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OFFICE OF THE STATE COMPTROLLER

February 3, 2020

Vanessa A. Countryman
Secretary
United States Securities and Exchange Commission
110 F Street, N.E.
Washington, D.C. 20549

Re: Comments on Proposed Rule "Amendments to Exemptions from the Proxy Rules for Proxy Voting Advice" [Release No. 34-87457; File No. S7-22-19]

Dear Ms. Countryman,

I write as Trustee of the New York State Common Retirement Fund, which is the third largest public pension fund in the United States, with an estimated $210.5 billion in assets under management as of March 31, 2019. The Fund holds and invests the assets of the New York State and Local Retirement System on behalf of more than 1.1 million members and beneficiaries and pays over $1 billion per month in benefits.

I wholeheartedly disagree with the Commission's premise, analysis, and conclusions for this Proposed Rule, so I appreciate the opportunity to provide a detailed comment outlining my opposition.[1] I hope that after the Commission completes its review and analysis of these comments and others that have been submitted, it finds that the Proposed Rule is unnecessary.

[1] As I communicated back in November, the Fund, and numerous other investors, requested additional time to comment on this proposal. In combination with the SEC proposal on "Requirements and Resubmission Thresholds under Exchange Act Rule 14a-8," such dramatic and controversial changes to the proxy process require additional time for all parties to provide comprehensive comments. Letter from New York State Comptroller Thomas P. DiNapoli to Chairman, Jay Clayton, Securities and Exchange Commission (November 18, 2019) https://www.sec.gov/comments/s7-22-19/s72219-6468376-199333.pdf.

General Comments About the Proposed Rule

I strongly oppose the Commission's current Proposed Rule to define the distribution of voting recommendations, related research and analysis by proxy advisors as a "solicitation" under the Securities Exchange Act of 1934. The Fund has long opposed rulemaking and legislation that would jeopardize the timely and independent research and voting recommendations we receive to assist us with casting proxy votes at our portfolio companies.[2] If enacted, this Proposed Rule, will unnecessarily interfere in the privately ordered relationship between investors and their advisors in a way that will increase costs, inject complexity, and possibly tilt voting recommendations toward management preference rather than a balanced analysis of the merits of an issue.

The premise of this Proposed Rule is that there is a "risk of proxy voting advice businesses providing inaccurate and incomplete voting advice."[3] However, the Commission has presented no actual evidence that proxy advisor clients are currently receiving inaccurate and incomplete voting advice. Furthermore, the Commission's purported evidence for inaccurate and incomplete voting advice is based solely on anecdotal information from registrants, analyses based upon flawed methodologies, and mischaracterizations of proxy research "errors."

For example, page 96 of the Proposed Rule includes a table with the total number of occasions on which registrants filed additional definitive proxy materials in response to proxy voting advice in calendar years 2016, 2017, and 2018. The Commission concludes that 150 filings indicated particular "errors" with proxy voting advice. At the time of submitting this letter, the Commission has failed to provide the analysis associated with the underlying data of this table. Without this analysis one is unable to conduct an independent review of these "errors."[4] It is therefore unclear whether the Commission found actual "errors" or simply issues on which company management disagreed with analyses or methodologies.

The Commission's methodology in assessing "factual errors" and "analytical errors" may contain the same flaws as the methodologies of groups representing corporate CEOs and other executives who have examined this topic. For example, the most cited "analysis" of proxy voting advice errors conducted by the American Council on Capital Formation (ACCF) is highly inaccurate and misleading. According to an analysis by the Council for Institutional Investors (CII), "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," and "...in some cases, ACCF simply misstates what the company said."[5] However, even accepting the Commission and ACCF methodologies would not support the Proposed Rule as the results would show that 99.99% of proxy advisor reports over both

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[2]Letter from New York State Comptroller Thomas P. DiNapoli to Chairman, Jay Clayton, Securities and Exchange Commission (November 13, 2018) https://www.sec.gov/comments/4-725/4725-4646620-176466.pdf.

[3] Page 11 of Proposed Rule.

[4]Letter from Glenn Davis, Council of Intuitional Investors to SEC Office of FOIA Services (November 14, 2019) https://www.cii.org/files/issues_and_advocacy/correspondence/2019/20191114%20CII%20FOIA%20request%20to%20SEC(1).pdf; Letter from Glenn Davis, Council of Intuitional Investors to SEC Office of FOIA Services (December 31, 2019). https://www.cii.org/files/issues_and_advocacy/correspondence/2019/20191231%20CII%20Appeal%20for%20Dispute%20Resolution.pdf.

[5]Letter from Kenneth A. Bertsch, Council of Intuitional Investors to SEC Chairman and Commissioners (October 24, 2019). https://www.cii.org/files/issues_and_advocacy/correspondence/2019/20191024%20SEC%20comment%20letter%20proxy%20advisor%20accuracy.pdf.

examination periods had no errors, because the main concerns voiced by registrants are not "errors," but disagreements on analysis and methodologies. These legitimate disagreements are proper grounds for discussion and debate among investors, their proxy advisors, and issuers; they should not be the basis for justifying the adopting of this Proposed Rule.

Proxy advisors have every incentive to conduct credible research and provide accurate recommendations—their clients seek accurate advice and proxy advisors compete to provide it. Additionally, as CII noted in its October 15, 2019, letter, "[p]roxy advisors' business model depends on factual accuracy and their incentives are thus aligned with issuers and institutional investors alike."[6] While, like every other human enterprise, proxy advisors are not perfect, when they make errors, their business interests compel them to immediately correct them and notify their clients. However, there is no real evidence—as opposed to anecdotal accounts and mischaracterizations of disagreements with management as proxy research "errors"—of an accuracy problem warranting government intervention.

Potential for Increased Litigation

The Proposed Rule's codification of the Commission's interpretation of "solicitation" as it relates to proxy voting advice may introduce new litigation risks for proxy advisors. If this Proposed Rule is adopted, one could readily imagine a case where an issuer may threaten legal action against a proxy advisor because they believe the information provided in the recommendation is false. This litigation risk will increase due-diligence and legal costs for these companies which we may safely assume would be passed on to their investor clients. This threat of litigation could force a change in the recommendation simply to avoid legal fees, or a delay in the timeliness of the research. In both instances, the proxy advisor's clients would be adversely impacted, either by losing the independence and timeliness we expect of proxy advisors or by added legal costs that will be passed on to investor–clients.

Problematic "Prepublication Review"

Among its several troubling provisions, the Proposed Rule would require that proxy advisors give issuers two chances to review proxy research before it is sent to investor–clients like the Fund. This would give issuers outsized influence and place a barrier between independent researchers and their paying customers. It would significantly disrupt the proxy voting system by introducing new litigation risks for proxy advisors, increasing the cost of their services, imposing severe time constraints on the production of reports, and effectively commandeering the proxy advisory firms to provide an additional platform for companies' views, which are already communicated by companies to shareholders in several other ways.

