February 3, 2020

VIA EMAIL

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

Re: File No. S7-22-19 Amendments to Exemptions from the Proxy Rules for Proxy Voting Advice

Dear Madam Secretary:

On behalf of the Colorado Public Employees' Retirement Association (Colorado PERA or PERA), thank you for the opportunity to file public comment regarding proposed amendments concerning proxy advisory services. I hereby conjoin the following information to our previous comments regarding potential proxy advisor regulation, which we submitted on October 30, 2019. [1] In addition to that submission, PERA was signatory to the October 15, 2019 letter from the Council of Institutional Investors (CII) regarding the same matter.[2]

In light of the related November 2019 amendment proposals by the Securities and Exchange Commission (Commission or SEC), we are submitting additional comments for consideration on the issue of rulemaking that would affect proxy advisory services that PERA utilizes in fulfillment of its fiduciary duty. The information below includes supportive evidence from the relevant public record as well as from our own analysis, and represents PERA's perspective as a large institutional investor.

Colorado PERA is the state's largest public pension plan, managing approximately $50 billion in assets under obligation to enhance the retirement security of over 600,000 current and former public employees and their beneficiaries. In fulfillment of our fiduciary duty, we vote proxies on behalf of those beneficial owners of the shares we hold. In order to effectively vote proposals in a cost-efficient manner, PERA contracts with proxy advisory firms to obtain and review their research on ballot items. Although we incorporate this third-party research into our analysis, we ultimately vote according to our own guidelines and policies, which we believe are in the best interests of plan beneficiaries.

In that fiduciary capacity, we are concerned that the SEC has not fully evaluated the necessity and implications of their proposed amendments, and that substantive support for such rulemaking is demonstrably lacking from the market participants such rules are intended to protect – investors. Specifically, we are concerned with the proposed codification of the Commission's interpretation that

[1] https://www.sec.gov/comments/4-725/4725-6370565-196517.pdf

[2] https://www.cii.org/files/issues_and_advocacy/correspondence/2019/201910015proxy_advisor_sign_on_final.pdf

proxy advisory services qualify as "solicitation"; that related guidance would effectively negate federal filing exemptions that preserve the independence and competitive advantages of proxy advisory services; that such impediment to reliance on those exemptions would pave the path for litigation by reaffirming proxy advisors' subjection to Rule 14a-9 through magnified claims of erroneous proxy papers - which claims cited by the SEC have since been found to be unsubstantiated by CII; and that the Commission proposes feedback mechanisms that would introduce undue influence into otherwise objective research and analysis on which investors rely in order to submit informed votes on ballot proposals concerning the companies in which they share ownership.

We respectfully urge the Commission to re-evaluate the proposed amendments, with due consideration to comments and data provided by investors, coalitions representing investor interests, and the Investor-as-Owner Subcommittee, which has submitted their own analysis and proposal to its oversight body, the SEC's own Investment Advisory Committee. The following comments and supporting data echo those in the relevant comment record which oppose the proposed rulemaking, with additional context from PERA's own perspective and analysis.

Regarding the Proposed Codification of the Commission's Interpretation of "Solicitation" Under Rule 14a-1(l):

According to the SEC's filing:

> *"The proposed amendment would add paragraph (A) to Rule 14a-1(l)(1)(iii)45 to make clear that the terms "solicit" and "solicitation" include 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 advice for a fee."*[3]

In the release, the Commission also recognizes that the term "solicit" has historically excluded proxy advisors: "Under such a view, 'solicitation' arguably might be limited to requests to obtain proxy authority or to obtain shareholder support for a preferred outcome."[4] Although the SEC argues the solicitation codification is consistent with broader intentions of the definition, we argue that the new interpretation of proxy advisory services as solicitation is contrary to the original and historically accepted qualification, and confuses advisors with solicitors, which definition has far-reaching implications for proxy advisors and investors.

There is a fundamental difference between the actions of proxy solicitors and proxy advisors. Proxy solicitors are persons who urge shareholders to vote in a specific manner to achieve a specific outcome. Proxy advisors are independent bodies who provide unbiased research on proxy topics and are indifferent to the outcome of the votes. Therefore, PERA does not view proxy advice as "solicitation".

