



California Public Employees' Retirement System

Branch or Division

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Ms. Vanessa Countryman, Secretary  
U.S. Securities and Exchange Commission  
100 F Street, NE, Washington, DC 20549-1090  
February 3, 2020

**Subject: Amendments to Exemptions from the Proxy Rules for Proxy Voting Advice; Exch. Act Release No. 34-87457 (File No. S7-22-19)**

**Dear Secretary Countryman,**

On behalf of the California Public Employees' Retirement System (CalPERS), we write to comment on the Securities and Exchange Commission's (SEC or Commission) proposed rule entitled Amendments to Exemptions from the Proxy Rules for Proxy Voting Advice (Proposed Rule or Release). As the largest public defined-benefit pension fund in the United States, we manage approximately \$400 billion in global assets on behalf of more than 1.9 million public employees, retirees, and beneficiaries. Our duty to pay benefits decades into the future requires that we take a long-term view when assessing whether the companies that we hold in our portfolio are effectively managed.

As of December 31, 2019, CalPERS owned 3,600 U.S. companies. In the 2019-2020 proxy season, we have thus far been asked to vote on 3,313 proxies covering a wide range of areas. In determining how to vote on these proxy issues, CalPERS seeks to ascertain the most accurate, reasonably available information.<sup>1</sup> Because we cannot possibly be experts in all areas upon which we may be asked to vote, we also seek out research from third parties, including proxy advisors. While we generally want more information from companies and have petitioned the SEC to expand and enhance issuer disclosures in a number of material ways,<sup>2</sup> the Proposed Rule would go in the opposite direction. Instead of providing us with more useful and reliable information, the Proposed Rule would make the process more complicated and expensive for clients/customers that use proxy advisor research services without materially improving the quality, quantity, or timeliness of information.

Worse, the Proposed Rule lacks key details,<sup>3</sup> which we do not believe can be adequately addressed through voluntary, cross-industry collaboration (as the Release suggests), and which would require significant subsequent SEC determinations. The lack of implementation details makes it impossible for us to adequately assess the full impact of the Proposed Rule on

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<sup>1</sup> The standard articulated in the Release that, "proxy advice be based on the most accurate information reasonably available,"<sup>1</sup> is already being met by the current system.

<sup>2</sup> See, e.g., Letter from Cynthia Williams, et al, to Brent J. Fields, SEC, Oct. 1, 2018, at <https://www.sec.gov/rules/petitions/2018/petn4-730.pdf>.

<sup>3</sup> Release at 59, stating, "Because there may be a number of implementation details to resolve, effective coordination between proxy voting advice businesses and registrants (and certain other soliciting persons, as applicable) would be needed."

CalPERS, much less on the markets overall. Furthermore, the paucity of relevant details raises questions regarding the accuracy and utility of the limited (and arguably misleading) economic analysis that was provided in the Proposed Rule. Accordingly, we urge the Commission to abandon its effort to disenfranchise shareholders through this insufficiently supported Proposed Rule, and instead look to enhance the access to or/the availability of information for investors like CalPERS.

## I. PURPOSE OF THE PROPOSED RULE

While the Release suggests that the Proposed Rule is necessary to protect investors from potentially incomplete or conflicted advice, the reality is that there has been no investor demand for the Proposed Rule. The push for reforms in this area is not from investors who are obtaining the advice (like CalPERS), but instead is from the companies that are subjects of the advice sought. The Release is facially not an effort to protect shareholders but is instead a clear effort to protect company executives from shareholders.

The Release explicitly acknowledges companies' complaints that the proxy experts we hire are somehow not sufficiently considering their side of the story when providing research information and analyses. However, there is no relevant economic analysis or data to support that assertion. Nevertheless, the Proposed Rule would create a massive new process through which proxy advisors would have to engage with companies and communicate with us. So, while the SEC has offered no details regarding any potential benefits, we know for certain that the new proposed process would add significant complexity, time, and costs for us.

Put simply, company executives and their allies are now using the federal regulatory apparatus to make the proxy evaluation process more costly, complex, and less useful to us—the clear objective of which is to ensure company executives receive investor support for management proposals more often. In reality, management often has little to fear. Some of those who provide us with proxy voting advice recommend voting in favor of management approximately 85 percent of the time. But the differences (often involving Board director elections and executive compensation decisions) are typically materially impactful to executives.