The Fund, like other institutional investors, retains proxy advisors in order to obtain cost-efficient, informed, and independent research, analysis, and advice. The independence of that advice is absolutely essential, and if proxy advisors are required to obtain issuer review and include reference to issuer objections before releasing their research to investors, that independence would be compromised,

[6] Letter from Council of Institutional Investors' members to SEC Chairman and Commissioners (October 15, 2019) https://www.sec.gov/comments/4-725/4725-6308155-193468.pdf.

depriving investors of a vital resource. These concerns were also noted by Commissioner Robert Jackson in his November 5, 2019, dissenting statement.[7]

Another concern with "prepublication review" is that it treats proxy advisors differently than independent research analysts. FINRA Rule 2241, which was approved by the Commission as in the public interest, guards against issuer influence that could impair analysts' independent research. This safeguard was established in order to, as the Commission has explained, "help protect research analysts from influences that could impair their objectivity and independence."[8] Additionally, Commission Investor Advocate Rick Fleming stated that the Commission has been "reluctant to allow companies to influence the research provided to investors" by stock analysts.[9] However, the Proposed Rule takes the opposite approach and requires proxy advisors to allow issuers to review their recommendations and research twice before a client receives it. If the Commission proceeds with this Proposed Rule, an analyst and a proxy adviser could write a report on the same company and the analyst would violate the securities laws by showing it to the company in advance and the proxy advisor would violate the law if it did not show it to the company in advance. This scenario confounds logic and the Commission has provided no rationale as to why proxy advisors should be held to a different standard from analysts.

The Proposed Rule also fails to address First Amendment concerns with "prepublication review." As the Commission itself recognized in exempting proxy advice from the notice and filing requirements of the proxy rules in 1992, "[a] regulatory scheme that inserted the Commission staff and corporate management into every exchange and conversation among shareholders, their advisors and other parties on matters subject to a vote certainly would raise serious questions under the free speech clause of the First Amendment." Nothing has changed in the free speech clause nor the law of the First Amendment that would suggest a different conclusion today. These "serious questions" are even more grave under the Proposed Rule because it seeks not only to limit speech, but to *compel* speech by requiring proxy advisors to publish companies' replies to their reports. Additionally, the "prepublication review" period may pressure proxy advisors to gloss over their initial differences of opinion with company management, resulting in silencing or concealing initial differences of opinion from the view of clients. This could deprive these clients of access to information. As written, the Proposed Rule would not require clients of proxy advisors to give investors the benefit of knowing about the exchange between advisors and issuers. This would be a substantial loss to investors without any tangible benefit to them and may not lead to more accurate information, but less information. In the end, investors will ultimately have access to fewer points of view, while gaining no offsetting benefit.

Lastly, "prepublication review" may not even work in practice. As prominent corporate governance expert Robert Lamm has noted: "[G]iven the concentration of shareholder meetings in the late first/second quarters, getting draft reports to companies and fielding their comments is already a struggle, even though only larger companies are currently favored with draft reports . . . If advisory firms have to

[7]Robert J. Jackson, Jr., SEC Commissioner, Statement on Proposed Rules to Restrict Shareholder Voting (November 5,2019) https://www.sec.gov/news/public-statement/statement-jackson-2019-11-05-open-meeting#_ftn4, footnote [5].

[8]SEC Approves Consolidated Rule to Address Conflicts of Interest Relating to the Publication and Distribution of Equity Research Reports https://www.finra.org/rules-guidance/notices/15-30.

[9] Rick Fleming, SEC Investor Advocate, Remarks at SEC Speaks: Important Issues for Investors in 2019 (April 8, 2019) https://www.sec.gov/news/speech/fleming-important-issues-investors-2019.

provide drafts to every company, it's not clear whether or how they will be able to do this."[10] The logistical challenges would be compounded by distracting and unproductive disputes about proxy advisors' recommendations between proxy advisory firms and issuers.

The Costs of the Proposed Rule Have Not Been Accurately Accounted For

In terms of the potential increase in costs, I believe the Commission failed to adequately assess and reasonably estimate the costs, for both proxy advisors and their clients, associated with this Proposed Rule. The Proposed Rule's "Costs" section admits this deficiency as it is littered with statements such as "unable to provide quantitative estimates," "unable to quantify this potential cost," and "we lack the data necessary to quantify." Before imposing far-reaching regulatory burdens, the Commission should provide an adequate accounting of costs. I expect that the direct costs of the Proposed Rule to proxy advisors would be passed on to investors like the Fund.

For example, the Commission's cost–benefit analysis inexplicably assumes that, on average, only one-third of U.S. companies would be subject to proxy advisory reports each year, or 1,897 registrants, with one report per registrant. This suggests the Commission was unaware that proxy advisor business models generally require them to cover all companies their clients are invested in, and many institutional investors have widely diversified portfolios.

For example, on January 7, 2020, Glass Lewis & Co (Glass Lewis) submitted a comment letter on the Proposed Rule.[11] In the comment, Glass Lewis states that it issued 5,565 proxy research reports on U.S. companies in 2018. The letter states, "[T]he Commission's summary assertion of a 250 burden hour annual, [sic] ongoing estimate for proxy advisors is entirely unexplained, unsupported by any of the necessary estimates to begin to properly estimate the total burden, and is vastly understated." Glass Lewis concludes that its preliminary, rough estimate of its annual ongoing burden under the proposed rules would be 240 times larger than the Commission's estimate. Therefore the Commission's estimate that proxy advisory firms on average would have to expend a total of 250 hours per year on all additional requirements imposed under the new regulation fails to accurately express the costs and burdens borne by proxy advisors.

Additionally, in his November 5, 2019, dissenting statement, Commissioner Robert Jackson wrote, "[B]ut the real costs of today's new regime lie in considering the issuer's feedback, including the issuer's response in the proxy advisor's report, and facing litigation from an issuer angry about the methodology used to provide anti-management advice . . . and for present purposes I make the unremarkable assumption that corporate managers reviewing a friendly proxy-advisor recommendation will not impose these costs on the advisor issuing that opinion."[12]

Another concern I have with the Proposed Rule is that it may create new barriers to entry in what has historically been an industry with few competitors. Currently in the U.S. market, the proxy advisor

[10] Garry Larkin, The Conference Board, On Governance: What Does the Latest SEC Guidance Mean for Proxy Advisors, Companies? (August 26, 2019) https://www.conference-board.org/blog/postdetail.cfm?post=7124.
[11] Letter from Nichol Garzon-Mitchell, General Counsel, Glass Lewis to Alex Goodenough, Policy Analyst, Office of Management and Budget (January 7, 2020) https://www.sec.gov/comments/s7-22-19/s72219-6617071-202957.pdf.
[12] Robert J. Jackson, Jr., SEC Commissioner, Statement on Proposed Rules to Restrict Shareholder Voting (November 5,2019) https://www.sec.gov/news/public-statement/statement-jackson-2019-11-05-open-meeting#_ftn3, footnote [3].

industry is concentrated in two firms: Institutional Shareholder Services (ISS) and Glass Lewis. Those who support further regulation around proxy advisors have long expressed their discontent with this "duopoly." While I believe more competition in the industry would help improve the services provided by proxy advisors, the Proposed Rule may lead to further consolidation in the industry—increasing the market share and power of the largest firms.[13] The Commission's Proposed Rule may lead to increased costs and regulatory burdens that could exacerbate the situation, while providing no clear benefit to investors. Furthermore, these costs and burdens may potentially drive some proxy advisory firms out of business, possibly leaving a true monopoly in the industry.