PERA contracts with Institutional Shareholder Services (ISS) and Glass Lewis for various services, including research, vote recommendations, and vote submission, all of which assist us with fulfilling our fiduciary

[3] https://www.sec.gov/rules/proposed/2019/34-87457.pdf
[4] *Id.*

duty to vote proxies in a cost-effective, efficient manner. While these services are utilized in support of our voting process, PERA does not 'robo-vote' in harmony with any advisor's recommendations.

PERA votes proxies in accordance with its Board-adopted Proxy Voting Policy, which seeks to promote best practices in corporate governance for alignment between companies' and shareholders' interests.[5] Our Proxy Voting Policy has been in place for 40 years, and is periodically reviewed and updated in order to capture those issues which PERA believes are most impactful and relevant in corporate governance. Through the lens of our custom policy, we review the research provided by advisors, analyze the potential implications of ballot measures, and vote in line with our own guidelines.

Throughout the voting process, we exercise the right to vote in the best interests of our plan beneficiaries, regardless of how other investors vote or the recommendations made by proxy advisors. This is evidenced in PERA's voting record. Over the past 5 years, Glass Lewis's recommendations aligned with PERA's policies and guidelines on an average of 91% of proposals we voted. This majority alignment should not be misinterpreted as indicative of robo-voting. Rather, this is reflective of coalescence among proxy advisors and institutional investors on what constitutes best practices for corporate governance activities that are additive to shareholder value.

PERA attributes the 9% average balance of proposals voted against, or otherwise mixed in comparison to, Glass Lewis's recommendations to differences of opinion on ballot matters and their implications to us as investors. Just as buy-side securities analysts would not be expected to trade in accordance with sell-side analysts' recommendations 100% of the time, we do not expect that our proxy votes will align with the recommendations of proxy advisors 100% of the time. In either case, PERA values such research and recommendations as additional inputs into our own analyses, and contributory to informed decision making in line with our own investment objectives. The usefulness of proxy research and disclosures to PERA is further discussed in the sections below.

Regarding Proposed Amendments to 14a-2(b) Rules:

If the SEC's proposed codification of proxy advice as solicitation were to become legally effective, proxy advisors would be subject to new filing requirements. According to the Commission: "The purpose of Section 14(a) is to prevent 'deceptive or inadequate disclosure' from being made to shareholders in a proxy solicitation."[6]

On this premise, the SEC has further proposed amendments to Rules 14a-2(b)(1) and (b)(3), on which exemptions proxy advisors have historically relied in order to provide efficient communications useful to shareholders in the proxy voting process. Under qualification as solicitation by the SEC's proposed changes to Rule 14-a(1)(I), proxy advisors would no longer be able to rely on federal filing exemptions within the 14a-2(b) rules unless they complied with expanded disclosure requirements.

The Commission declares these proposed amendments would:

[5] https://www.copera.org/sites/default/files/documents/proxy_voting.pdf
[6] https://www.sec.gov/rules/proposed/2019/34-87457.pdf

> *(i) improve proxy voting advice businesses' disclosures of conflicts of interests that would reasonably be expected to materially affect their voting advice, (ii) establish effective measures to reduce the likelihood of factual errors or methodological weaknesses in proxy voting advice, and (iii) ensure that those who receive proxy voting advice have an efficient and timely way to obtain and consider any response a registrant or certain other soliciting person may have to such advice.*[7]

As a large shareholder and client to proxy advisors, Colorado PERA would like to take this opportunity to counter the SEC's rationale for the proposed amendments to the 14a-2(b) rules.

