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Ms. Vanessa Countryman
Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549-1090

Re: Amendments to Exemptions from the Proxy Rules for Proxy Voting Advice (File No. S7-22-19) and Procedural Requirements and Resubmission Thresholds under Exchange Act Rule 14a-8 (File No. S7-23-19)

Dear Ms. Countryman:

I am writing on behalf of MFS Investment Management ("**MFS**" or "**We**")¹ in response to the invitation by the U.S. Securities and Exchange Commission (the "**Commission**") to provide comments on the Commission's proposals related to proxy advice² and the shareholder proposal rule.³

We appreciate the opportunity to provide our thoughts on both the proxy advice proposal and the Rule 14a-8 proposal. While we appreciate the Commission's goal to "establish effective measures to reduce the likelihood of factual errors or methodological weaknesses in proxy advice,"⁴ we do not support the proxy advice proposal's "review framework."⁵ In our view, any incremental benefit of improving the accuracy of proxy advice is more than offset by the cost of adding a cumbersome and disruptive process to

¹ MFS Investment Management traces its history back to 1924 and the creation of the country's first open-end mutual fund, Massachusetts Investors Trust. Today MFS is a global investment manager managing approximately \$527 billion in assets as of December 31, 2019, through a variety of collective investment vehicles and separate accounts.

² U.S. Securities and Exchange Commission, *Amendments to Exemptions from the Proxy Rules for Proxy Voting Advice*, SEC Rel. No. 34-87457 (November 5, 2019), 84 FR 66518 (December 4, 2019), available at <https://www.govinfo.gov/content/pkg/FR-2019-12-04/pdf/2019-24475.pdf> (the "proxy advice proposal")

³ U.S. Securities and Exchange Commission, *Procedural Requirements and Resubmission Thresholds under Exchange Act Rule 14a-8*, SEC Release No. 34-87458 (November 5, 2019), 84 FR 66458 (December 4, 2019), available at <https://www.govinfo.gov/content/pkg/FR-2019-12-04/pdf/2019-24476.pdf> ("Rule 14a-8 proposal").

⁴ Proxy advice proposal at 66525.

⁵ For purposes of this letter, "review framework" refers to the proposal's process that provides companies and other soliciting persons the right to review and comment on a proxy advisory firm's draft research and advice before such firm's clients receive it.

an already beleaguered U.S. proxy voting system. Rather than "ensur[ing] that those who receive proxy voting advice have an efficient and timely way to obtain and consider any response a registrant or other soliciting person may have to such advice," we believe that the proxy advice proposal will limit the ability of investment advisers to conduct timely and meaningful engagements with issuers and to fully consider items at shareholder meetings on behalf of their clients. We believe that such a result is contrary to the guidance recently issued by the Commission regarding the proxy voting responsibilities of investment advisers.⁶ In addition to the adverse impact that the proposal will have on the timeliness of the research provided to clients of proxy advisory firms, clients of such firms will likely bear the entirety of the cost of the proposal as proxy advisory firms will likely pass the cost of their compliance with the rule on to their clients. Moreover, to the extent the Commission, in issuing the proposal, is attempting to address an unsubstantiated concern raised by some that proxy advisory firms have too much "control" over the voting behavior of institutional investors and investment advisers, we believe that instead of reducing the "power" of proxy advisory firms, the proposal will heighten their power by refocusing the proxy voting process from one between companies and their shareholders to one between companies and a third party service provider. In Section I below, we will more fully discuss our concerns with the proposal as well as address a number of questions posed by the Commission. Moreover, we will lend our support to an alternative proposal.

We likewise do not support the Commission's Rule 14a-8 proposal. While we acknowledge the need for a balance between providing a mechanism for smaller shareholders to voice their concerns about management and limiting shareholder proposals that impose significant costs upon companies without a commensurate increase in value to shareholders in the form of better risk management, we are concerned that the balance proposed by the Commission in Rule 14a-8 skews unfairly against the rights of shareholders. In Section II below, we will more fully address our concerns with the Rule 14a-8 proposal and request that, if the Commission determines to amend Rule 14a-8, the Commission reconsider certain aspects of the proposal to achieve a fairer and more equitable balance.