The Commission has dedicated numerous resources and time to identifying problems with the proxy process, including convening a Proxy Roundtable with an entire panel devoted to proxy advisors. While I appreciate the Commission's work on these important issues, it has failed to take into account the views expressed during that Roundtable. For example, at the end of the Roundtable when the Commission staff asked if proxy advisory firms needed additional regulation, no panelist—including those speaking on behalf of the issuer community—voiced any need for new regulations. Following this, a Commission staff member said: "I can't believe . . . is there anyone on the panel [who] thinks there should be additional regulation? I haven't heard it yet, and I'm kind of surprised." Despite this consensus around the lack of need for further regulation, the Commission proceeded to publish the Proposed Rule, notably omitting the lack of response to that staff member's question.

I have a responsibility to vote proxies with diligence and integrity and in the best long-term interests of the System's participants and beneficiaries. Therefore, it is inappropriate for company management to be interposed between our investment officers and our research service providers.

About the Fund's Proxy Voting Program

Because the Proposed Rule contains incorrect assumptions about the proxy voting process and the experience of investors generally, I wish to provide the Commission with a brief description of the Fund's proxy voting program. I hope this information will allow the Commission to correct some of its errors regarding investors' experience with the proxy voting process.

The Fund's purpose is to ensure the availability of funds to pay public employee pensions through a balanced investment strategy and a focus on long-term, sustainable returns to provide the System's beneficiaries with a secure pension through prudent asset management. The Fund's public equities portfolio was valued at $113.3 billion as of March 31, 2019, included over three thousand public companies and represented 48.7% of the Fund's total portfolio. The public equities allocation relies on broad passive index funds.

Consistent with my fiduciary duty, I am responsible for safeguarding the Fund's investment portfolio. An essential component of safeguarding the Fund's investments is voting the proxies for the public companies in which the Fund invests and encouraging best corporate governance and sustainable business strategies to reduce risks and realize strong returns. The Fund's use of broad passive indexes means that we are invested in a large number of companies and sectors in the economy.

The Fund believes that proxy voting is an effective means to communicate with boards of directors and management on environmental, social and governance issues as these issues impact the sustainability,

[13] Tao Li, Outsourcing Corporate Governance: Conflicts of Interest Within the Proxy Advisory Industry (July 15,2018) https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2828690.

value and performance of companies. As a result, the Fund has adopted ESG Principles and Proxy Voting Guidelines (Guidelines)[14] which provide guidance on voting practices to Fund staff, its managers, and portfolio companies, and also to other corporate engagements and policy initiatives. Fund staff reviews these Guidelines biennially to address new issues and refine positions based on updated research. The Fund makes its votes available annually on its website and releases an annual Corporate Governance Stewardship Report, which summarizes the Fund's voting during the year.[15]

Proxy voting decisions are based on reviews of available information relating to items on the ballot at each portfolio company's annual and special meetings. The Fund staff analyzes a variety of materials from publicly available sources, including but not limited to: Commission filings, analyst reports, relevant studies and materials from proponents and opponents of shareholder proposals, third-party independent perspectives and studies, and analyses from corporate governance data and proxy research providers.[16]

Because of the scope of the Fund's public equity portfolio, the Fund largely votes by proxy, instead of attending annual and special meetings in- person. The Fund votes on each proposal at annual and special meetings of all its U.S. public equity companies, as well as selected international companies. Accordingly, in 2019, the Fund voted by proxy on 28,322 total ballot items at 3,273 total meetings.

Fund's Total Number of Meetings and Ballot Items Voted 2017–19

Proxy Voting	2017	2018	2019
Meetings	3,249	3,198	3,273
Ballot Items Voted	29,848	27,701	28,322

Like many institutional investors, the Fund must manage voting at thousands of shareholder meetings each year. Even with the assistance of our proxy advisory firms, this is a challenging endeavor that requires a significant investment of staff time and resources. This is compounded by the compressed nature of the season; seventy-seven percent of all U.S. proxy votes are cast between March and June. Because of this, the Fund finds it vastly more efficient to hire proxy advisory firms to assist with proxy research than to conduct this research with Fund staff. As we discuss in greater detail below, the Fund utilizes a proxy advisor's proxy voting platform and rules-based voting, which are customized to the Fund's Guidelines. This is the most efficient and cost-effective way to vote the Fund's proxies.

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[14]New York State Common Retirement Fund's Environmental, Social & Governance Principles And Proxy Voting Guidelines, https://www.osc.state.ny.us/pension/proxyvotingguidelines.pdf.

[15] Office of the New York State Comptroller, Corporate Governance, https://www.osc.state.ny.us/pension/corporategovernance.htm.

[16] The Fund contracts with several corporate governance data and proxy research providers including Glass Lewis and ISS.

Fund's Total Ballot Items Voted by Month in 2017–19

Month	2017	2018	2019
January	848	851	536
February	644	502	691
March	835	1,335	670
April	**8,318**	**8,337**	**4,219**
May	**11,050**	**10,426**	**13,388**
June	**4,442**	**2,783**	**5,306**
July	997	780	660
August	538	634	542
September	571	537	551
October	556	623	514
November	670	587	717
December	379	306	528

As mentioned above, Fund staff spends a considerable amount of time reviewing information and researching different sources to inform its decision on voting each ballot item, all within the abbreviated timeframe between the release of a company's proxy and its voting deadline. In 2019, the Fund on average submitted its vote approximately 15 days ahead of the voting deadline.

Some ballot items require a more detailed analysis, including evaluating corporate actions, controversial directors, company mismanagement or underperformance, say-on-pay, and new shareholder proposals. In 2018, the Fund conducted detailed analysis on 8,309 ballot items, approximately 30 percent of all ballot items voted. Additionally, in 2018, the Fund conducted a review of 18,863 items, approximately 70 percent of all ballot items voted.

The idea that the investors like the Fund could fully review and research every ballot item with in-house staff is daunting, to say the least, especially given the compressed time frame during which most of the voting occurs. Therefore, the Fund relies on proxy advisory firms to provide this research. The Proposed Rule fails to consider the cost of reduced access to these services that may foreseeably result from the Proposed Rule.