1. Proposed Rule 14a-2(b)(9)(i) on Conflicts of Interest Disclosures

Under this revision, to qualify for an exemption, proxy advisors must disclose material conflicts of interests, material interest "in the matter or parties concerning which it is providing the advice", material transactions or relationships between involved parties regarding the matter, any information that would be "material to assessing the objectivity of the proxy voting advice", as well as policies and procedures that address these conflicts of interest.[8]

As stated by the SEC, the rationale for amendments to Rule 14a-2(b)(9)(i) is as follows:

> *We believe that by requiring proxy voting advice businesses to provide standardized disclosure regarding conflicts of interest, clients of these businesses would be in a better position to evaluate these businesses' ability to manage their conflicts of interest, both at the time the proxy voting advice business is first retained and on an ongoing basis.*[9]

As previously mentioned, PERA utilizes research reports from Glass Lewis and ISS to assist with its evaluation of items on a proxy ballot. PERA has analyzed each firm's disclosures and management of conflicts of interest. We concluded that the potential conflicts are harmless to the independence of the research, would not sway an investor's opinion, and the existing firewalls to prevent contamination of objectivity -- where applicable to specific proxy advisors -- are sufficient.

The SEC's revision asks advisors to disclose instances where research is offered by the proxy advisors that serve the same corporate clients through separate lines of their business. ISS does disclose the names of its advisory clients upon request, a service that PERA has utilized. In addition, we requested information from ISS regarding the separation of information and physical location between their proxy service research and advisory businesses, and received a satisfactory response.

Importantly, we find that disclosed firewalls between ISS's business arms are adequate for controlling any inappropriate exchange of information that could infringe upon the objectivity of their research business. This includes the disclaimers made by ISS in their proxy papers, which broadly and consistently describe that there *may be* relationships between the subject issuer of proxy research and ISS's corporate governance consultation arm, which provides services to issuers.

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[7] *Id.*
[8] *Id.*
[9] *Id.*

Contrary to the Commission's conclusion that such disclosures inadequately inform investors, these statements are actually intentionally broad to maintain the integrity of the firewalls that exist between ISS's proxy research and corporate consulting arms. By disclosing potential, and not actual, corporate consultant clients, ISS upholds its firewall policies to not influence its proxy research business with information about corporate clients.[10]

Likewise, upon evaluation of Glass Lewis's policies, procedures, and disclosures on conflicts, PERA has found no reason to be concerned with the number or content of disclosures.[11] Nearly half of perceived conflicts of interest disclosed by Glass Lewis to PERA represent occasions of Glass Lewis's engagement with registrants. We do not see this as a conflict to clients, nor to the registrants. On the contrary, we see this as a necessary function for Glass Lewis to obtain the issuer information necessary to conduct thorough analysis.

Furthermore, another 32% of disclosed conflicts of interest represent occasions on which a registrant purchased Glass Lewis's proxy research on their own meeting. PERA takes a positive view on such behavior – this signifies to us that companies are trying to ascertain how proposals are understood from the view of third party, objective analysis, and this could lead to increased alignment of proposals with shareholder interests.

The remainder of these disclosures address relationships or ownership structures that could potentially be perceived as a conflict of interest. The disclosures are clear and provide adequate information for us to assess whether there are conflicts of interest that may impact the proxy research or our use thereof. While the disclosures are not standardized across proxy advisors, we find the information contained therein to be adequate for comparability.

In PERA's view, the scope, quality, and placement of disclosures made by proxy advisors are adequate in informing clients of real or potential conflicts of interest that are material for consideration in determining the independence and usefulness of purchased products. Standardized metrics of disclosure may not be equally applicable across all proxy advisor firms, as each may have different business functions which may support or contradict the necessity of some standards of disclosure. We do not believe that such requirements are necessary to boost our understanding of the conflicts of interest that are particular to each proxy advisor, nor would they enhance the usefulness of the reports and services we purchase.

By requiring not only more, but also uniform, disclosures, the Commission is effectively tasking proxy advisors with compliance burdens that do not add value from the investor client's perspective. We caution that requirements could also have the unintended effect of precluding disclosures from the standardized template which would otherwise have been made known to clients, as deemed appropriate by the proxy advisors that are party to specific relationships through courses of their unique businesses. These

[10] For more information on ISS's policies, see:
https://www.issgovernance.com/file/duediligence/code-of-ethics-nov-2019.pdf
https://www.issgovernance.com/file/duediligence/Disclosure-of-Significant-Relationships.pdf

[11] For more information on Glass Lewis's policies, see:
https://www.glasslewis.com/wp-content/uploads/2019/11/GL-Code-of-Ethics-051019.pdf
https://www.glasslewis.com/wp-content/uploads/2019/11/GL-Policies-and-Procedures-for-Managing-and-Disclosing-Conflicts-of-Interest-050819-FINAL.pdf
https://www.glasslewis.com/wp-content/uploads/2019/05/GL-Policies-and-Procedures-for-Managing-and-Disclosing-Conflicts-of-Interest-050819-FINAL.pdf

demands could also jeopardize the integrity of firewalls where they are currently beneficial to preserving objective analysis.