## II. CALPERS' CONCERNS WITH THE PROPOSED RULE

The Proposed Rule would weaken proxy advisor services and make existing processes more difficult and more expensive for shareholders. The one-sided Proposed Rule appears to embrace changes requested by business trade groups without materially addressing concerns raised by shareholder interest groups—the firms that voluntarily hire the advisers to help us. As we read through the Proposed Rule, we are concerned that the industry as depicted or implied in the Proposed Rule may not accurately reflect the actual processes for informing the proxy voting system. The reality is that third parties that provide us with proxy voting advice side with company executives around 85 percent of the time.<sup>4</sup> Company executives and their allies have long pressed the SEC to reduce the ability of the proxy advisors that we hire to provide us with timely information which we need to make informed proxy decisions and simultaneously reduce our ability to rely on that advice.

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<sup>4</sup> Directors won 98.6 percent of the time in Russell 3000 and shareholder proposals failed 82 percent of the time in Russell 1500 in recent elections according to Georgeson/Proxy Insight 2019 Annual Corporate Governance Review.

The Proposed Rule would force proxy voting advice businesses to operate differently or risk losing their businesses. When the market provides votes in favor of management 90 percent of the time, it is pragmatically very difficult for a company to lose a proxy vote. Our experience is that when a company loses a vote, there are generally material issues that the company should address. The Proposed Rule would provide relief to the most deficient companies when the better course would be for companies to enhance disclosures, communicate better with shareholders, and make changes to corporate culture or operations. The Proposed Rule would weaken our ability to act when a company falls short of a baseline requirement, so we will have to pursue additional/alternative methods to effectuate change that will likely be more critical of corporate practices and more expensive to implement.

If adopted, the proxy voting process will take longer and likely result in more shareholders failing to vote on time at some companies. One way for investors to reduce this timing constraint would be to vote at fewer companies. This may be accomplished by abstaining from voting or divesting, which removes the requirement to vote. Some investors will critically examine their portfolios and may decrease the number of companies they are invested in to reduce voting requirements. Such divestment will most often adversely impact smaller companies.

Additionally, while a portion of the Proposed Rule addresses conflicts, the changes may create a system that will make proxy advisors captive to registrants, in a way that will likely make the advice we receive far more conflicted because proxy advisor independence is weakened.

Below, we address each section of the amendments included in the Proposed Rule.

*A. Proposed Codification of the Commission's Interpretation of "Solicitation" Under Rule 14A-1(L) and Section 14(A)*

The market for proxy voting advice has matured over the past 36 years. Treating this advice as a "solicitation" constitutes a fundamental shift and may have a chilling effect on shareholder communications. The Proposed Rule's explanation for this shift is not clear to us. Each time it addresses the shift/change, the reader is referred to the definition of a "solicitation" without providing an example or explanation. For example, page 15 of the Release states, "the definition of a solicitation may result in proxy advisory firms being subject to the federal proxy rules because they provide recommendations that are reasonably calculated to result in the **procurement, withholding, or revocation of a proxy.**"<sup>5</sup> Repeatedly, the same highlighted phrase is used in the Release without making a connection as to how proxy voting advice constitutes either "procurement, withholding, or revocation."<sup>6</sup> It appears to us that the three terms appear to actually apply to a "proxy statement" rather than a proxy vote;<sup>7</sup> however, the Release equates proxy voting advice with the right to vote on another's behalf and in a manner that would benefit a particular party without explanation.

Since the change will shift an entire market, the SEC should provide greater detail regarding the connection. In our view, if the conclusion were obvious that proxy voting advice is a solicitation, this interpretation would have been the standard decades ago which would have allowed another

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<sup>5</sup> Release at 15.

<sup>6</sup> Release at 15, 16, and 85.

<sup>7</sup> Release at 136 (including the current definition of solicitation (iii) The furnishing of a form of proxy or other communication to security holders under circumstances reasonably calculated to result in the procurement, withholding or revocation of a proxy.)

system of proxy voting information to develop. In other words, even if correct, the SEC should explain more regarding the benefits of shifting an entire market now.

