STATE BOARD OF ADMINISTRATION OF FLORIDA

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February 3, 2020

Sent via email to rule-comments@sec.gov

Vanessa A. Countryman
Secretary, Securities and Exchange Commission
100 F Street NE
Washington DC 20549-1090

Re: Comments concerning S7-22-19

Dear Secretary Countryman:

The State Board of Administration (SBA) of Florida is writing with comments concerning the Commission's proposed rules on shareowner proposal resubmission thresholds. **In sum, we feel that both proposals S7-22-19 and S7-23-19 represent a hindrance to improving corporate governance and our ability as investors to perform oversight of our investments and our fiduciary duty.** These proposals devote attention to areas we feel function quite well while other aspects of the proxy voting system are in desperate need of attention.

The SBA manages the assets of the Florida Retirement System (FRS), one of the largest public pension plans in the United States with 1.1 million beneficiaries and retirees. The SBA's investment and corporate governance activities focus on enhancing share value and ensuring that public companies are accountable to their shareowners with independent boards of directors, transparent disclosures, accurate financial reporting, and ethical business practices. The SBA takes steps on behalf of its participants, beneficiaries, retirees, and other clients to strengthen shareowner rights and promote leading corporate governance practices among its equity investments in both U.S. and international capital markets.

As a fiduciary, we strive to vote in a manner that maximizes value for our beneficiaries. We do not default to proxy advisory recommendations, nor do we default to the recommendations of management. We use both ISS and Glass Lewis as advisors but we make our own voting decisions, and we deviate substantially from both advisors' recommendations in our voting pattern. We have read their thoughts and comments on these proposed rules, which we endorse. We also urge you to closely consider the comments from the CFA Institute and the Council of Institutional Investors (CII), of which we are a member, as well as their request to delay implementation of these rules for further study and comments. We also echo the eloquent comments made by T. Rowe Price[1], and we appreciate their comments in that they are both a corporate issuer and client of proxy advisory firms.

[1] https://www.sec.gov/comments/s7-22-19/s72219-6721059-206207.pdf

As a client of the proxy advisory service providers, we expect that the provisions in these proposed rules will impede our ability to obtain cost-effective services on a timely basis. We do not expect any commensurate benefit or positive impact that would offset these burdens. Further, the near entirety of institutional investor commentary has indicated that these rules would in fact interfere with our right to contract with proxy advisors and not bring relief of any actual problems in the voting process. We urge you instead to focus on the issues the investing community raised in comments to the 2010 Concept Release on the U.S. Proxy System (Concept Release). Nearly 10 years ago, the Commission outlined concerns regarding the accuracy, reliability, transparency, accountability, and integrity of the system, as well as possible regulatory responses to these concerns. Many investors weighed in asking the Commission to assist in areas like vote confirmation, securities lending, investor communication, and transparency of share counting and vote tabulation. These problems, of substantial importance to investors, still exist, and are waiting to be addressed.

Today, BlackRock, Vanguard, StateStreet, T. Rowe Price and Fidelity often hold shares totaling well in excess of 20 to 40% of the voted capital. In 2010, Blackrock wrote a comment letter[2] asking for vote confirmation and XBRL. They also discussed OBO/NOBO and securities lending and record dates. Here's the entirety of what they said about proxy advisors in their eleven-page comments:

> *"Issuers sometimes raise concerns about inaccurate or incomplete data appearing in a proxy advisory firm's report. In our experience we have sometimes found this to be an issue, though the quality of proxy research, in our view, has generally improved over time. This is also an issue on which investors regularly engage and provide feedback to the proxy advisory firms. We believe that substantial additional regulation of proxy advisory firms would likely impose costs that will ultimately be borne by investors. We encourage the Commission to allow investors, and the market for proxy research, to impose discipline on providers. In our view, improvements in the quality of proxy research over the past several years suggest that the discipline of the market is working.*
>
> *We believe that comparing proxy advisory firms to Nationally Recognized Statistical Rating Organization[7] ("NRSROs" also known as credit rating agencies) accords greater significance to the marketplace than proxy advisory firms actually represent. Unlike NRSROs, whose evaluations of an issuer are required for certain securities offerings and whose ratings are closely tied to changes in security valuations, we believe that proxy advisory firms are less influential. In addition, investors have greater flexibility in acting on the judgments of a proxy recommendation than they typically do when considering a credit rating."*

