



February 3, 2020

Ms. Vanessa Countryman
Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-0609
via email at rule-comments@sec.gov

RE: File Number S7-22-19 (Amendments to Exemptions from Proxy Rules for Proxy Voting Advice)

Dear Ms. Countryman:

The Los Angeles County Employees Retirement Association (LACERA) submits the following comments in response to the Securities and Exchange Commission's (SEC or Commission) December 4, 2019, proposed rulemaking regarding amendments to exemptions from the proxy rules for proxy voting advice (Proposed Rulemaking).¹ LACERA is the largest county pension system in the United States, with over \$60 billion in plan assets as of January 31, 2020, including equity holdings in about 2,800 U.S. companies. LACERA's mission is "to produce, protect, and provide the promised benefits" for about 170,000 beneficiaries.

As outlined in our comments submitted in advance of the Commission's November 15, 2018, Roundtable on the Proxy Process, we believe that sound corporate governance practices at the firms in which we invest help generate long-term economic performance and safeguard our interests as providers of long-term capital to U.S. financial markets.² We consider proxy votes to be plan assets and a fundamental component of how LACERA advocates prudent governance practices. Accordingly, we urged the Commission to strengthen investors' franchise and the integrity of our proxy votes by prioritizing efforts to ensure end-to-end vote confirmation across the market and enact the Commission's 2016 proposed universal proxy rule. The integrity of investors' franchise is, in our view, the paramount priority for the U.S. proxy system. We remain unaware of any investor input at the Commission's 2018 Proxy Roundtable urging the Commission to prioritize resources to introduce new regulation by which proxy research is provided to investors. Not only, therefore, does the Proposed Rulemaking appear to be a quintessential "solution in search of a problem," but we are respectfully disquieted by the Commission's release of the Proposed Rulemaking while investors' appeal for Commission action to modernize the proxy plumbing system remains unresolved.

LACERA nevertheless appreciates the opportunity to comment on the Proposed Rulemaking. Our access to a range of market and investment research, including proxy-related research, is crucial for us to inform our investment decisions. For the upcoming 2020 proxy season, we anticipate voting at over 8,000 public market holdings in over 65 markets around the world. We vote proxies according

¹ United States Federal Register. Amendments to Exemptions From the Proxy Rules for Proxy Voting Advice. Securities and Exchange Commission. File Number S7-22-19. December 4, 2019. Available at: <https://www.federalregister.gov/documents/2019/12/04/2019-24475/amendments-to-exemptions-from-the-proxy-rules-for-proxy-voting-advice>.

² LACERA. Letter to the U.S. Securities and Exchange Commission. October 30, 2018. Available at: <https://www.sec.gov/comments/4-725/4725-4587744-176291.pdf>.

to our *Corporate Governance Principles*.³ LACERA subscribes to multiple proxy-related research vendors which would be subject to the Proposed Rulemaking. We use one vendor to provide an online voting software platform by which we execute, record, and analyze votes. And we use two vendors to access multiple sources of data, research, and analysis to help inform our votes and apply our *Corporate Governance Principles* to the specific facts and circumstances of each voting decision.

Accessing multiple sources of research and analysis informs our entire investment process, including voting decisions. While our proxy voting record varies from proxy research vendors' recommendations (see below for a vote record comparison), we value our access to several vendors for underlying data points, analysis, and alternative viewpoints to consider in assessing the vote that best aligns with our policies and interests.

Table: Proxy Voting Support Levels on Select Topics at U.S. Companies⁴
July 1, 2018 through June 30, 2017

Voting Item	LACERA	ISS	Glass Lewis
Elect Director	85.6%	89.7%	87.6%
Advisory Vote to Ratify Named Executive Officers' Compensation	68.3%	86.9%	85.9%
Shareholder Proposals	82.0%	74.4%	56.8%

Our comments regarding the Proposed Rulemaking are guided by LACERA's *Corporate Governance Principles* which encourage financial market regulation to promote fair, orderly, and competitive markets and provide for investor protections. A critical component of fair, orderly, and competitive markets is encouraging investor access to “competitive, timely, and independent market, investment, and proxy research services of their choosing” and we advocate that “market regulation should support and not impede a competitive market of service providers.”⁵ LACERA is concerned that the Proposed Rulemaking fails on each of these accounts, which we address below in reverse order.

The Proposed Rulemaking Risks Undermining Independent Research

LACERA considers it crucial that all investment-related research be free of undue influence from the companies that are subjects of the research. Towards that end, LACERA observes that the Financial Industry Regulatory Authority (FINRA) rules intended to mitigate potential conflicts of interest for securities analysts explicitly “prohibit prepublication review of a research report by a subject company for purposes other than verification of facts.”⁶ The Commission's Proposed Rulemaking, however, proposes that subject companies of proxy research be permitted *two* prepublication reviews of proxy research. Since enactment of the FINRA rules, we believe they have served as reasonable guidance to mitigate prospective undue influence from subject companies. We

³ LACERA. *Corporate Governance Principles*. March 2019. Available at: <http://www.lacera.com/BoardResourcesWebSite/BoardOrientationPdf/policies/CorpGovPrinciples.pdf>.