*B. Proposed Amendments to Rule 14A-2(B)*

a. Conflicts of Interest

The Proposed Rule presents a solution to an academic problem that poses no practical threat. We see no evidence that conflicts of interest with proxy advisors have led to voting advice that conflicts with our voting policies. In other words, proxy advisors are not calling balls and strikes differently for clients and non-clients. Proxy voting advice businesses help lead their registrant clients to the strike zone. We have noted no proxy voting recommendations that threaten our view of proxy advisors' "objectivity or reliability."<sup>8</sup> We have sought no help from the SEC in monitoring proxy advisors or in enhancing the information we receive regarding conflicts of interest. Interestingly, while investors who are clients have not sought the assistance, the SEC has moved to enhance such requirements for the apparent benefit of non-clients. Disclosures of conflicts of interest are important for participants in the financial markets to protect clients which makes the SEC's leap to protect non-clients more interesting given the SEC never explains its enhanced duties in this situation or where it might so intervene in the future to protect non-clients.

CalPERS evaluates proxy voting advice businesses by reviewing how well those proxy advisors follow our voting guidelines, so the advice can be compared against a stable standard, that if followed, would not include conflicting advice. We operate in a market that we know well and are comfortable with the existing state of the market. We see no impact in our votes or in the voting outcomes on company issues based on proxy voting advice businesses' potential conflicts. As such, we find it confusing that resources and attention are focused on proxy advisors who pose little danger.

We are generally happy with our proxy voting advice services and are comfortable with the current level of disclosures regarding conflicts of interest, given we check the actual advice against our voting guidelines. We also note that proxy advisors do a great job of influencing registrant clients to adopt good practices in corporate governance and assist in getting registrants to meet baseline standards. The Proposed Rule 14a-2(b)(9)(i) requirements are not necessary and will not improve the advice that we receive. The existing disclosures already address the concerns raised. It is not clear to what extent the SEC has reviewed all of the disclosures that proxy voting advice businesses already provide. The Proposed Rule creates a substantial amount of additional paperwork, while providing no benefits to proxy voting advice provided to business clients. The additional requirements would enhance the barriers to entry for other potential proxy advisory participants in the market making future competition less likely. While providing institutional investor clients no new information, Proposed Rule 14a-2(b)(9)(i) exists to make disclosures readily available to non-institutional investor clients.

Proxy advisor clients are primarily institutional investors with substantial capacity to review the voting advice and hire consultants or lawyers when a problem arises. We believe the SEC's resources could be better applied to improve disclosures of conflicts in other areas of the

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<sup>8</sup> Release at 27.



financial market with greater potential to enhance transparency and investor protections. The approach could follow the model proposed for proxy advisors. Additional procedures should be applied to accountants,<sup>9</sup> credit ratings agencies, investment advisors, broker-dealers, securities analysts, lawyers, and corporate directors.

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

Making proxy advisors have to clear proxy voting advice with management of companies creates far more conflicts than the existing system because it diminishes independence for proxy voting advisors. Enabling a non-client to review the work product before actual clients is a unique proposal that arguably violates the Constitution by taking private property for public use without compensation. It seems counterproductive to attempt reduce conflicts by making proxy advisors provide additional disclosures and then add a feature that has more significant conflicts which compromise independence. Institutional investor clients will then have to pay substantially more for the less valuable conflicted advice and have less time to review the voting information and vote. Under this proposed system, proxy advisors become substantially less independent, more costly, much more conflicted, and less useful.

As we have repeatedly stressed, proxy advisors already make recommendations favoring management more than 85 percent of the time. Table 2 of the Release places the number of factual errors among 17,296 companies at 54 or 0.3 percent.<sup>10</sup> Stated differently, that is an accuracy rate of 99.7 percent. There is no indication that any of the votes containing errors caused a different voting outcome. The primary votes against management occur in votes on non-binding shareholder proposals where management has the power to ignore the outcome using its veto. Under the current system, a registrant can review proxy advisor recommendations and protest the outcome to the proxy advisor without reducing the amount of time that shareholders have to vote. Registrants may also choose to engage shareholders and explain significant or problematic issues more thoroughly to get its shareholder base comfortable with certain votes. In no case are registrants made to be victims without recourse under the current system, so there is no reason to create a system of conflicted advice and make institutional investors pay more for it.