Put simply, we rely on proxy advisors to do this research in a manner that can spread costs over a large group of investors because it saves a great deal of money. Since it is reasonably foreseeable that, under the Proposed Rule, the proxy advisors' research will be—at the very least—sometimes late or influenced by management preferences as a result of this Proposed Rule, the Commission must consider these costs that will be borne by investors who will have to independently research potentially thousands of ballot items if proxy advisors' research is no longer considered reliably independent or available timely.

As mentioned above, the Fund independently votes its proxies according to its Guidelines and uses proxy research to help supplement our own internal research. By no means is proxy research the only resource the Fund uses to inform its voting decision. As referenced above, the Fund also analyzes a variety of materials from publicly available sources.

Since 2011, the Fund has used a proxy voting platform to facilitate its proxy voting function. In using the electronic platform, all of Fund's ballots are "prepopulated" in accordance with our own

Guidelines. In advance of each proxy season, Fund staff performs a review to ensure that the prepopulated voting instructions match the Fund's Guidelines.

Furthermore, the Fund manually votes a variety of proxy ballots at approximately 800–1,000 companies a year. In advance of each proxy season, the Fund develops various criteria of companies or proxy items that will require manual votes.

Fund's Current Proxy Voting Timeline

In order to shed additional light on the process of voting from the perspective of an investor, I would like to describe the Fund's proxy voting process.

The Fund's proxy advisor will prepopulate all ballots following the publishing of its research and voting recommendation. This allows for our proxy advisor to accurately prepopulate the ballot in accordance with our instructions (the Proxy Voting Guidelines). The Fund's voting deadlines are one day prior to the meeting dates, which ensures proper transmission of our voting position.

Aside from the proxy voting mechanics itself, the Fund looks to proxy advisors to provide detailed research, analysis and voting recommendations about companies through their online platforms. The proxy advisors provide information about the companies' businesses, including ESG aspects. While the Fund's Guidelines are paramount in deciding how to vote, proxy advisors' information may be used to inform the Fund's analysis of the proxy ballot.

I am extremely concerned about the practical and financial impacts of the Proposed Rule on the Fund's proxy voting program. As discussed above, in 2019, the Fund on average submitted its vote approximately 15 days ahead of the voting deadline. Additionally, the Fund receives proxy research on average 23 days before an issuer's meeting. Under the Commission's Proposed Rule, issuers could be provided up to seven business days to conduct both the "review and feedback" and the "final notice of voting advice" periods.

Further, proxy advisors would need additional time to conduct their review and address issuer feedback. ISS has concluded this could add an additional two to three calendar days to the process. Overall, ISS has claimed that if the Proposed Rule were adopted, this would result in a nine to thirteen calendar day delay (eleven days on average) in the publication of reports to clients.[17] One could assume other proxy advisors would face similar delays to its publishing of proxy research and recommendations.

If a company used both periods, this could result in a delay of up to thirteen days in the voting process. This would limit the timeframe to review and consider the Fund's votes, while pushing our vote execution date right up to the voting deadline. If Fund staff spent a week researching and determining its voting position, which is not uncommon (for example, in corporate actions or contested elections), **this delay would mean the Fund would have only 2 days before the voting deadline.** As a result, the Fund may have to expedite its review period in order to complete it in a shorter timeframe, consider eliminating aspects of its review, or further automate its voting.

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[17] ISS also states: "This estimation is not inclusive of the time that would be required to negotiate confidentiality agreements with all issuers and to coordinate issuer hyperlinks for inclusion in reports and in platform delivery systems. It also does not include any estimate for the considerable additional administrative requirements to manage the various different timeframes and number of draft reviews dependent on issuer proxy filing dates under the proposed rules."

These unpalatable options fly in the face of the Commission's recent "Commission Guidance Regarding Proxy Voting Responsibilities of Investment Advisers," which sets out the responsibilities of investment advisors with respect to their proxy voting and the advice they receive in preparation for voting.[18] On one hand, the Commission is demanding more diligence over the proxy voting process for investment advisors; on the other, the Commission is proposing rules that would constrict the timeframe for which shareholders would have the ability to review, research, and determine its vote in the best interests of its clients. This tension serves no beneficial purpose and only serves to injure shareholders by increasing cost and limiting access to information and guidance.

"Excessive" Influence of Proxy Advisors

I would also like to address the arguments made by some issuers and their lobbyists and trade group representatives that proxy advisors have excessive influence over proxy voting and their clients vote in "lockstep" with their recommendations. As stated above, the Fund votes its proxies independently, in accordance with its Guidelines, and in the best interest of its members and beneficiaries. Furthermore, when our proxy advisor prepopulates the Fund's ballots in their proxy voting platform, they do so based on the Fund's Guidelines, not the advisor's recommendations.

While supporters of this Proposed Rule contend that investors vote in "lockstep" with their proxy advisors' advice, this is false. In 2019, the Fund voted with its proxy advisor recommendations 78.1 percent of the time on all ballot items (78.4 percent with recommendations on management proposals and 62.8 percent with recommendations on shareholder proposals).

Additionally, to understand how advisory firms do not exert undue influence generally over how institutional investors vote consider the following:

- In 2018, ISS recommended voting against say-on-pay proposals (SOP) at 12.3% of Russell 3000 companies. Just 2.4% of those companies received less than majority shareholder support on SOP proposals.
- In 2019, Glass Lewis recommended in favor of 89% of directors (the Fund voted in favor of 68% of directors) and 84% of SOP proposals (the Fund voted in favor of 73% of SOP proposals), while directors received average support of 96% and SOP proposals garnered average support of 93%.
- According to Proxy Insight, which analyzes the voting records and policies of over 1,800 global investors and is the world's leading source of information on global shareowner voting, "the number of investors delegating their entire policy and voting to a proxy voting advisor is actually very low—from a sample of 1,413 investors, 75% have their own dedicated proxy voting representing a significant 92% of the assets under management."[19]

Furthermore, academic research has concluded that while both ISS and Glass Lewis appear to have some impact on shareholder voting (estimated at 6%–10% of shareholder votes), supporters of this Proposed Rule often substantially overstate the extent of their influence.[20]

[18] Although the Fund is not an investment advisor, the SEC's description of proxy voting responsibilities is couched in the fiduciary duty those advisors have to their clients. Because that duty is at least analogous to the Comptroller's fiduciary duty as trustee, the steps recommended by the SEC are relevant considerations for the Fund.

[19] Letter from Proxy Insight to Brent Fields, Secretary, SEC (November 13, 2018) https://www.sec.gov/comments/4-725/4725-4636546-176444.pdf.

[20] Stephen Choi, Jill Fisch, and Marcel Kahan, The Power of Proxy Advisors: Myth or Reality? (January 1, 2010) https://scholarship.law.upenn.edu/faculty_scholarship/331/.

