



February 3, 2020

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

Re: File No. S7-22-19, SEC Release No. 34-87457, Amendments to Exemptions From the Proxy Rules for Proxy Voting Advice.

Dear Madam Secretary:

The Interfaith Center on Corporate Responsibility (ICCR) adamantly opposes the rule changes for proxy voting advice proposed in SEC Release No. 34-87457, *Amendments to Exemptions From the Proxy Rules for Proxy Voting Advice* (“*Proposal*”). We wish to strongly support comments on the Proposal made in the January 30, 2020, letter from the Council of Institutional Investors (CII), and the February 3, 2020 letter from Investor Advocates for Social Justice (IASJ).

ICCR is a coalition of more than 300 institutional investors collectively representing over \$500 billion in invested capital. Our members are a cross section of religious investors, foundations, asset managers, pension funds, and other long-term institutional investors. ICCR members have nearly 50 years of experience as pioneers in the shareholder resolution process, and our long-term engagement on environmental, social, and governance issues has brought about valuable improvements in corporate accountability and transparency.

The Proposal on proxy voting advice, like the rule that the Commission has proposed on the shareholder proposal process, is arbitrary, and would further tilt the playing field toward corporate management and away from investors. The rule-making process for the Proposal appears to lack credible, factual evidence in support of it. For example, in its rationale for the proposal, the SEC references claims by corporate management and lobbyists that proxy advisory firms’ reports are full of errors, and that proxy advisory firms exert undue influence over how institutional investors vote, but the Commission provides no analysis or data to support that contention.

The SEC’s proposed rules on proxy advisors would be costly and burdensome to implement. The feedback and review process in the Proposal would result in significant undue costs and delays for proxy advisory businesses, and would be particularly burdensome for small entities. Most disturbingly, the proposed rule

would seriously undermine the ability of long-term institutional investors, including ICCR members, to access independent proxy advice and support for proxy voting. This would significantly erode the ability of institutional investors to meaningfully engage with the companies that they own on critical environmental, social, and governance issues.

ICCR opposes codification of the Commission's August 2019 "Guidance and Interpretation" that proxy advice constitutes "solicitation" under Rule 14a-1(1) and Section 14(a). While we support disclosure to clients on conflicts of interest (including in reports), we do not believe that the SEC needs to create an elaborate and expensive new regulatory framework to do this. We do not believe that proxy advisory reports are "solicitations" as that term is understood in plain English or according to the securities law.

Additionally, we strongly oppose a requirement that a proxy advisor provide company management with pre-review rights. We believe the proposed requirements would significantly and negatively impact the ability of institutional investors to obtain independent, timely, and cost-effective research and advice from proxy advisors. The pre-review requirements would, in our view, explicitly violate First Amendment free speech rights. The fact that the proposed rule contemplates extensive pre-review rights for corporate management, but would not afford any similar rights to proponents, is further evidence that the Proposal is heavily weighted toward corporate issuers and against investors.

While we strongly oppose the concept of management pre-review, if the Commission nonetheless unwisely goes down the road of requiring it, the Commission should be aware that as proposed the rules would be simply unworkable for investors, including our members. The week-plus delay in issuing proxy advice reports would sharply limit the time for any guided investor consideration on proxy voting matters. In its comment letter, CII has outlined essential requirements should the SEC mandate company management pre-review rights, including eliminating the "final notice" period, and providing just one period for review of no more than two business days. The review should be limited to factual information and data only (not analysis or recommendations). A company should be eligible to participate in any review only if it files its definitive proxy statement at least 50 calendar days before the shareholder meeting. The proxy advisor should be permitted to provide the draft report to its paying clients at the same time it is provided to company management. The proxy advisor should be eligible for a safe harbor to shield it from liability under Rule 14a-9 if it complies with the requirements of the proposed requirements.

We would emphasize that the SEC should ensure that there is a fair and even playing field for active participants in annual meetings. If the Commission is to require management pre-review, it must afford proponents of shareholder proposals

a commensurate opportunity to pre-review information relevant to their respective proposals.

We have many members who are reliant on proxy voting services from small providers that we understand the SEC did not contact in preparing this Proposal, including Investor Advocates for Social Justice. We believe the business viability of those small providers is threatened by the SEC's proposed heavy-handed regulatory scheme. We would request, as CII and IASJ strongly recommend, that the Commission exempt any 501(c)(3) providing proxy voting services, as well as proxy advice firms of any form (profit or nonprofit) that have annual gross receipts of less than \$5 million. We also believe such an exemption may help to mitigate some of the harm from barriers to entry that will be created by the new regulatory structure.

In short, ICCR and its members believe that the Commission's Proposal on proxy voting advice lacks any evidentiary basis; would negatively impact the ability of proxy advisory firms to provide independent advice and proxy voting support for institutional investors; and would seriously undermine meaningful engagement between shareholders and management. For these reasons, ICCR strongly opposes the proposed rules, and believes that they should be withdrawn by the Commission.

Sincerely,

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke extending to the right.

Josh Zinner
CEO
Interfaith Center on Corporate Responsibility

