS and Glass Lewis have typically provided, and instead would require the firms to disclose and address any specific conflicts they may have with an underlying issuer. This type of sunlight will better inform institutional investors as to how a vote recommendation may be biased and should lead to more informed voting decisions.

The Proposal would also condition an exemption from the solicitation rules on proxy advisory firms providing issuers with a meaningful opportunity to review and comment on vote recommendations. If an issuer filed their definitive proxy statement at least 25 days in advance of an annual general meeting, proxy advisory firms would be required to provide at least three business days for the issuer to review a vote recommendation and provide feedback. Additionally, a proxy advisor must include an issuer statement (via hyperlink) in response to a recommendation as part of the final report that is delivered to clients.

These review recommendations would help address one of the biggest flaws of the current proxy advice system, which is the tendency of proxy advisory firms to make egregious errors in vote recommendations. A 2018 report from the American Council for Capital Formation catalogues no fewer than 139 errors by ISS and Glass Lewis over three separate proxy seasons.³ Notwithstanding these problems, ISS today allows only S&P 500 companies the opportunity review vote recommendations, while Glass Lewis only recently launched a platform for issuers to give input. However, even when proxy advisory firms give issuers the chance to review a recommendation, they often only provide 1-2 days (and sometimes only a matter of hours) to provide feedback. Indeed, a recent survey from Willis Towers Watson found these provisions to be especially welcome amongst issuers, with over 80% reporting they would speak up if they found a factual error in a voting recommendation.⁴

The Coalition also supports application of the SEC's antifraud rules under Rule 14a-9 to proxy advisory firms, regardless of whether a firm seeks an exemption from the proxy solicitation rules. The Proposal would also expand what could be considered "misleading" in the context of proxy voting advice, including a failure to disclose methodology, sources of information, or conflicts of interest. These are reasonable standards that will hold proxy advisory firms accountable and enhance protections for retail investors.

Furthermore, the Coalition supports a provision considered under the proposal that would condition relevant exemptions for proxy advisors on disabling automatic submissions of votes on its voting platform where a registrant has submitted a response to the proxy advisor's vote recommendation. Indeed, this provision would ensure that clients of proxy advisors have access

³ https://accfcorgov.org/wp-content/uploads/2018/10/Analysis-of-Proxy-Advisor-Factual-and-Analytical-Errors_October-2018.pdf

⁴ <https://www.pionline.com/governance/companies-say-sec-proposal-proxy-firms-will-increase-transparency-survey>

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to the issuer response regarding the proxy advisor's vote recommendation and have adequate time to consider the full mix of information.

Conclusion

We appreciate the careful work done by the SEC to gather input from a wide variety of market participants on these critical issues and for putting forth such a constructive proposal. If adopted, these revisions to the SEC's proxy rules would ultimately benefit the retail investors in America that often rely on institutional investors to make voting decisions in their best interest. It would also improve the overall regulatory framework for public companies and make it more attractive for growing businesses to enter our public markets. The Coalition stands ready to assist the SEC in any way possible to advance this initiative forward.

Sincerely,

U.S. Chamber of Commerce

National Black Chamber of Commerce

Retail Industry Leaders Association (RILA)

American Securities Association (ASA)

Biotechnology Innovation Organization (BIO)

National Association of Real Estate Investment Trusts (NAREIT)

TechNet

Independent Community Bankers of America (ICBA)

National Investor Relations Institute (NIRI)