Prepopulated and Automated Rules-Based Voting Mechanisms

The Fund also has concerns with how the Proposed Rule describes automated voting and its inclusion of a "reasonable alternative" of disabling of prepopulated and automatic voting mechanisms. The Fund's rules-based prepopulated ballots and automated voting allows me to fulfill my fiduciary duty in the most efficient and cost-effective manner. As stated above, the Fund does not delegate any decision-making authority to its proxy advisory firm. Rather, our proxy advisor populates ballots with voting positions customized to the Fund's instructions (the Guidelines). In advance of each proxy season, the Fund performs a review to ensure that the prepopulated rules-based voting instructions for the proxy voting platform match the Fund's Guidelines. The Fund believes that employing an automated, customized prepopulation in no way compromises its independent voting or impedes its ability to conduct due diligence of its proxy voting.

The Fund's current proxy voting process is cost-effective and efficient. As mentioned above, if the Fund were required to review and execute all of its proxy votes, it would incur considerable cost. These are the potential costs to the Fund of disabling prepopulated and automatic voting mechanisms. The Commission should consider these costs and its impact on all institutional investors that seek cost-effective and efficient means for voting their proxies.

Another misconception around "automated voting" relates to the ability to modify votes following publication of research and prepopulation ballots. The Fund has the ability to change its vote at any point before a meeting. If the Fund staff acquires new information in supplemental proxy materials, corrections or additions to proxy research, or solicitations from other investors, Fund staff reviews the Fund's votes to ensure that its voting positions remain aligned with the Guidelines.

In addition to these general comments, I wish to share the following answers in response to several of your specific questions. Each of these comments should be considered in light of the fact that I believe no changes to proxy rules for proxy voting advice are necessary at this time.

1. Should we codify the Commission interpretation on proxy voting advice and the Commission view about unprompted requests for proxy voting advice? Would the proposed codification (adding paragraph (A) to Rule 14a-1(l)(iii) and paragraph (v) to Rule 14a-1(l)(2)) provide market participants with better notice as to the applicability of the federal proxy rules?

No, the Commission should not treat the proxy voting recommendations provided by proxy advisors to their clients in the same way that the Commission regulates a person or firm soliciting proxies. I believe the Commission is applying an extremely broad interpretation of solicitation; soliciting the authority to vote someone's shares by proxy is not remotely similar to providing research and recommendations under contract to shareholders about factual issues. When providing voting recommendations, proxy advisors do not seek to achieve a specific result and their recommendations can either be ignored or considered by their clients as the clients see fit. This is a completely different activity than an entity soliciting proxy votes for a specific outcome.

As mentioned in my general comments, the Proposed Rule's codification of the Commission's interpretation of "solicitation" as it relates to proxy voting advice, which thereby makes it subject to antifraud prohibitions under Rule 14a-9, will introduce new litigation risks for companies that provide proxy voting research and jeopardize their independent research, which will ultimately be detrimental to shareholders who rely on this outsourced research.

7. Is the text of proposed Rule 14a-2(b)(9)(i) sufficient to elicit appropriate disclosure of a proxy voting advice business's conflicts of interest to its clients? Are there other examples of conflicts of interest that the Commission should take into account in considering the text of proposed Rule 14a-2(b)(9)(i)? Is the principles-based requirement in Rule 14a-2(b)(9)(i)(C) sufficient to capture material information about conflicts of interest not otherwise included within the scope of paragraphs (9)(i)(A) and (B)? Is there additional material information that should be required?

I believe the Commission's Proposed Rule is duplicative of current practices and would not deliver decision-useful information for assessing or making voting decisions.

24. How prevalent are factual errors or methodological weaknesses in proxy voting advice businesses' analyses? To what extent do those errors or weaknesses materially affect a proxy voting advice business's voting recommendations? To what extent are disputes between proxy voting advice businesses and registrants about issues that are factual in nature versus differences of opinion about methodology, assumptions, or analytical approaches?

As mentioned above, I do not believe factual errors or methodological weaknesses in proxy voting research are prevalent or warrant rulemaking. Analyses mentioned in the Proposed Rule are solely based on registrants' anecdotes, and they refer to situations which are not truly "errors", but, rather disagreements about analyses and methodologies. Where there are differences of opinion, debate should be encouraged to distill the truth instead of suppression of this exchange of ideas and pressure by government regulation compelling deference in favor of management views.

In the Proposed Rule, the Commission states that some private interests, such as some corporate issuers and their lobbyists and trade group representatives, raise issues with proxy advisors such as errors in published research. When one reviews the sources cited in the Proposed Rule, those sources fail to provide a reliable basis for concluding significant problems actually do exist. For example, the only issuer source noted by the Commission is a letter from the Exxon Mobil Corporation and in that letter, Exxon says it believes ISS already adequately fixes factual errors, and does so for market-driven reasons.

The Commission states that such problems "may" or "could" exist, but fails to demonstrate that more than a trivial number of factual errors have actually occurred, and the analysis does not show that any so-called "errors" were material to the outcome of an actual shareholder vote. Even if one accepts the possible methodological flaws mentioned in the Commission's analysis referenced above, the Commission's Investor Advisory Committee stated: "From over 17,000 shareholder votes over three years, the number of possible factual errors identified by companies themselves in their proxy supplements amounts to 0.3% of proxy statements—and none of those is shown to be material or to have affected the outcome of the related vote."[21] Additionally, the Commission has failed to evaluate and provide analysis regarding the significance of this 0.3% (or 3 out of every 1,000).

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[21]Recommendation of the Investor-as-Owner Subcommittee of the SEC Investor Advisory Committee (IAC), Relating to SEC Guidance and Rule Proposed Rules on Proxy Advisors and Shareholder Proposed Rules 2 (Jan. 16, 2020) https://www.sec.gov/spotlight/investor-advisory-committee-2012/iac-recommendation-proxy-advisors-shareholder-proposals.pdf.

Furthermore, ISS has stated that its "error rate" was 0.62% in 2018 and 0.73% in 2019.[22] This led to 41 recommendation changes in 2018 and 48 in 2019. These error rates are exceptionally low and reveal that the Proposed Rule is a solution in search of a problem.

While investors demand accuracy and accountability in proxy voting research, this is already occurring through market-driven responses and private ordering. Investors, including the Fund, regularly engage with proxy advisors to survey the procedures for identifying and addressing errors. If these issues were systemic, as some may argue, clients would withdraw their business. Proxy advisors are incentivized to provide highly accurate proxy research with policies and procedures in place to address possible errors. This includes alerting clients when an error is found, explaining the correction in a specific written communication and on the front page of the research report, and allowing clients the ability for additional follow-up if they have further questions on the correction.

In fact, the Proposed Rule may create an incentive to *not* correct errors because of the risk of legal action by companies under Rule 14a-9. In a marginal case, the proxy advisor may err on the side of a minor error that favors management to avoid litigation, rather than further explaining nuances that could invite litigation from issuers.