⁴ LACERA and ISS support levels based on the universe of companies LACERA was entitled to vote during the defined period (15,227 director nominee votes, 1,976 advisory votes to ratify named executive officers' compensation, and 472 shareholder proposals voted at U.S. companies). Glass Lewis support level based on all U.S. companies. Source: ISS ProxyExchange voting database platform and Glass Lewis & Co, *2019 U.S. Season Review: Voting Trends & Proxy Stats*. Online link not available.

⁵ LACERA. *Corporate Governance Principles*. March 2019. *Emphasis added*. Available at: <http://www.lacera.com/BoardResourcesWebSite/BoardOrientationPdf/policies/CorpGovPrinciples.pdf>.

⁶ Financial Regulatory Authority (FINRA) Rule 2241(b)(2)(N). Available at: https://www.finra.org/rules-guidance/rulebooks/finra-rules/2241?rbid=2403&element_id=11946.

urge the Commission to consider the market experience that prompted enactment of the FINRA rules and refrain from requiring preclearance of proxy research by subject companies.

Securities analyst reports, which incorporate recommendations to buy, sell, hold, or remain neutral on a given security, are not dissimilar to proxy research, which may incorporate recommendations to support, oppose, or abstain from voting matters. They both provide research and analysis for a client user to weigh merits and considerations of a course of action when managing an investment asset. Prepublication review risks opening a Pandora's Box for companies to attempt to unduly influence the research and analysis, outside the view of the paying client of said research.

The risk of undue influence is heightened by the Commission's August 2019 guidance interpreting proxy research as "solicitation" (and the Proposed Rulemaking's proposed codification of the guidance).⁷ Such an interpretation creates a legal hazard by which companies might threaten legal recourse to exert influence and alter the substance of research prior to its release to paying clients. While the Proposed Rulemaking indicates that registrants have reported "inaccuracies" in proxy research, it is our experience as investors and research clients that such allegations (voiced from companies in the course of engagement calls and otherwise) mostly pertain to disagreements regarding CEO compensation peer groups and calculations. Research conducted by the Council of Institutional Investors confirms that company reports of pervasive "inaccuracies" in proxy research is itself inaccurate and that the number of purported inaccuracies is extremely small.⁸

Yet under the terms of the Proposed Rulemaking, should a subject company, for example, disagree with a proxy research report's defined peer group for compensation comparisons, the company might argue that the analysis is materially misleading. Even if the company does not ultimately pursue legal action, the specter of legal action may prompt vendors to modify market research to the ultimate detriment of investors who are the end-users and paying clients.

We believe the private market already avails avenues to attend to legitimate concerns about proxy research accuracy. To the extent that companies are concerned about data accuracy within proxy reports, we note that both prominent proxy research vendors have tools available throughout the year by which companies can contact and correct the underlying data points that inform proxy reports. Both of our providers continue to revise and experiment with avenues for company feedback in real time. We find proxy research vendors to be solicitous of client feedback and welcoming of suggestions. When and where information emerges that prompts a vendor to revise an initial proxy report – such as breaking developments in a proxy contest, for example – we receive prompt notification of new information from our vendors, which we assess to consider whether it may change how we interpret our policies and execute a vote in line with our interests.

It is this dynamic interplay of free-flowing market information that we consider to be beneficial for all market participants. If a company subject to a proxy report has an alternative opinion or additional information it believes that investors should consider in evaluating a vote, it may contact the proxy firm to consider a revision, file supplemental proxy information for investors' review, engage

⁷ Securities and Exchange Commission. Commission Interpretation and Guidance Regarding the Applicability of the Proxy Rules to Proxy Voting Advice. August 21, 2019. Available at: <https://www.sec.gov/rules/interp/2019/34-86721.pdf>.

⁸ CII cites an error rate of 0.3-0.5%, depending on one's interpretation of an "error." See Council of Institutional Investors. Letter to the Securities and Exchange Commission. February 4, 2020. Available at: https://www.cii.org/files/issues_and_advocacy/correspondence/2020/20200204%20PAF%20error%20claims%20letter%20FINAL.pdf.

in dialogue with investors, and other routes for recourse. Investors benefit from this exchange of information and viewpoints to inform our votes. Creating a channel for prepublication risks undermining an open exchange of viewpoints, and incenting the subjects of the research to attempt to alter the information prior to its distribution to paying clients and the market. Clients of proxy research services are best positioned to assess the quality and accuracy of the products and services we procure.