I. Proxy Advice Proposal

MFS' investment process relies on deep fundamental research, a long-term perspective and institutional risk controls. Our clients appoint us to help them achieve their investment objective over the long term, which generally is to maximize the financial return of their portfolio within appropriate risk parameters. As part of our investment process, MFS seeks to understand any factor that could impact our clients' investment returns over the long-term, including financially material environmental, social and governance ("ESG") factors. Moreover, MFS believes that robust ownership practices are an important component of our investment process and help to protect and enhance long-term shareholder value. Such ownership practices include the thoughtful and diligent exercise

⁶ *Commission Guidance Regarding Proxy Voting Responsibilities of Investment Advisers*, SEC Rel. No. IA-5325 (Aug. 21, 2019), 84 FR 47420 (Sept. 10, 2019), available at <https://www.govinfo.gov/content/pkg/FR-2019-09-10/pdf/2019-18342.pdf>.

of our voting rights. We therefore cast all proxy votes in what we believe to be the best long-term economic interest of our clients. We maintain a proxy voting committee, which includes members of our legal, investment, and investment operations teams, that oversees our proxy voting activities and the governance of MFS' Proxy Voting Policies and Procedures (the "MFS Proxy Voting Policy"), which can be found on our website (mfs.com).

MFS uses a proxy advisory firm to perform various proxy voting-related administrative services, such as vote processing. We also subscribe to research from two proxy advisory firms under their respective benchmark policies as well as to research under our own MFS Proxy Voting Policy (i.e., custom research). While we receive research reports and vote recommendations from proxy advisory firms, MFS analyzes all proxy voting issues within the context of the MFS Proxy Voting Policy, which is developed internally by our proxy voting committee and independently of third-party proxy advisory firms. Our voting decisions are not defined by any proxy advisory firm benchmark policy recommendations and are instead based on our proprietary analysis of companies, management teams and ESG topics, among other things. Proxy advisory firm research reports are just one input in our comprehensive analysis, which includes other essential sources of information (e.g., proxy materials, engagement, other third-party information, etc.) that help us determine the votes that we believe are in the best long-term economic interest of our clients.

As noted above, we do not support the proxy advice proposal's review framework. Under this framework, registrants and other soliciting parties are provided with a specified period of time⁷ to provide feedback on proxy advisory firms' reports prior to such reports' issuance. The framework also provides an opportunity for registrants and other soliciting parties to review a final report no later than two business days prior to its publication to the clients of the proxy advisory firm regardless of whether the registrant or other soliciting party reviewed the draft report. We object to this framework because it (i) compresses an already challenging timeline and puts more strain on an already beleaguered proxy voting system, (ii) inequitably imposes the costs of this framework on large institutional investors and investment advisers, and (iii) limits our ability as an investment adviser to protect and enhance the long term value of an investment on behalf of our clients by increasing the proxy advisory firms' role in our engagement and proxy voting process.

As noted by the Investment Adviser Association in its letter commenting on the proxy advice proposal, the current timeline in the proxy process is already exceedingly tight. During the period from July 1, 2018 to June 30, 2019, MFS voted on over 21,000 ballot items at over 1,900 meetings (nearly 750 of which were at shareholder meetings of U.S. companies). The bulk of the shareholder meetings of U.S. companies occurred from March 1, 2019 to May 31, 2019 ("proxy season"). We employ proxy advisory firms to assist in managing this tight timeline by identifying routine votes and providing limited analysis under our custom policy so that we can focus our analysis and engagement

⁷ This period would be five business days if a proxy is filed 45 calendar days prior to an annual meeting and three business days if it is filed at least 25 but less than 45 calendar days prior to an annual meeting (emphasis added).