State Street also asked for vote confirmation and discussed shareowner communication and securities lending.[3] State Street didn't even mention proxy advisory firms in their letter. Fidelity discussed Client-directed voting, OBO/NOBO and shareowner communications, and XBRL data tagging. Fidelity also did not mention proxy advisory services at all. In our review, we did not find comments from Vanguard and

[2] https://www.sec.gov/comments/s7-14-10/s71410-254.pdf
[3] https://www.sec.gov/comments/s7-14-10/s71410-175.pdf

T. Rowe Price to the 2010 Concept Release. **These investors vote a substantial portion of the shares in the market, and none of them submitted comments to voice concern about proxy advisors.**

In contrast, the 2010 letter submitted by the chair of the Business Roundtable concerning the concept release contains over a page of recommended regulations for proxy advisors that match almost completely to those in this current rule proposal. The 2010 letter states in part, "As a result, at many of our companies a single proxy advisory firm controls 20-35% of the vote. Moreover, many proxy advisory firms do not evaluate the facts and circumstances of particular companies in making their recommendations." **Both of these statements are false.** Just because 20-35% of certain voting item outcomes *coincide* with the proxy advisor recommendations does not mean they are "controlled". The analysis done by proxy advisors often reaches the same conclusions as the broader market. But importantly, sometimes just two to three percent of the votes correspond to the recommendations of any single proxy advisor, making it evident that there is no "control". The Business Roundtable also falsely asserted that the advisory firms do not evaluate the individual circumstances of companies. As a purchaser and consumer of these reports, I can assure you that they do. The problems, attention and importance that the Business Roundtable ascribed to the proxy advisors is simply not shared by the largest investors in the marketplace.

It is tragic and avoidable that we are no closer to vote confirmation, despite continued technological improvements in the market. Investors still have problems recalling loaned shares due to late disclosure of record dates. We still lack transparency on a variety of aspects of the voting chain, which lead to real consequences and failures in the market. Consider the Yahoo! vote from 2008, when a massive error was found only by happenstance, due to the discrepancy occurring in an unusually large holding.[4] This is inexcusable in a modern system. These are the areas to which the Commission should be dedicating its efforts.

Much is made of the collective action problem underlying the choice of institutional investors in hiring proxy advisors, but companies hire advisors in similar capacities routinely. They hire compensation consultants who aggregate market data and practices and produce compensation plan guidance, they hire lawyers that advise them on what matters to put forth on the proxy including language and management recommendations, and they hire accounting teams to assist with not just audits, but a myriad of non-audit accounting functions and to provide advice. Companies and investors hire advisors because it is an efficient and effective way to get information and context in making decisions. Our advisors don't make our decisions for us any more than theirs do. Rules inhibiting the collection of information and advice for analysis of proxy statements are unnecessary on either side. These rules will interfere with our ability to make timely decisions, and we join with many other commenters in expressing significant concern that they will drive up the prices of these services without commensurate benefit.

Much of the proposal concentrates on the analysis process of the advisors and its quality. As the clients of this research, we have found the quality to be quite robust and unproblematic. In the course of our engagements with company management and board members, SBA staff has often heard about

[4] https://www.wsj.com/articles/SB121795327814413747

purported "errors" in the advisory reports, and yet we have not encountered a single error that was either significant in its impact or one that would have changed our vote outcome.

The Commission attempted to highlight registrant concerns with advisors in Table 2 in the proposed rules. We have also reviewed the Commission's memorandum of January 16, 2020 (issued in response to a request for the underlying data from the Council of Institutional Investors). It appears that the criteria used by the Commission to discern a factual error, a methodological deficiency or both is overly broad, and it is grossly inadequate as a basis to support these rules. The second criteria noted in the memo explicitly includes an additional DEF 14A filed by an issuer citing disagreement with an adverse voting recommendation; this is neither an error nor deficiency. [5] This type of disagreement is quite routine and constitutes a significant amount of the engagement that the SBA conducts with issuers.

