



February 6, 2020

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

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

Dear Ms. Countryman:

The undersigned individuals, who are the leadership of the National Investor Relations Institute (NIRI) Capital Area Chapter, are writing, on behalf of the chapter, in support of the proposed rules issued on November 5, 2019. We represent members who are investor relations officers at 17 publicly held companies headquartered in the greater Washington, DC area, including Maryland and Virginia. These companies, listed on the New York Stock Exchange and the NASDAQ Exchange, have a combined market capitalization of approximately \$470 billion. We also represent investor relations counselors who advise other publicly held companies across the country.

We support the proposals to codify the Commission's recent interpretation regarding the definition of a proxy solicitation under Rule 14a-1 and Section 14(a); the new conditions to the exemptions from the proxy solicitation rules to require enhanced disclosure regarding proxy advisory firm conflicts of interest when making vote recommendations; the new conditions to the exemptions under Rule 14a-2(b)(1) and 14a-2(b)(3) that would require proxy advisory firms to grant issuers a review-and-comment period for vote recommendations, as well as a requirement that proxy advisor firms include a hyperlink to an issuer statement as part of a final vote report; and the reminder that even proxy solicitations which are exempt from the information and filing requirements of the federal proxy rules are still subject to the Rule 14a-9 prohibitions against false or misleading statement.

We support the codification of the recent interpretation regarding the definition of a proxy solicitation. Codification makes it clear as to what the definitions for the terms "solicit" and "solicitation" are. It would preclude any misinterpretation of these terms with regard to proxy voting advice and from whom they are being furnished. We agree with the Commission's

statement that “the furnishing of proxy voting advice by a person who has decided to offer such advice, separately from other forms of investment advice, to shareholders for a fee, with the expectation that its advice will be part of shareholders’ voting decision-making process, is conducting the type of activity that raises the investor protection concerns about inadequate or materially misleading disclosures.”¹ Codification would provide market participants with better notice as to the applicability of the federal proxy rules and mitigate against “grey area” interpretations.

We concur with the concerns raised regarding actual or potential conflicts of interest of the proxy voting advice business cited in the proposed rules. We agree that the proposed rules “would (i) improve proxy voting advice businesses’ disclosure of conflicts of interest that would reasonably be expected to materially affect their voting advice, (ii) establish effective measures to reduce the likelihood of factual errors or methodological weaknesses in proxy voting advice, and (iii) ensure that those who receive proxy voting advice have an efficient and timely way to obtain and consider any response a registrant or certain other soliciting person may have to such advice.”² As pointed out, the current rules do not specify any requirements for disclosing conflicts of interest. The proposed rules are needed as they would address this gap in information. We further believe that these disclosures should be included in the proxy voting advice and not provided separately. We believe that accuracy, materially complete information, and, most important, transparency are key measures of a fair market.

We strongly endorse and support the new conditions outlined in the proposed rules that would require proxy advisory firms to grant issuers a review-and-comment period for vote recommendations, as well as a requirement that proxy advisory firms include a hyperlink to any issuer response as part of a final vote report. We believe that the issue is not the prevalence of factual errors or methodological weaknesses in the analyses currently issued by proxy advisors. Rather, all issuers should be permitted the opportunity to review proxy voting advice and provide accurate and properly documented feedback to the proxy advisory firms that corrects any factual errors in the proposed advice before those firms send that advice on to their clients. That opportunity currently exists only for constituent companies of the Standard and Poor’s 500 Index. Even in those instances, issuers may be given only a day or even a few hours to give feedback. Currently, there are no set timeframes for an issuer to review and comment on a proxy advisor’s proposed advice. We believe that the timeframes proposed are appropriate and give issuers flexibility in choosing between a three or five business day period, thus correcting this inequity. We do not believe, however, that a proxy advisor should provide its final notice of voting advice prior to the expiration of the review and comment period. We believe that honoring the three or five business day review and comment period will result in all issuers being treated equally, depending upon which period is chosen.

We believe proxy advisors should include in their advice a hyperlink (or other analogous electronic medium) to any response from issuers. Shareholders will be better informed as a

¹ See page 17, *Amendments to Exemptions from the Proxy Rules for Proxy Voting Advice*, Release No. 34-87457 (Nov. 5, 2019)

² *Ibid.*, 27

result of the inclusion of such a response. Doing so will result in greater transparency in the proxy voting advice process, allowing investors to see both sides of the issue in the event the proxy advisor does not agree with feedback provided in the issuer's response. Overall, we believe the proposed rules regarding registrants' and other soliciting persons' review of proxy voting advice address and rectify significant issues that have hindered investment advisers in making informed voting determinations on investors' behalf.

We support the "proposal 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."³ We believe that further clarification of this rule is necessary in order to avoid any potential violations of the rule, and ensures that any advice given to a proxy advisor's clients is not materially misleading. We agree with the statements "If the use of the criteria and the material differences between the criteria and the applicable Commission requirements are not clearly conveyed to proxy voting advice businesses' clients, there is a risk that the clients may make their voting decisions based on a misapprehension that a registrant is not in compliance with the Commission's standards or requirements. Similar concerns exist if, due to the lack of clear disclosures, clients are led to mistakenly believe that the unique criteria used by the proxy voting advice businesses were approved or set by the Commission."⁴ More importantly, we strongly agree with the statement "that subjecting proxy voting advice businesses to the same antifraud standard as registrants and other persons engaged in soliciting activities is appropriate in the public interest and for the protection of investors."⁵

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 Dixon
President, NIRI Capital Area Chapter



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NIRI Capital Area Chapter Advocacy Ambassador
Retired Senior Vice President, Investor Relations
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Cc: Ted Allen, Vice President, Communications and Member Engagement, NIRI

³ Ibid., 73

⁴ Ibid., 70

⁵ Ibid., 68