While PERA is an advocate for effective, material disclosures, we view the proposed changes to disclosures on conflicts of interest by proxy advisors to be unwarranted, and believe they will add cost, rather than value, as currently proposed by the Commission.

2. *Proposed Rule 14a-2(b)(9)(ii) on Registrants' and Other Soliciting Persons' Review of Proxy Voting Advice and Response*

a. Need for Review of Proxy Voting Advice by Registrants and Other Soliciting Persons

The Commission's proposal indicates that a number of concerns have been voiced by issuers over:

> *…factual errors, incompleteness, or methodological weaknesses in proxy voting advice businesses' analysis and information… that could materially affect the reliability of their voting recommendations and could affect voting outcomes, and that processes currently in place to mitigate these risks are insufficient.*[12]

In a 2018 study of proxy advisors commissioned by the American Council for Capital Formation ("ACCF"), "supplemental proxy filings during 2016, 2017 and a partial 2018 proxy seasons (though September 30, 2018)" were reviewed and 139 errors were identified.[13] In a letter to the SEC dated October 24, 2019 and including corrections made October 25, 2019, CII noted that, during the time period of the ACCF study, "ISS reported on 15,646 shareholder meetings at U.S. operating companies, and Glass Lewis reported on 16,184 U.S. company shareholder meetings."[14] If the findings of 139 errors are correct, ISS and Glass Lewis had a combined 0.4% error rate in their supplemental proxy filings, which is *de minimus*.

CII evaluated the filings referenced in the ACCF study and concluded, "it is clear that most of the claimed 'errors' actually are disagreements on analysis and methodologies, and that some other alleged proxy advisory firm errors derive from errors in the company proxy statements. Finally, in some cases, ACCF simply misstates what the company said. We think ACCF has documented no more than 18 reports with factual inaccuracies that can be blamed on proxy advisory firms, not the 39 that it claims." If only 18 of the 31,830 reports contained incorrect information, the combined error rate of Glass Lewis and ISS in these supplemental proxy filings was a mere 0.06%.

Similarly, the Commission's own analysis in the proposal indicates errors in proxy reports are immaterial in the proxy voting process. Table 2 on page 96 of the SEC's filing cites 54 out of 17,296 (or 0.3%) of registrants that filed proxies between 2016-2018 raised concerns about factual errors (as classified by the SEC) in proxy advisors' reports through additional definitive proxy materials. More importantly, zero of the claimed errors were deemed by the Commission to be material, and zero errors were determined by the SEC to have an effect the outcome of the vote.[15]

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[12] https://www.sec.gov/rules/proposed/2019/34-87457.pdf
[13] https://accfcorpgov.org/wp-content/uploads/2018/10/ACCF_ProxyProblemReport_FINAL.pdf
[14] https://www.sec.gov/comments/4-725/4725-6357861-196392.pdf
[15] https://www.sec.gov/rules/proposed/2019/34-87457.pdf

Concerns about errors in proxy reports are not shared by PERA. In the 30 years that we have contracted with proxy advisors, we have not known of any material issues with, or errors in, the proxy reports and analysis. Additionally, PERA has never been approached by an issuer to discuss what they perceived as material issues in a proxy advisor's report.