efforts on more complex ballot items. Pursuant to statistics provided by one of the proxy advisory firms that MFS employs, the firm currently provides reports and recommendations under its benchmark policy on average just under 20 calendar days in advance of the meeting for Russell 3,000 companies. During proxy season we often receive reports and recommendations under our custom policy seven calendar days after the firm publishes its benchmark recommendations. Even if a proxy advisory firm's current delivery timeline does not change, the review framework proposed by the Committee may result in situations where clients do not receive the proxy advisory firm's report until after the meeting date. This is certainly not the result the Commission intended.

To avoid this result, proxy advisory firms will likely add to their staff to comply with the requirements of the proxy advice proposal, thereby increasing their overall costs. This increase in costs will likely be borne by the proxy advisory firms' clients. As a result, registrants are provided with the benefit of the proxy advisory firms' reports at the expense of the proxy advisory firms' *paying* clients (emphasis added). The Commission has not provided a justification for such an inequitable alignment of costs and benefits.

We also are concerned that the review framework will heighten the influence of proxy advisory firms. While we believe that proxy advisory firms have an important role to play in the proxy voting process, we believe that we are in a better position to analyze the overall impact of a vote on the value of an investment for our clients. We believe that the review framework sidelines investment advisers and limits our ability to effectively engage with registrants. We fear that registrants will focus their attention during proxy season on engaging with proxy advisory firms and will not be receptive to institutional investors' engagement requests for clarifications about matters on their proxies. We believe that such a result is contrary to the Commission's recent guidance regarding the proxy voting responsibilities of investment advisers.⁸

We further believe that the framework is needlessly complex, and to the extent the Commission's goal is to provide all registrants with the opportunity to review proxy voting advice regardless of the registrant's size and regardless of whether the advice contains facts or opinions, this goal can be achieved by simply requiring proxy advisory firms to provide their research reports to all registrants and soliciting persons simultaneously with their publication to clients. We believe that such a process can be achieved with minimum disruption and cost and more importantly will refocus the proxy voting process as one between companies and their shareholders.

Finally, we address two questions posed by the Commission. First, the Commission has asked whether the voting advice formulated under custom policies established by clients should be subject to the review framework.⁹ We strongly believe that such advice should be excluded from the review framework. We consider the research provided by proxy advisory firms under the MFS Proxy Voting Policy to be proprietary and commensurate with of our overall investment approach. Second, the Commission has asked whether

⁸ *Id.*

⁹ Proxy advice proposal at 66536.

the proposal should require proxy advisory firms to disable the automatic submission of prepopulated votes unless the firms' clients click on the hyperlink provided by the registrant (or other soliciting persons), or otherwise access the registrant's (or other soliciting persons') response, or otherwise confirms any pre-populated voting choices before the proxy advisory firm submits the votes.¹⁰ Although we typically do not use a pre-populated voting mechanism for the types of votes that are likely to generate discussion between the proxy advisory firm and the registrants (e.g., advisory votes on executive compensation that the proxy advisory firm deems excessive), we are concerned with the adoption of a requirement that may result in shareholders failing to submit a vote.

II. Rule 14a-8 Proposal¹¹

MFS does not support the Commission's Rule 14a-8 proposal. As noted above, as part of our investment process, we seek to understand any factor that could impact our clients' investment returns over the long-term, including financially material ESG factors, and have historically supported a wide variety of shareholder proposals on ESG topics. For example, we have supported proposals that have encouraged improved governance or provided shareholders with insight into the company's management of environmental, social, reputational or regulatory risks. While some of these proposals were submitted by shareholders who would still be able to submit these proposals under the Rule 14a-8 proposal, it is likely that some of these proposals were submitted by shareholders who will no longer be able to submit proposals if Rule 14a-8 is amended as proposed.