Additionally, this burden is not solely on the shoulders of proxy advisors. Investors are also responsible for implementing internal controls to identify and mitigate possible proxy advisory firm errors. For example, the Fund has found occasional errors like incorrect names and genders of director nominees. When an error is found, the Fund communicates this to the proxy advisor and they typically correct their research report. Indeed, as remarked above, it already is in the advisors' business interests to do so.

Nevertheless, there is a clear difference between an "error of fact" and "methodological differences" or a "difference of opinion." For example, in ExxonMobil's comment letter, the company states: "Ultimately, we do not believe it is productive to discussions of shareholder value to argue over whether any particular issue falls into the 'errors of fact' category or the 'difference of opinion' category." Clients of proxy advisors contract with firms understanding their methodologies for evaluating various ballot items. Furthermore, many proxy advisors publicly report on their guidelines and how they assess proxy issues. As mentioned above, CII's analysis of the most cited "study" on proxy research errors found that most of the claimed "errors" actually are disagreements on analysis and methodologies.

One of the most frequently identified so-called "errors" in proxy research is analysis surrounding an issuers' peer group. The creation of a peer group is often a combination of fact and opinion because no two companies are exactly alike. Peer group selection can impact many facets of proxy research, including analysis regarding executive pay. While an issuer may disagree with a proxy advisor's determination of its peer group, investors benefit from hearing independent views about appropriate peer groups from a proxy advisor. Proxy advisors also make their policies for selecting peer groups public so all market participants can understand their approach.[23] The fact that issuers may disagree with proxy advisors about peer group selection, is not an adequate basis for asserting there are enough "factual errors" to warrant Commission action. Furthermore, a "prepublication review" period for issuers is not likely to address these "methodological differences" or "difference of opinion." These differences of

[22] As measured by post-publication "Proxy Alerts" to clients notifying them of a material error within a benchmark proxy research report that resulted in a change of a vote recommendation.
[23] Glass Lewis, Understand Glass Lewis' Approach to Peer Groups https://www.glasslewis.com/peer-groups/.

opinion are unlikely to be resolved by conversation between a proxy advisor and an issuer. The result would only be increased costs for clients without achieving any benefits for investors.

25. As a condition to the exemptions in Rules 14a-2(b)(1) and 14a-2(b)(3), should registrants and certain other soliciting persons be permitted an opportunity to review proxy voting advice and provide feedback to the proxy voting advice businesses before the businesses provide the advice to clients, as proposed? If yes, how much time should be given to review and provide feedback on proxy voting advice? Are the timeframes set forth in proposed Rule 14a- 2(b)(9)(ii) appropriate? What would the impact of these proposed timeframes be on registrants, proxy voting advice businesses, and their clients? Are there alternative timeframes that would be more appropriate? Should we allow a proxy voting advice business to provide its final notice of voting advice to the registrant at any time after the registrant has provided its comments during the review and feedback period, regardless of whether the review and feedback period has expired? Are there alternative conditions to the exemptions that the Commission should consider to address the concerns regarding inaccuracies and the ability for investors to get information that is accurate and complete in all material respects?

Issuers already have numerous venues to communicate with investors. For example, the Commission has noted that companies currently file supplemental proxy materials to counter proxy voting recommendations (however, it also said "the efficacy of this is uncertain"). These supplemental proxy materials are examples of "counter-speech," and the Commission offers no evidence or analysis for concluding that supplemental proxy materials are not an effective way for issuers to communicate their opinions regarding proxy voting recommendations. Additionally, the Commission states that while shareholders have the ability to change their vote prior to a meeting, the Commission believes this "seldom occurs." The Commission also states one explanation for this is the "inconvenience" shareholders face in changing a vote. As stated previously, the Commission has provided no evidence or analysis for concluding this. This is false and evinces the Commission's failure to understand of the process by which shareholders vote their proxies.

The Fund has the ability to withdraw its initial proxy vote and change its vote up until the voting deadline. As stated above, the Fund votes its proxies on average six days after initial proxy research is released. This provides the Fund time to conduct its own research, review proxy research, and in some cases consider issuers' supplemental proxies and possible corrections made to the proxy research.[24] Again, the Commission provides no reason or evidence to show that this process is not adequate to keep voting outcomes in line with what would occur but for the small number of possible factual errors that affect outcomes to begin with.

Another concern with the "prepublication review" period relates to the solicitation of votes. For example, if an issuer is able to preview and gain information regarding proxy advisors' recommendations as they relate to shareholder proposals, they can "game the system" using this information to devise a strategy for soliciting votes against a proposal before the proponent can even access the research. As discussed above, the Proposed Rule could severely shorten the time frame between publication of proxy

[24] As stated throughout this letter, the Proposed Rule would limit the time the Fund has to do this research. If the Proposed Rule is enacted, we may not be afforded appropriate time to conduct the requisite diligence before voting proxies following the release of proxy voting research.

advisors' research and the deadline to vote proxies. Because of this, the window for shareholders to file exempt solicitations highlighting or questioning proxy advisor recommendations would also be limited.

26. Should the number of days for the review and feedback period be contingent on the date that the registrant files its definitive proxy statement? For example, should there be a longer period (e.g., five business days instead of three) if the registrant files its definitive proxy statement some minimum number of days before the shareholder meeting at which proxies will be voted, as proposed? Would registrants and other soliciting persons be likely to take advantage of the additional time by filing their definitive proxy statements early enough to qualify for this treatment?

I do not believe the proposed timeframes related to the date that a registrant files its definitive proxy statement would compensate for the time that would be lost because of the "prepublication review" periods. It is the Fund's observation based on a sample of 2019 meetings that issuers file definitive proxy statements on the higher end of the ranges cited in the Proposed Rule's footnotes (45-50 days on average). The "prepublication review" period may lead to delays in proxy research and the timeframes provided in the rule do not increase the likelihood of issuers filing definitive proxy statements earlier. Therefore, this would not compensate for the lost time due to the "prepublication review" period.

Additionally, I have concerns with the timeframes and the discrepancies related to business days and calendar days. While the dates for filing definitive proxy statements are in calendar days, the "prepublication review" dates are in business days. Because of the use of business days for the "prepublication review," issuers may be afforded additional days to review research. For example, if a proxy advisor submitted a report to an issuer on Friday, an issuer would have two additional days to review the research. The Proposed Rule does not address this discrepancy.

27. What impact would the proposed review and feedback period and final notice of voting advice have on the ability of proxy voting advice businesses to complete the formulation of their voting advice and deliver such advice to their clients in a timely manner? Are there additional timing considerations or logistical challenges that we should take into account?

As stated above, the "prepublication review" periods would negatively impact the timeliness of proxy voting research. The Fund could lose eleven days of its current proxy voting process because of the Proposed Rule. The Commission should consider the overall time it takes for proxy advisors to research and draft proxy research, the time associated with application of rules-based voting population of ballots, and the time it takes shareholders to review and research proxy voting items. Additionally, the Commission should consider the possible impact the Proposed Rule may have on investors' ability to engage with issuers regarding a proxy advisors' recommendation. I am concerned the Proposed Rule would eliminate time that is currently afforded to engage with company management.