Based upon PERA's own experience, as well as the results of the ACCF study and subsequent analysis by CII and the SEC we do not see a definitive, documented need for review of proxy voting advice by registrants and other soliciting persons. We are concerned with the Commission's acceptance of these reported errors as proof that rulemaking is necessary.

b. Review of Proxy Voting Advice by Registrants and Other Soliciting Persons

The Commission's proposal binds unease over negligible errors with complaints from "many registrants" that:

> *…(i) they lack an adequate opportunity to review proxy voting advice before it is disseminated, (ii) there are not meaningful opportunities to engage with the proxy voting advice businesses and rectify potential factual errors or methodological weaknesses in the analysis underlying the proxy voting advice before votes are cast, particularly for registrants that do not meet certain criteria (such as inclusion in a particular stock market index), and (iii) once the voting advice is delivered to the proxy voting advice business's clients, which typically occurs very shortly before a significant percentage of votes are cast and the meeting held, it is often not possible for the registrant to inform investors in a timely and effective way of its contrary views or errors it has identified in the voting advice.*[16]

This portion of the proposal would allow registrants and other soliciting persons to review and respond to the proxy voting advice prior to publication, with a feedback window dependent upon the number of days before the annual meeting that a proxy is filed. The proposal acknowledges that proxy advisors are faced with a short deadline to prepare and disseminate their research; the SEC noted that this "proposed rule is intended to provide an incentive for registrants and others to file their definitive proxy statements as far in advance of the meeting date as practicable."[17]

The proposed rule would also require proxy advisors to provide issuers and solicitors with final notices of their advice "no later than two business days prior to the delivery of the proxy voting advice to its clients", regardless of whether the issuer provided feedback during the prescribed window.[18] The proposal would require the notice to include any revisions to the advice resulting from the review and feedback period.

It is interesting that this proposed regulation is the very opposite of what is mandated for securities research analysts. According to FINRA Rule 2241, "sections of a draft research report may be provided to … the subject company for factual review so long as: (a) the sections of the report submitted do not contain the research summary" and the analyst's legal or compliance personnel has been provided a

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16 https://www.sec.gov/rules/proposed/2019/34-87457.pdf

17 *Id.*

18 *Id.*

complete draft of the report.[19] Therefore, if this proposed regulation is adopted, a research analyst would violate securities law by providing a copy of the report to the company in advance of publication, while a proxy advisor would violate securities law if they did not provide it to the company in advance.

This is an unusual and confusing contradiction of the rules applied to research reports. PERA agrees with the Investor-as-Owner Subcommittee of the SEC Investor Advisory Committee in its January 16, 2020 recommendations, "The draft rule appears to treat proxy advisors inconsistently with other advice providers and in a number of respects it could have the effect of creating unmanageable conflicts of interest by inserting the issuer in the advisory process."[20]

As stated by the SEC's release, the rationale for amendments to Rule 14a-2(b) is as follows:

> *We believe that establishing a process that allows registrants and other soliciting persons a meaningful opportunity to review proxy voting advice in advance of its publication and provide their corrections or responses would reduce the likelihood of errors, provide more complete information for assessing proxy voting advice businesses' recommendations, and ultimately improve the reliability of the voting advice utilized by investment advisers and others who make voting determinations, to the ultimate benefit of investors.*[21]

PERA does not find the above complaints and rationale to be adequate grounds for the proposed rulemaking. As it pertains to opportunities for reviewing proxy advice, registrants may currently purchase papers on their company meetings from proxy advisors. From the conflict of interest disclosures provided to us by proxy advisors, we know that issuers do take advantage of that service. Even so, we reiterate that PERA has not been approached by registrants seeking to clarify errors or misinterpretations in proxy papers, either before or after votes have been cast.

Registrants may also take advantage of formal, documented, and market-based mechanisms for engaging with proxy advisors, such as through Glass Lewis's pilot Report Feedback Statement service.[22] Such services provide issuers and shareholders with a formal communication channel through which to clarify viewpoints or to identify factual errors in voting advice, without filter.

It is important to note that companies are not frequently making use of Glass Lewis's Report Feedback Statement service. In 2019, the pilot program offered a feedback mechanism to 12 issuers and/or shareholder proponents per week. Of the 624 total offerings made by Glass Lewis during the pilot, only six issuers (or less than 1% of offered entities) utilized the Report Feedback Statement service during the 2019 proxy season.[23] If issuers are not currently taking advantage of this program, we question the true appetite of companies to review reports, and adhere to the mandatory feedback and final notice periods as proposed by the SEC.