The Proposed Rulemaking Jeopardizes Investors' Timely Access to Research

The tight timelines by which investors receive notification of eligibility to vote a proxy and review related research prior to a vote deadline exacerbate the risks that preclearance presents. Seventy-five (75) percent of the shareholder meetings that LACERA is entitled to vote fall during the "proxy season" months of April, May, and June. Despite the compressed proxy season, we have experienced and benefited from an increase in company-investor engagement in the marketplace in recent years, both during the busy proxy season and throughout the "off-season." When and where we have questions of clarification on certain proxy items, we may contact and engage with a range of possible sources of additional insight to help inform our vote, including the company itself, our contracted proxy research firms, fellow institutional investors, shareholder proponents of individual shareholder proposals, research centers and investor associations in local markets, and others. These points of contact enrich our process to ensure we are voting in proper alignment with our stated policies, careful understanding of local market practices and policies, and consideration of various perspectives, including those of the companies in which we invest.

The Proposed Rulemaking threatens to further compress an already limited proxy voting timeline, to the detriment of investors' ability to access and engage various sources of information to inform a vote decision. Although the Proposed Rulemaking calls for companies to publish proxy materials at least 25 days before a shareholder meeting to take advantage of prepublication reviews of proxy research, nearly all companies already do that. Moreover, we note that the Proposed Rulemaking does not take into consideration the amount of time a proxy research vendor may require for legal, substantive, and other review of the registrants' comments and feedback from preclearance reviews prior to finalization and distribution of the research to paying clients. The resultant delay of research to us as paying clients means that investors would fundamentally have less time to review sources of information and develop an independent analysis and view to inform a vote.

By virtue of compressing the amount of time, the Proposed Rulemaking risks creating several unintended consequences. First, with less time for review and consideration of multiple research inputs, the Proposed Rulemaking may result in less engagement between companies and investors because we will have less time between reviewing proxy reports and vote deadlines during the busy proxy season. Second, to the extent that the Proposed Rulemaking seeks to address a perception among some companies that proxy research firms play an unduly prominent role in the market, we believe limiting investors' time for review of research and engagement risks making the proxy firms *more* prominent. Double preclearance, coupled with compressing investors' opportunity for review, incents companies to engage more with the third-party proxy firms, rather than us as investors who would have less time for such dialogue. Third, to the extent that the Proposed Rulemaking may threaten timely access to research and information, it may result in greater opposition to company-recommended votes. When and where we have inadequate information from available company disclosures and market research, and we are not in a position to cast an informed vote, LACERA may abstain or oppose voting items to signal our interest in better information. Accordingly, if timely access to research is impeded and

corporate disclosures are inadequate, we and other investors may opt to withhold support on voting matters. It is our view that regulatory measures should facilitate greater investor access to information and company-investor engagement, not stifle market dialogue.

The Proposed Rulemaking Imperils a Competitive, Dynamic Marketplace of Research Providers

Investors benefit when we have multiple sources of data, research, and analysis. The Proposed Rulemaking would enact numerous additional legal, operational, and compliance requirements that may create barriers for entry for additional service providers in an industry already limited to two primary vendors. These requirements, to the extent they become onerous and costly, also pose a risk that one or more vendors discontinue their proxy services, thereby further limiting investors' choice among prospective vendors. The Commission appears to acknowledge these risks:

If costs borne by proxy voting advice businesses are large enough to cause some businesses to exit the market or potential entrants to stay out of the market, the proposed rules could decrease competition.⁹

We believe the Commission should prudently evaluate prospective unintended consequences and the economic impact thereof before finalizing any provisions of the Proposed Rulemaking. In accordance with SEC rules, such analysis should be part of any proposed rulemaking, so that the market may review and comment on the economic analysis in advance of any finalization of new rules.

It is for the above reasons that LACERA concurs with the Securities and Exchange Commission's Investor Advisory Committee's recommendations and believes that the Commission should reconsider the Proposed Rulemaking.¹⁰ Investors – and we believe the broader market – benefit from a dynamic marketplace of independent, timely, and competitive research and analysis, which the Proposed Rulemaking threatens to undermine.

Please contact the undersigned at [REDACTED] or [REDACTED] if you would like to further discuss any of the above remarks.

Sincerely,



Jonathan Grabel
Chief Investment Officer

CC: The Honorable Jay Clayton, Chair
The Honorable Robert J. Jackson, Jr., Commissioner
The Honorable Allison Herren Lee, Commissioner
The Honorable Hester Peirce, Commissioner
The Honorable Elad L. Roisman, Commissioner

⁹ Proposed Rulemaking, page 111.

¹⁰ Securities and Exchange Commission Investor Advisory Committee (IAC). Letter to the Securities and Exchange Commission. January 24, 2020. Available at: <https://www.sec.gov/comments/s7-22-19/s72219-6698769-206000.pdf>.