We acknowledge that the Business Roundtable, Center on Executive Compensation, Society for Corporate Governance, and Wachtell Lipton have all advocated for mandatory review periods for registrants,<sup>11</sup> but it is worth noting that no institutional investors have suggested that such review would enhance the quality, quantity, or timeliness of advice. Registrants appear to be silent on the issue, but most do not want the additional obligations to review recommendations given the existing overwhelming pro-management votes. Management loses few votes, so the additional requirement wastes company time.

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<sup>9</sup> Amendments to Rule 2-01, Qualifications of Accountants. <https://www.sec.gov/rules/proposed/2019/33-10738.pdf> (SEC proposes amendments to reduce auditor independence requirements moving in the opposite direction from that of proxy advisers.)

<sup>10</sup> Release at 84.

<sup>11</sup> Release at 43, footnote 109. (Each organization mentioned has recommended this change.)



Proxy advisors publicly disclose their positions on key voting items with the annual publication of guidelines.<sup>12</sup> Many companies choose to ignore this valuable information that proxy advisors make publicly available. In our experience, when a company loses a vote, it isn't because of an error by a proxy adviser. Rather, when management loses a vote, it is because they generally have not addressed a major concern that needs to be addressed. Thus, the Proposed Rule provides additional protection for the most deficient registrants rather than encouraging better performance. Proxy advisory businesses provide detailed information on the key issues for proxy season. A registrant doing basic due diligence can find the institutional investor proxy voting guidelines online.<sup>13</sup> A better approach may be to encourage registrants to review the publicly available information and use it to inform their processes and disclosures.

Given that proxy advisors make key information public and highlight what they are looking for, it seems useless to let a registrant review proxy voting advice based on guidelines that went unreviewed though were publicly available. The registrant may argue it is unique and has reasons for diverging from the known standard, but the onus is on such registrant to communicate that to its shareholders in its proxy statement. The new registrant requirements are the equivalent of letting a company retake a test when an outline with all of the answers had been previously made available. Therefore, the proposed process will discourage additional participants from entering the proxy voting business market; slow down voting; increase vote failures; cost more for proxy voting advice business clients; create information overload when companies include additional information; and force shareholders to develop other systems.

On page 50, the Release partially acknowledges the magnitude of the problem when it says, "[w]e are mindful of the potential disruptions and costs that the proposed review and feedback period and final notice requirements could have on the current practices of proxy voting advice businesses and their clients."<sup>14</sup> The proposed fix is to limit the review and feedback period to registrants and "soliciting persons who intend to deliver their own proxy statements and proxy cards to shareholders."<sup>15</sup> This intentionally hinders shareholder proponents from getting a second chance to review and provide a hyperlink as well. In the shareholder proposal process, the registrant speaks last because it writes a response to the shareholder proposal and includes it in the proxy. Under the proposal, the proxy advisor would provide its voting advice to the registrant, and the registrant could then provide additional information. It is not necessary to allow the registrant an additional opportunity to comment because it already had the last word. On the most basic level, this is not fair to shareholders, especially when registrants have a final veto on non-binding proposals and can ignore the outcome of the vote.

We recognize that the proxy advisors are not required to revise advice, but a heavy hammer is placed over their heads by the added emphasis on Rule 14a-9 liability.<sup>16</sup> Each proxy advisor will face lawsuits in such a system given the large number of votes. Proxy advisors will have to account for the increased risks of lawsuits by charging clients more and asking clients to indemnify them in certain situations. Costs and risks to investors and proxy advisors will

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<sup>12</sup> See e.g. <https://www.glasslewis.com/2020-policy-guideline-updates-u-s-u-k-canada-europe-china-and-more/us-guidelines-cover-2020/>

<sup>13</sup> Id.

<sup>14</sup> Release at 50.

<sup>15</sup> Id.

<sup>16</sup> Release at 51.

increase while actual oversight goes down substantially, leaving institutional investors more vulnerable.