28. Should there generally be a review and feedback period and a final notice of voting advice, as proposed? Should we allow registrants (and certain other soliciting persons) more or fewer opportunities to review the voting advice than proposed? Should a proxy voting advice business be required to provide the final notice of voting advice only if the registrant (or certain other soliciting person) provides comments to the proxy voting advice business during the review and feedback period and the proxy voting advice business's revisions are pertinent to such comments? Should the

period allotted for the final notice of voting advice be two business days, as proposed? Should it be longer or shorter?

As stated throughout this comment, issuers should not have a "prepublication review" of proxy research and recommendations. Such review would corrupt the independent research clients receive from proxy advisors and inject new burdens, costs, and uncertainties into the proxy voting system.

29. Are there specific ways in which, if we allow the opportunity for registrants and certain other soliciting persons to review and provide feedback on the proxy voting advice, questions may arise about possible influencing of the proxy voting advice by the reviewing parties? How, if at all, could the independence of the advice be called into question if other parties reviewed and commented on it? How could we address such concerns? For example, would disclosure of the specific comments raised by the reviewing party and the proxy voting advice businesses' responses to this feedback help alleviate concerns about the independence of the advice?

There are three overarching concerns with allowing issuers to have "prepublication review" of proxy research. One major reason investors contract with proxy advisors is to receive third-party, independent research on its portfolio companies. The independence of proxy advisors from issuers is absolutely essential, and if issuers have the ability to influence any part of this process, the independence could be corrupted. This is the exact reason why stock analysts reports are not subject to issuer review.

Additionally, as described above, "prepublication review" introduces new legal risks for proxy advisors which could impact voting recommendations. If this Proposed Rule is adopted, one could imagine a case where an issuer may threaten legal action against proxy advisors simply because they believe the recommendations are false when, in reality, many of these types of disagreements are due to reasonably different methodologies. This could force a change in the recommendation simply to avoid legal fees, or a delay in the timeliness of the research. In both instances, the proxy advisor's clients would be adversely impacted.

30. What effect will the Proposed Rules, if adopted, have on proxy voting advice businesses' ability to provide timely voting advice to their clients? What are the anticipated compliance burdens and corresponding costs that proxy voting advice businesses are expected to incur as a result of the proposed new conditions? What impact will these burdens and costs have on proxy voting advice businesses' clients?

ISS has stated that the Proposed Rule would "potentially substantially reduce our delivery time by between 45 and 65 percent." While the "prepublication review" could add five to seven days as it relates to issuers review, proxy advisors would need additional time to conduct their review and address issuer feedback. ISS has concluded this could add an additional two to three calendar days to the process. As noted above, the total delay to investors due to the Proposed Rule could be thirteen days.

The delay in research and recommendations would further strain shareholders' resources in an already constricted proxy voting season and impact the Fund's ability to make timely and informed voting decisions. The Fund will lose valuable days needed to research and determine its voting positions. It would also limit the Fund's ability to engage with issuers regarding their proxy materials and the research published by proxy advisors.

31. Should the proposed amendments allow a proxy voting advice business to seek reimbursement from registrants and other soliciting persons of reasonable expenses associated with the review and feedback period and final notice of voting advice in proposed Rule 14a–2(b)(9)(ii)? If so, what would constitute reasonable expenses and how should these amounts be calculated? Should the calculation of these amounts be dependent on the size or other attributes of the proxy voting advice business, or on the size of the registrant, or number of recommendations? Should there be limits on the amount beyond reasonable expenses for which a proxy voting advice business can seek to be reimbursed?

If enacted, the proposed amendments should include a provision that allows a proxy advisor to seek reimbursement from registrants and other soliciting persons of the reasonable expenses associated with any required review and feedback period. As I have stated, one of my main concerns with the Proposed Rule is related to the potential costs for clients of proxy advisors. This would potentially help defray some of those costs that otherwise likely would be passed along to from investors.

32. We proposed to limit the review and feedback period and final notice of voting advice requirements to only registrants and soliciting persons conducting non-exempt solicitations. Should the opportunity to review and provide feedback and receive final notice of voting advice also be given to other parties, such as shareholder proponents or persons engaged in exempt solicitations, such as in "vote no" or withhold campaigns?

As a shareholder who regularly uses Rule 14a-8 to submit shareholder proposals at portfolio companies, the Fund would of course benefit from "prepublication review" of proxy advisor research regarding issuers where it has a proposal on the ballot because it would allow the Fund to plan a strategy before the formal release of the proxy research and voting recommendation. This could include preparing an exempt solicitation promoting the recommendation and encouraging shareholders to vote for the Proposed Rule. However, this kind of "prepublication review" from shareholder proponents, just like the "prepublication review" for issuers, threatens the core independence of the proxy research and can lead to interested parties "gaming the system" for their benefit. The Fund does not want any issuer, soliciting persons, shareholder proponent, or other interested parties to have "prepublication review" of proxy research and recommendations.

33. Should the voting advice formulated under the custom policies established by clients whose specialized needs are not addressed by a proxy voting advice business's benchmark or specialty policies be subject to the proposed review and feedback period and final notice of voting advice requirements? Are there any confidentiality concerns, such as the revelation of the client's investment strategies, which would arise from the ability of registrants or others to review the advice formulated under these customized policies? If so, is there a need for a method for distinguishing voting advice formulated under a proxy voting advice business's benchmark or specialty policy from advice formulated under a client's custom policy, and what would be the appropriate method for making this distinction? We note, for example, at least one major proxy voting advice business asserts that it is not the "norm" for its clients to adopt all or some of the business's benchmark policy, with the "vast majority of institutional investors" opting for

"increasingly more detailed policies with specific views" on the issues presented for a vote in the proxy materials.

No, custom policies established by clients should not be subject to the proposed review and feedback period and final notice of voting advice requirements. While the Proposed Rule seems to be addressing the differences between a proxy advisor's "benchmark" policy and other policies, for example, faith-based or Taft-Harley policies, one could argue the Commission may be considering allowing issuers "prepublication review" of a proxy advisors' prepopulated voting recommendations for clients with custom voting policies. There is no case in which issuers should be able to review prepopulated voting recommendations. The Fund works with our advisor to create custom rules-based voting on the Fund's Guidelines. These rules lead to the prepopulating of ballots. Additionally, the Fund already makes it Guidelines public for issuers and other market participants to review.

A "prepublication review" and final notice requirement that includes custom policies would likely dramatically impact the timeliness concerns discussed throughout this comment. For example, ISS has stated it has more than 400 custom policies for clients.