The third and fourth criteria from the memo that imply the proxy advisor committed an error are equally problematic. The table is counting instances when the issuer has filed additional information concerning changes made in the current year (criteria 3) or a change in circumstances (criteria 4) *in response to* an "adverse" voting recommendation as errors or at least valid concerns (the data underlying the table discussed in the memorandum is incomplete). These are *updates* on the issuer side, not errors in analysis or judgment by the advisors. Further, the proxy advisors already regularly alert us when there are changes in the information the company provides. Indeed there are times that new information causes our advisors to change their recommendation, so the current system works quite well.

The additional DEF 14a filings that the Commission provides in the memorandum show that issuers already have a mechanism for expressing concern with proxy advisory recommendations and further obviate the need for these rules. In our review of additional DEF 14A filings in the data file underlying Table 2, we saw the arguments that companies make every day in our engagement with them: they do not agree with the peer groups chosen for them, they didn't agree with an accounting measure being GAAP or Non-GAAP, or they disliked the timing over which performance was assessed or how compensation metrics were assessed for disclosure levels. These are not actual mistakes; they are simply judgments the company did not agree with. They contained language such as, "For these reasons, Glass Lewis was mistaken in supporting proponent's proposal."[6] The company American Outdoor Brands submitted this quote when they filed an additional DEF 14A on September 6, 2018. They filed similar additional proxy materials on September 10, 2018 charging that ISS also was "mistaken" in supporting the proposal; therefore, this company's filings represent two of the 2018 "errors" cited in Table 2. These filings concerned a shareowner proposal made on gun safety which passed with 52% of the vote, and SBA voted in support of that proposal. We weighed the arguments made by both sides, carefully. These types of filings do not show alleged errors made by advisors and certainly do not justify the additional regulation proposed in these rules.

The proposed rules are arbitrary and capricious in their scope, design, and impact on our ability to cast timely votes in a cost-effective manner. We strongly urge the Commission to heed the views of the

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[5] https://www.sec.gov/comments/s7-22-19/s72219-6660914-203861.pdf
[6] https://www.sec.gov/Archives/edgar/data/1092796/000119312518267792/d620794ddefa14a.htm

Council of Institutional Investors, the SEC's own Investor Advisory Committee and the many investors who are recommending the Commission not move forward with these rules, but instead focus on more important and problematic aspects of the proxy voting process. **These rules will impose real cost on investors and will introduce delays in our voting process.** The Commission has not made a sufficient or compelling case for this proposal.

The following quotes by Allison Lee, SEC Commissioner, and Rick Fleming, Investor Advocate at the SEC, illustrate our thoughts on the proposed rules. Please consider them as you move forward in your deliberations.

> "Today's proxy voting release, however, creates significant risks to the free and full exercise of shareholder voting rights. First, it introduces increased costs and time pressure into an already byzantine and highly compressed process. Second, it calls for more issuer involvement in the process despite widespread agreement among institutional investors and investment advisers that greater involvement would undermine the reliability and independence of voting recommendations. Significantly, we are creating these risks without notice and comment, without justifying the choices made to affected parties and the public, and without weighing the costs and benefits of the chosen course." - SEC Commissioner Allison Lee, August 21, 2019

> "Indeed, at the roundtable on the proxy process that the commission held last November, I think the investors made it pretty clear they are relatively happy with the services they receive from proxy advisers. This is not to suggest that proxy advisers are perfect, but to the extent that any problems exist, it seems that their paying customers should be the ones to raise them. Investors certainly don't want those problems to be *solved* by injecting costly inefficiencies into an already-cumbersome process or by giving companies more opportunities to influence the advice that is given to investors about how they should vote." - Rick Fleming[7]

Thank you for your consideration of these significant issues. If you have any questions, please contact Michael McCauley, Senior Officer—Investment Programs and Governance, at [redacted], or [redacted].

Sincerely,

Ashbel C. Williams
Executive Director & CIO

[7] https://www.irmagazine.com/regulation/sec-investor-advocate-cautions-proxy-adviser-controls