Notably, proxy voting advisory businesses will only experience penalties when they recommend voting against management, because most companies will not correct proxy advisors when the recommendations favor management. Under such circumstances, the most effective and cost-efficient method of complying with the SEC's new requirements would be to simply advise voting with management 100 percent of the time in order to reduce litigation risks.<sup>17</sup>

Further, we have not been able to fully assess what it will mean for shareholders when they share voting advice. Many others may get caught in the new regulations unintentionally, so there is a substantial need to further clarify the definitions and determine the extent to which market participants will be silenced from communicating when companies fall short.

The Proposed Rule acknowledges that there are details to resolve and places it on proxy advisors and registrants and other soliciting parties to figure out the "number of implementation details."<sup>18</sup> This understates the degree of effort required by market participants to complete the work of the SEC. In fact, this creates a gap in the Proposed Rule that, in our opinion, is too large to overcome. It is not reasonable to expect opposing parties to work together to solve a collective action problem and develop the details of such a complex system. That is the role of the government, which should be an impartial arbiter and regulate accordingly. The SEC must fully develop the amendments and then present those amendments for review and comment. This has not happened with the Proposed Rule because the most significant details and costs born of the Proposed Rule have not been ironed out.

Although the Release states there is no new private right of action created by the new Rule 14a-2(b)(9), the process and greater focus on the Rule 14a-9 will make it more likely that proxy voting advice businesses will be sued under the new rules. It is not clear whether the proxy voting advice must produce a majority vote against management to be held liable. If mistaken advice produces a resubmission, a registrant may have grounds to sue a proxy advice business. If the information is wrong, a registrant will likely be able to successfully sue regardless of intent. This sets up proxy voting advice businesses for failure and makes them, for purely business reasons, less likely to recommend voting against management. Therefore, the voting advice would be compromised in a way that makes it less independent than it is today. It will also make it less likely that there will be new participants selling proxy voting advice. Shareholder proponents would be left out of the review system completely.

The Proposed Rule asks if registrants should enter confidentiality agreements with proxy advisors. This issue is never dealt with in the economic analysis because such confidentiality agreements would not be difficult to produce.<sup>19</sup> We disagree with the Release's conclusion. Entering 5,000 confidentiality agreements is a significant endeavor even if the agreements were simple. On the contrary, most of the large registrants will initially demand that their form and

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<sup>17</sup> Release at 58. (The SEC states that it will "allow the parties the flexibility to determine the most effective and cost-efficient methods of compliance.)

<sup>18</sup> Release at 59.

<sup>19</sup> Release at 49, stating, "The terms of such agreement would apply until the proxy voting advice business disseminates its proxy voting advice to one or more clients and could be no more restrictive than similar types of confidentiality agreements the proxy voting advice business uses with its clients."

chosen forum dictate the agreement which in the best case will mean a given proxy voting advice business will have hundreds of different confidentiality agreements to manage. Each of the proposed agreements would also become a part of the detailed conflict disclosures. It is hard to develop all of the detailed processes that would need to be implemented to comply with the proposed process. It is exceptionally hard when the Release is lacking the details necessary to implement complete confidentiality agreements.<sup>20</sup> As part of the cost-benefit analysis, we recommend that the SEC survey law firms to determine how much would be charged to produce the contracts required to properly operate the system that has been proposed. Additionally, we ask that the SEC provide more details regarding the proposed system in order to allow any such estimates to be produced.

### *C. Proposed Amendments to Rule 14a-9*

We are keenly interested in any discussion of materiality at the Commission, such as the proposed amendments to Rule 14a-9:

Rule 14a-9 prohibits any proxy solicitation from containing false or misleading statements with respect to any material fact at the time and in light of the circumstances under which the statements are made. In addition, such solicitation must not omit to state any material fact necessary in order to make the statements therein not false or misleading.<sup>21</sup>

Moving forward, proxy voting advice businesses will more clearly be subject to the same anti-fraud standard as registrants.<sup>22</sup> This will likely produce more suits against proxy voting advice businesses as well as registrants because the materiality bar is lowered. Registrants will lose more arguments that particular information is not material because the Release more firmly connects materiality to voting than it did in a recent release, Modernization of Regulations S-K Items, 101, 103 and 105. Moreover, registrants will not be able to claim certain information is material when suing proxy voting advice businesses and then claim it is not material when they are sued.

