

February 4, 2020

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

Subject: Release No. 34-87457; File No. S7-22-19, Amendments to Exemptions from the Proxy Rules for Proxy Voting Advice

Dear Ms. Countryman:

The undersigned officers of the Orange County Chapter of the National Investor Relations Institute (NIRI) are writing to you to express support for the Commission's Amendments to Exemptions from the Proxy Rules for Proxy Voting Advice.¹

The members of the NIRI Orange County Chapter are investor relations officers whose companies are listed on Nasdaq and the New York Stock Exchange. These eleven companies represent a combined market capitalization of \$108 billion. We also represent investor relations counselors who advise other public companies across the country.

Investor relations practitioners, together with the corporate governance professionals at their companies, play an increasingly vital role in communicating with institutional and retail investors on corporate governance and proxy voting matters. This role is especially critical when a company needs to engage quickly with shareholders during a proxy contest or after receiving a negative proxy advisor recommendation on an equity incentive plan or during a Say-on-Pay vote.

We join our parent organization, the National Investor Relations Institute;² more than 318 issuers³ around the country; and a broad coalition of corporate organizations, including the Shareholder Communications Coalition, the U.S. Chamber of Commerce, the Society for Corporate Governance, the Business Roundtable, and the National Association of Manufacturers, which all have urged the Commission to exercise greater oversight over proxy advisors.

Our members, who engage with investors throughout the year, know that a significant number of investment advisors, asset managers, and other institutional investors rely heavily on proxy

¹ See Release No. 34-87457; File No. S7-22-19, Amendments to Exemptions from the Proxy Rules for Proxy Voting Advice, November 5, 2019, available at: <https://www.sec.gov/rules/proposed/2019/34-87457.pdf>

² See NIRI Letter re Roundtable on the Proxy Voting Process, SEC File No. 4-725, April 30, 2019, available at: <https://www.sec.gov/comments/4-725/4725-5436094-184708.pdf>.

³ See Nasdaq Letter re Roundtable on the Proxy Voting Process, SEC File No. 4-725, February 4, 2019, available at: <https://www.sec.gov/comments/4-725/4725-4872519-177389.pdf>.

advisor research because they don't have the time or in-house resources during proxy season to carefully read the proxy materials filed by issuers that are subject to Commission review. Consequently, it is imperative that all issuers have an opportunity to review proxy advisor report drafts before the final report is issued and investors start voting.

We welcome the draft-review safeguards that are included in the SEC's proposal. Most notably, we strongly support the proposed requirement that proxy advisory firms provide a three-business day review period for issuers that release their proxy materials more than 25 days in advance of the annual meeting and a five-business day review period for issuers that release their materials more than 45 days in advance of the annual meeting.

One of the undersigned was personally involved in a situation where a significant error was discovered during the review of their company's draft report. The company's investor relations and governance persons had to scramble to get the proxy advisory firm to make the correction before the report was issued. Had the error not been discovered and the report been issued, the subsequent votes by the company's investors might have been incorrectly influenced, thus affecting the voting outcome. Fortunately, the company was large enough to receive a draft report, but not all companies are presently afforded that opportunity.

We believe the draft-review safeguard should not be limited to large-cap issuers, as is the current practice at Institutional Shareholder Services (ISS). Many smaller companies, who typically won't have a large team of investor relations and governance professionals, may need more time to review proxy report drafts than larger issuers. Even if the company does not find any factual errors in the draft report, a review period would be beneficial as it would give corporate IR professionals and their senior management teams more time to plan how they might engage with institutional investors following a negative proxy advisor recommendation. Currently, small and mid-cap companies can get blindsided by negative recommendations and often are unable to engage with many of their investors before they vote.⁴

We also support the proposed requirement that a proxy advisory firm include in each final proxy report a hyperlink to any comments submitted by an issuer. Such a procedure would ensure that investors can quickly access the company's response before they vote – if they care to do so.

We also endorse the Commission's proposal to require more comprehensive disclosure of specific conflicts of interest by the proxy advisory firms, including the policies and procedures used by the firms to identify and address conflicts. Disclosure on conflicts can impact proxy voting decisions and thus should be easy for investors to find. For instance, investors should know when they consider a proxy advisory firm's recommendation on a shareholder proposal if the proponent is a client of the proxy firm. Likewise, investors should be informed if a company

⁴ A survey of issuers by Frank Placenti of Squire Patton Boggs on their experiences during the 2017 proxy season found that 19 percent of company shares were voted within three days of an adverse proxy advisor recommendation. See American Council on Capital Formation, "Are Proxy Advisors Really a Problem?" (2018), available at: https://accfcorgov.org/wp-content/uploads/2018/10/ACCF_ProxyProblemReport_FINAL.pdf

retained ISS’s corporate consulting business for advice on its equity incentive plan. To ensure that investors have this information when voting, these conflicts should be disclosed on the front page of each proxy report.

Finally, we urge the Commission to address the growing use of automated voting platforms and pre-populated ballots by proxy advisor clients. We have been troubled by the various reports by the American Council on Capital Formation that document that a significant number of small and mid-size investment advisors have outsourced their fiduciary duties to the proxy advisors and essentially are engaging in “robo-voting.”⁵ While we don’t object to using technology to streamline the proxy voting process, we believe that investment advisors should be required to review each pre-populated ballot and provide affirmative consent to authorize the voting decisions on each individual ballot prepared by a proxy advisory firm. While we understand that not all investment advisors have the time or the interest to read proxy statements or engage with corporate IR officers on governance issues, investment advisors should at least make these final proxy voting decisions.

We believe that the Commission’s proposed reforms will improve the transparency, availability of materially complete information, and accuracy of proxy voting research for the benefit of both investors and public companies.

Sincerely,

David K. Erickson
President, NIRI Orange County Chapter

Craig Barberio
Board Member, NIRI Orange County Chapter

Mark Collinson
Board Member, NIRI Orange County Chapter

Jeanie Herbert
Board Member, NIRI Orange County Chapter

Cynthia Skoglund
Board Member, NIRI Orange County Chapter

⁵ See Letter from Mark A. Bloomfield, President and Chief Executive Officer, American Council for Capital Formation (ACCF), January 27, 2020, available at: <https://www.sec.gov/comments/s7-22-19/s72219-6705468-206098.pdf> (The ACCF found that 82 asset managers, with over \$1.3 trillion assets under management, have voted in line with ISS 99 percent of the time).