We do not believe that there is necessarily a correlation between the value of a proposal in achieving the objectives of improved corporate governance and more fulsome disclosure and the size of a shareholder's holding or the time period for which the shareholder held the shares. Over the years, we have seen smaller shareholders use the shareholder proposal process to initiate and encourage improved governance (e.g., declassification of boards and the introduction of proxy access) and better management of financially material environmental and social risks (e.g., disclosure of risks from climate-related regulatory changes). We believe that shareholder proposals play an important role in our investment approach and our ownership activities because they provide all shareholders with a voice in the oversight of the companies that they own. As a large institutional investor, we generally have access to management teams and directors that smaller shareholders may not have. As an active investment adviser, we

¹⁰ *Id.* at 66537.

¹¹ Although not explicitly addressed in this letter, we agree with the recommendation proposed by the Investment Company Institute that the Commission adopt amendments to Rule 14a-8 to require shareholder proponents to reaffirm prior proposals submitted to mutual funds and ETFs after some passage of time. We likewise agree with the Investment Company Institute's request that the Commission's Division of Corporation Finance reconsider its recent announcement that the staff may respond orally instead of in writing to no-action requests and that if the staff declines to state a view on a request it should not be interpreted as indicating that the proposal must be included. SEC Division of Corporation Finance, Announcement regarding Rule 14a-8 No-Action Requests (Sept. 6, 2019), available at <https://www.sec.gov/corpfin/announcement/announcement-rule-14a-8-no-action-requests>.

believe that it is to our clients' benefit to understand the views of other shareholders, as this information can augment our understanding of the risks and opportunities inherent in the companies we own. As such, we would view the Rule 14a-8 proposal as an action to limit shareholders' ability to fully consider all risks and opportunities of their investment.

We also do not support the amendments to Rule 14a-8(i) that will allow a company to exclude a shareholder proposal if that proposal or a similar proposal has not received 5, 15 or 25 percent support for the first, second and third submission, respectively, within the preceding 5 calendar years.¹² Under the Rule 14a-8 proposal, a company may also exclude a shareholder proposal even if the proposal received 25% or more approval at its most recent submission if the proposal has been voted on 3 or more times in a five-year period but (i) it has not received majority support or (ii) it experienced a decline of 10% or more compared to the immediately preceding vote (the "momentum requirement"). Over the years, we have seen shareholders use the shareholder proposal process to initiate and encourage improved governance and more transparency with respect to financially material environmental and social risks. Some of these proposals did not initially receive the support that they do today. We believe that the proposed changes to the resubmission threshold and the addition of the momentum requirement will damper corporate governance improvements by excluding proposals based solely on whether they have quickly gained support and not based on whether they propose substantial improvements to a company's corporate governance. In addition, the risk exists that shareholders may decide to support resolutions they might not otherwise support in order to avoid a resolution being excluded from future votes. Despite this objection, if the Commission decides to amend Rule 14a-8(i), we request that the Commission reduce the resubmission thresholds below the 5, 15 and 25 percent levels and reconsider the addition of the momentum requirement or at a minimum raise the momentum percentage decline to a more equitable percentage.

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We appreciate the opportunity to provide comments on the Proposing Release. If you have any questions, please contact me at [REDACTED] or Susan Pereira at [REDACTED].

Sincerely,



Heidi W. Hardin

¹² Currently, under Rule 14a-8(i) a company can only exclude a proposal if it or a similar proposal has not received at least 3, 6 and 10 percent approval for the first, second and third submission within the preceding 5 calendar years.

cc:

The Honorable Jay Clayton, Chairman
U.S. Securities and Exchange Commission

The Honorable Robert J. Jackson, Jr., Commissioner
U.S. Securities and Exchange Commission

The Honorable Hester M. Peirce, Commissioner
U.S. Securities and Exchange Commission

The Honorable Elad L. Roisman, Commissioner
U.S. Securities and Exchange Commission

The Honorable Allison Herren Lee, Commissioner
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Dalia O. Blass, Director, Division of Investment Management
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