38. Are there any risks raised by proxy voting advice businesses providing advance copies of voting advice (e.g., misuse of material, nonpublic information, or misappropriation of proprietary information), and if so, how can such risks be managed?

Issuers and interested parties having advance copies of voting advice introduces entirely new and complex issues for all participants. I am concerned about all the risks listed above and how the process of negotiating confidentiality agreements will impact the timeliness and cost of proxy advisor services. As stated above, the determination that proxy research is a solicitation and the "prepublication review" process injects new legal risks for proxy advisors. And while the Commission states the Proposed Rule does not create a new private right of action for registrants against proxy voting advice businesses,[25] it is our expectation that proxy advisors may conclude differently. These risks can be avoided by the Commission not creating them in the first place.

41. Should proxy voting advice businesses be required to include in their voting advice to clients a hyperlink (or other analogous electronic medium) to the response by the registrant and certain other soliciting persons, as a condition to the exemptions in Rules 14a-2(b)(1) and 14a- 2(b)(3)? Are there better methods of making the response available to the clients of proxy voting advice businesses? Should the proposed rule provide certain guidelines or limitations on the responses (e.g., responses may cover only certain topics, such as disagreements on facts used to formulate the proxy voting advice)?

I categorically reject the idea that issuers need an additional venue to express their views to investors. As mentioned above, issuers are already afforded numerous opportunities to comment on proxy advisor research and recommendations through supplemental proxy filings. This is a low-cost and effective means for issuers to communicate directly to their shareholders. On the other hand, the "prepublication review" and hyperlink requirements could increase costs and burdens to issuers far beyond the costs of supplemental proxy filings.

[25] Page 60 of the Proposed Rule.

The Commission should consider the First Amendment issues I noted above before requiring a hyperlink in proxy voting research.

44. In instances where proxy voting advice businesses provide voting execution services (pre-population and automatic submission) to clients, are clients likely to review a registrant's response to voting advice? Should we amend Rules 14a-2(b)(1) and 14a-2(b)(3) so that the availability of the exemptions is conditioned on a proxy voting advice business structuring its electronic voting platform to disable the automatic submission of votes in instances where a registrant has submitted a response to the voting advice? Should we require proxy voting advice businesses to disable the automatic submission of votes unless a client clicks on the hyperlink and/or accesses the registrant's (or certain other soliciting persons') response, or otherwise confirms any pre-populated voting choices before the proxy advisor submits the votes to be counted? What would be the impact and costs to clients of proxy voting advice businesses of disabling pre-population or automatic submission of votes? Could there be effects on registrants? For example, if a proxy voting advice business were to disable the automatic submission of clients' votes, could that deter some clients from submitting votes at all, thereby affecting a registrant's ability to achieve quorum for an annual meeting? If we were to adopt such a condition, what transitional challenges or logistical issues would disabling pre-population or automatic submission of votes present for proxy voting advice businesses, and how could those challenges or issues be mitigated?

I unequivocally oppose the Commission amending Rules 14a–2(b)(1) and 14a–2(b)(3) so that the availability of the proposed exemptions are conditioned on a proxy advisor structuring its electronic voting platform to disable the automatic submission of votes in instances where a registrant has submitted a response to the voting advice. The Commission should not prevent shareholders from exercising their voting rights in this manner simply because they use a proxy voting advice vendor to provide an electronic platform to execute their independent votes.

As mentioned before, the Fund has the ability to change its vote at any point before a meeting. At times, the Fund has changed its voting decision based on additional information, like corrections to proxy research, solicitations, and supplemental proxy materials. Whenever the Fund receives an email from its proxy advisors regarding a correction or update to its proxy research or recommendation, the Fund will review its vote to confirm the vote is still being made based on its Guidelines and is not affected by a correction or update.

The impact of these proposals would lead to a further delay in the voting process, adding more burdensome steps. It would also interfere with our already cost-effective and efficient proxy voting program. Any actions taken to limit prepopulation or voting will add further constraints on the proxy voting process, including additional costs listed above and a delay in the Fund's voting process.

48. Should proxy voting advice businesses be required to disclose the nature (e.g., frequency, format, substance, etc.) of their communication with registrants (and certain other soliciting persons) to their clients or publicly?

Proxy advisors already disclose their communications with issuers, soliciting persons, investors, and shareholder–proponents on the front page of their proxy research. Proxy advisors should continue to provide clients with as much information as possible as it relates to its engagements with all market participants, but this does not rise to the level of requiring rulemaking.

51. To what extent have factual errors or methodological weaknesses in proxy voting advice businesses' analyses resulted in impaired voting advice or adversely affected the ability of proxy voting advice businesses' clients to vote securities effectively?

I do not believe that factual errors or methodological weaknesses in proxy voting advice businesses' analyses have resulted in impaired voting advice or have adversely affected the ability of proxy voting advice businesses' clients to vote securities effectively. As the Commission's Investor Advisory Committee stated: "From over 17,000 shareholder votes over three years, the number of possible factual errors identified by companies themselves in their proxy supplements amounts to 0.3% of proxy statements—and none of those is shown to be material or to have affected the outcome of the related vote."[26]

52. Is the Proposed Rule to amend the list of examples in Rule 14a-9 necessary in light of the Commission's recent guidance specifically underscoring the applicability of Rule 14a-9 to proxy voting advice? Should the Proposed Rule to amend Rule 14a-9 list different or additional examples and, if so, which examples?

I do not believe proxy advisors should be required by a Commission rule to disclose voting advice methodologies. These methodologies are part of the expertise that the Fund purchases as a client of a proxy advisor. I believe the requirement to disclose methodologies could lead to a homogenous set of recommendations from proxy advisors who could be pressured to use other publicly-available methodologies. Coupled with the other changes in the Proposed Rule, including the increased risk of litigation over methodological differences, could reduce the overall quality of the advice provided by proxy advisors.

57. Is the proposed transition period appropriate? If not, how long should the transition period be and why? Please be specific.

While I oppose the Proposed Rule in its entirety, if adopted, one year is not a reasonable timeframe for affected parties to comply with the Proposed Rule. This Proposed Rule fundamentally alters the proxy voting system and will impact the way thousands of investors vote and issuers solicit votes.

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[26] Recommendation of the Investor-as-Owner Subcommittee of the SEC Investor Advisory Committee (IAC), Relating to SEC Guidance and Rule Proposed Rules on Proxy Advisors and Shareholder Proposed Rules 2 (Jan. 16, 2020) https://www.sec.gov/spotlight/investor-advisory-committee-2012/iac-recommendation-proxy-advisors-shareholder-proposals.pdf.

I appreciate the opportunity to submit comments on this important matter. I trust the Commission conducts the necessary analysis and review of these comments and others that have been submitted, and finds that rulemaking relating to proxy advisors is unnecessary. On behalf of the more than one million members, retirees and beneficiaries of the System for whom the Fund invests, thank you for your attention to these comments.

Sincerely,

Thomas P. DiNapoli
State Comptroller