The character and construction of the proposed changes broadens materiality in a way that we embrace. Under the Proposed Rule, a proxy voting advice business could be held accountable for failing to disclose its methodology, sources of information or conflicts of interests to registrants.<sup>23</sup> So, without making payments to proxy voting advice businesses, those businesses will owe greater loyalty to registrants because of the new solicitation rules. In addition, if fair, registrants will be responsible if they fail to correct mistakes that run in their favor. Based on the tenor of the Proposed Rule, this may not be the intent, but it must be the logical outcome given that the registrants will have a direct role in the proxy voting advice.

Page 70 of the Release appears to suggest that proxy advisor business clients may mistakenly infer that a “negative voting recommendation is based on a registrant’s failure to comply with the applicable Commission requirements when, in fact, the negative recommendation is based on the determination that the registrant did not satisfy the criteria used by the proxy voting advice

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<sup>20</sup> Release at 59.

<sup>21</sup> Release at 68 referencing 17 CFR 240.14a.9.

<sup>22</sup> Id.

<sup>23</sup> Release at 70.



business.”<sup>24</sup> We think it would be rare for the professionals that actually use proxy voting advice to make such a mistaken inference. Page 70 limits registrant requirements to meeting SEC standards and eliminates tactics used by practitioners to encourage board members to do their jobs. This would leave little room for private ordering,<sup>25</sup> and eliminate the need for shareholders to create their own principles and voting policies. Carrying the discussion that starts on page 70 to its end challenges the notion that any shareholder proposal would ever be proper. The only changes in corporate governance could come from the SEC.<sup>26</sup> The argument turns the entire notion of corporate governance on its head to attempt to further limit what information can be shared among shareholders and what issues can be addressed with a proxy vote.

The discussion in pages 70 to 73 provide examples highlighting a problem that does not exist in reality because proxy voting advice businesses already distinguish their advice from SEC guidance. In publicly available information, for example, on page 5 of the Glass Lewis Guidelines, it reads, “we apply our own standards when assessing the independence of directors.”<sup>27</sup> The three-page discussion seems unfamiliar because it does not reflect our experience using proxy voting advice businesses. Practitioners understand where the information comes from and why it is in place. Competent lay people doing a minimal amount of research will find that proxy advisors routinely inform clients about where the standards come from because clients want to know. The proposal, beginning on page 70, expects proxy voting advice businesses to treat their institutional clients as lay people when dealing with basic knowledge within their profession. Proxy voting advice businesses should not be penalized by what the advocates against them failed to read about them online. Existing clients have few complaints about the quality of proxy voting advice and already know when proxy voting advice businesses produce their own guidance as opposed to report on the minimal requirements of the SEC.

#### *D. Transition Period*

Given the Release does not provide the details required to make the Proposed Rule work, leaving the development to the more than 5,000 registrants and existing proxy advisors,<sup>28</sup> a transition will take much longer than one-year. In fact, it is not clear that the required details will ever be developed. It is unclear how a given proxy voting advice business might work through such details with each available registrant without additional guidance. In order to develop the guidance, the SEC should engage experts with detailed knowledge of the proxy voting system. Once complete, the detailed rules should be circulated to the market for review. After analyzing a complete Proposed Rule, we could assess how long a transition might take. Without the detailed information, we cannot anticipate what the new system will require.

### III. ECONOMIC ANALYSIS

The purported economic analysis contained in the Release is facially inadequate to support the Proposed Rule. In fact, the Release includes an acknowledgement of the limitations of its economic review, stating, “[m]any of the effects discussed below cannot be quantified.

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<sup>24</sup> Release at 70.

<sup>25</sup> Private ordering takes place when shareholders agree how corporate governance will work at a particular company or many companies

<sup>26</sup> Release at 70 - 73.

<sup>27</sup> Glass Lewis at 5.

<sup>28</sup> Release at 59.