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[19] https://www.finra.org/rules-guidance/rulebooks/finra-rules/2241?rbid=2403&element_id=11946

[20] https://www.sec.gov/spotlight/investor-advisory-committee-2012/iac-recommendation-proxy-advisors-shareholder-proposals.pdf

[21] https://www.sec.gov/rules/proposed/2019/34-87457.pdf

[22] https://www.glasslewis.com/report-feedback-statement-service/

[23] Information privately disclosed to PERA pursuant to policies found here https://www.glasslewis.com/report-feedback-statement-service/ stating that "Upon request, Glass Lewis will provide quarterly reports that list the issuers and shareholder proponents that subscribed to the Report Feedback Statement service."

Moreover, allowing an issuer to review and respond to a proxy advice prior to its release to consumers introduces the potential for undue influence on a neutral party. PERA values independent, unbiased research. The research and analysis we receive from Glass Lewis and ISS currently meet this criteria. However, we are concerned that objectivity would be compromised were registrants granted feedback and final notice periods for additional comment.

Contrary to the Commission's intent, the mandatory feedback windows and the two day final notice period could result in delayed investor access to proxy advisor reports, which may negatively impact our ability to fulfill our responsibilities in the proxy voting process. It is imperative that investors have adequate time between receipt of proxy research and voting deadlines in order to review and vote proposals in accord with their fiduciary duty.

As stewards of pension fund assets, we strive to minimize costs to preserve the value of benefits offered to our members. If the window between publication of such research and company meetings is compressed, PERA may not have sufficient time to evaluate these reports and make an appropriate voting decision. We currently have the appropriate staff to handle our proxy process. However, if these amendments were to pass, PERA believes additional resources would be required to vote proxies in a timely fashion, especially during the proxy season, and the cost of such staffing would be significant.

c. Response to Proxy Voting Advice by Registrants and Other Soliciting Persons

Additionally, the Commission's proposed final notice period would:

> *…allow the registrant and/or soliciting person to determine whether or not to provide a statement in response to the advice and request that a hyperlink to its response be included in the voting advice delivered to clients of the proxy voting advice business.*[24]

This portion of the proposed amendments would require proxy advisors to allow issuers and other solicitors the opportunity to provide a written response to the research that would be included as a hyperlink in the advisors' reports.

The SEC's rationale for this proposal is as follows:

> *The proposed amendments would provide a more efficient and timely means of ensuring that a proxy voting advice business's clients, including investment advisers, are able to consider registrants' views at the same time they are considering the proxy voting advice and before making their voting determinations.*[25]

Currently, when PERA reviews proxy research, we can simultaneously review registrant proxy filing materials, through the proxy advisor's submission platform, to inform our vote. We do not foresee that issuers or shareholders would add information above and beyond what they have so meticulously laid out in their proxy filings. As such, we believe the Commission's rationale for the proposed amendment is misguided.

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[24] https://www.sec.gov/rules/proposed/2019/34-87457.pdf
[25] *Id.*

Furthermore, we see another interesting bifurcation here in requirements between research provided by proxy advisors and public market analysts. Sell-side firms are not obligated to provide a link to a written response from the subject of their analysis. The inclusion of an issuer-sponsored hyperlink in a research document, whether from a proxy advisor or an analyst, could potentially cause the recipient of such analysis to question its independence and objectivity.

To comply with this amendment, a proxy advisor would have to coordinate the hyperlink inclusion with the issuer. It is PERA's understanding that advisors currently do not have this functionality available, and would be required to build it themselves or purchase it from a software vendor. The cost of this functionality may ultimately be passed on to the clients.

Additionally, inclusion of a hyperlink would add an unnecessary layer of complexity to the proxy process. Would the advisor or the issuer bear the risk if the hyperlink were incorrect or unsupported? If the issuer were required to submit the hyperlink contents as a supplementary filing, would the advisor be exposed to liability if this process did not happen prior to publishing of the link, or perhaps at all? We respectfully request the SEC to consider these questions and their impact prior to moving forward with their proposals.