Consequently, while we have, wherever possible, attempted to quantify the economic effects expected from this proposal, much discussion remains qualitative in nature.”<sup>29</sup> The statement actually minimizes the lack of economic analyses. Frankly, given that the Proposed Rule lacks key details, there is simply no way to conduct anything close to an adequate analysis. For example, other than acknowledging the reality that the Proposed Rule would increase the costs, complexity, and time needed by us, we cannot make any detailed analyses. We simply don’t have the needed parameters.

One of the likely costliest (in terms of time and money) requirements would be to companies review of proxy voting recommendations. Yet, the Release does not quantify this cost. Furthermore, the Release does not clarify whether registrants will be held liable for failing to correct mistaken information that leads to proxy voting advice that runs in their favor. As we mention elsewhere, a large portion of the errors in proxy-related information and analyses provided to us by third parties arises from errors made by the companies they are studying. Nevertheless, from our view, it appears likely that they would be liable for these types of errors that are clearly not their fault. As such, the cost of the Proposed Rule could far exceed the stated expectations.

It is clear to us that the Proposed Rule would make fulfilling our fiduciary duties to vote our shares much more complex and expensive while reducing our potential benefits. We cannot provide an estimate of additional costs because details of the Proposed Rule are not complete. The SEC should provide a supplement containing complete details so that we – and it -- could estimate the potential costs. Further, the Release does not examine the risk of institutional and index investors divesting from certain small investments if the increased voting costs cannot be justified by expected returns on such investments. Like with the proposed rule on shareholder proposals, there is a possibility that certain investors may reallocate investments because of the Proposed Rule. Thus, in providing certain relief to large companies, the Proposed Rule may very well change investment patterns that will reduce investments in smaller companies. This possibility should be included in the economic analysis.

#### IV. CONCLUSION

The Proposed Rule would undermine our efforts to fulfill our fiduciary duty to make informed proxy voting decisions. Under the guise of protecting investors, the Proposed Rule would make the process more complicated and expensive without materially improving the quality, quantity, or timeliness of information provided to investors. The Proposed Rule offers no data to support the theory that the proxy advisors we hire provide us with systematically inaccurate or misleading information. On the contrary, we value their advice or we would provide other sources.

Further, the Proposed Rule would produce a system that is arguably more conflicted, as it would provide registrants the right to review proxy voting advice prior to it being disseminated to the clients that pay for it. The assumption is that this would give registrants an opportunity to make certain the information is accurate, but currently, there are extremely few factual mistakes. And of those, the vast majority are because the information used by our experts has been obtained directly from erroneous company disclosures.

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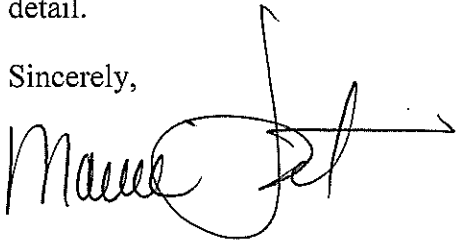
<sup>29</sup> Release at 107.

But these are not the only problems with the Proposed Rule. Our instant, pragmatic problem is that we cannot fully analyze its impact on CalPERS because many of the details simply aren't provided. Instead, the SEC essentially punted many key decisions to be subsequently voluntarily determined by registrants and proxy voting advice businesses.<sup>30</sup> Thinking through the complex details that will establish the rules for more than 5,000 businesses without further guidance is not likely to get completed in the near term, especially when factoring the varied interests.

As written, the Proposed Rule leaves investors (like CalPERS) that seek to make informed voting decisions worse off than we are today. We recommend that the SEC make no changes without developing the missing details and providing market participants an opportunity to review and comment on a completed Proposed Rule, including a detailed economic analysis. This information should include, at a minimum, a clear identification and quantification of the "problem" being addressed, how that would be improved by the approach taken, as well as the impact of the increased cost and complexity on institutional investors and registrants subject to the enhanced liability.

We welcome the opportunity to discuss this release in more detail. Please contact Anne Simpson, Investment Director, at [REDACTED] if you have any questions or wish to discuss in more detail.

Sincerely,

A handwritten signature in black ink, appearing to read "Marcie Frost", with a large, stylized flourish extending from the end of the signature.

MARCIE FROST  
Chief Executive Officer  
CalPERS

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<sup>30</sup> Release at 59.