Regarding Proposed Amendments to Rule 14a-9:

Proxy advisors are already subject to Rule 14a-9, a fact the SEC has reaffirmed in their recent guidance and proposals. In addition to the current examples of misleading information within the Rule text, proposed amendments would ask a proxy advisor to:

> *…disclose information such as the proxy voting advice business's methodology, sources of information and conflicts of interest" to ensure their research is not "materially false or misleading."*[26]

In a January 2020 SEC comment letter from Glass Lewis, they noted that this amendment would "require proxy advisors to publicly file proprietary information - the proxy advice that is their product - even though the SEC has no apparent plans or use for the information."[27] This disclosure of their resources used in data collection, proprietary methodology, and anything that may potentially be deemed a conflict of interest could result in advisors losing their competitive advantage.

The SEC's rational for this addition is as follows:

> *By including this example, our focus is on ensuring that any advice provided to those clients is not materially misleading with respect to its underlying bases.*[28]

As described above, Glass Lewis and ISS have been forthcoming regarding real or perceived conflicts of interest. Both firms have readily discussed the matter with PERA, and we are satisfied with the quality of information and disclosures received. We are also satisfied with the factual inputs and thorough analysis

[26] *Id.*
[27] https://www.glasslewis.com/wp-content/uploads/2020/01/GL-PRA-Letter-01072020.pdf
[28] https://www.sec.gov/rules/proposed/2019/34-87457.pdf

provided by proxy advisors. Where there is need to revise those inputs and/or resulting recommendations, we appreciate that proxy advisors provide prompt access and full disclosure of the amended reports, regardless of the level of materiality they may present to our voting decisions.

PERA does not need the details of an advisory firm's proprietary methodology or sources of information to be publicly disclosed in order to benefit from the ensuing product. On the contrary, we foresee such public disclosure requirements could reduce the benefits via increased costs and limited market competition.

PERA appreciates market competition, which motivates proxy advisors to be accurate, unbiased, and thorough in their research. A healthy number of service providers also promotes price competition, which helps keep costs manageable for investors. There are currently only a handful of U.S.-based proxy advisory firms; further contraction in this industry would lead to less price competition and higher costs for clients.

PERA believes these potential regulations would unnecessarily increase compliance burden on proxy advisors, and the resulting costs would ultimately be passed on to investors. If these amendments were to pass, proxy advisors could see additional and undue burdens on their processes.

In 2018, Glass Lewis filed 5,565 U.S. proxy research reports. By their calculations, compliance with these regulations would prompt the firm to "make in excess of 21 SEC filings each business day of the year on an ongoing basis."[29] That is a significant number. Additionally, Glass Lewis' "Estimated Annual, Ongoing Compliance Burden of SEC Exemptive Conditions" would amount to 59,999 burden hours.[30] The SEC has estimated compliance at 250 hours, after the first year in which the requirements become effective.[31] There is a clear disconnect between the two estimates.

In addition to operational costs, the SEC acknowledges that proxy advisors may also incur litigation costs: "Compliance with the proposed amendments may require the use of professional skills, including legal skills."[32] Such operational, legal, and compliance costs will ultimately be borne by investors. It is evident that more work needs to be done to fully assess the impact of these amendments.

In sum, we agree with ISS' statement that "The net effect of the [proposals] will be to not only diminish important investor protections but also impair what is now a balanced, independent, transparent, and well-functioning relationship between proxy advisers and their clients that over recent decades has resulted in an efficient and effective system for proxy voting."[33] As an institutional investor, we support free market operations, balance, and transparency in all aspects of the investment business.

PERA champions the SEC's mission to protect investor interests. However, we do not believe the proposed amendments in their current form are aligned with that pursuit. We again urge the Commission to heed comments from investors, proxy advisors, CII, and the SEC Investment Advisory Committee's Investor-as-Owner Subcommittee in a more dutiful consideration of the potential impacts of its proposed rulemaking.

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[29] https://www.glasslewis.com/wp-content/uploads/2020/01/GL-PRA-Letter-01072020.pdf
[30] *Id.*
[31] https://www.sec.gov/rules/proposed/2019/34-87457.pdf
[32] *Id*
[33] https://www.issgovernance.com/iss-files-suit-over-august-sec-guidance/

Thank you for considering public comment in your reflection on these amendments. We appreciate the Commission's devotion of time and consideration to Colorado PERA's perspective as an institutional investor.

Sincerely,

Ron Baker
Executive Director
Colorado Public Employees' Retirement Association