Council of Institutional Investors®
The voice of corporate governance

Via Email

February 13, 2020

Vanessa A. Countryman
Secretary
Securities and Exchange Commission
100 F Street NE
Washington, DC 20549

Re: File No. S7–22–19

Dear Madam Secretary:

We thank the Staff for the opportunity to comment on the Securities and Exchange Commission's (SEC or Commission) proposed *Amendments to Exemptions From the Proxy Rules for Proxy Voting Advice (Release No. 34-87457; File No. S7-22-19* (Release). We write to express concerns relating to the Release.

The Council of Institutional Investors (CII) wrote to the SEC on January 30, 2020, articulating a number of concerns about the Release and process issues related to the SEC proposal. We wish to underline in this letter the practical considerations for investors who seek to carry out their fiduciary duties in voting at shareholder meetings. We do not believe the Release demonstrates an adequate understanding of how proxy voting works for institutional investors.

As CII indicated, the proposed requirements on proxy advisors to provide management an opportunity to pre-review reports, and receive the "final" reports at least two days before advisors send them to clients, would significantly and negatively impact the ability of institutional investors to obtain independent, timely and cost-effective research and advice from proxy advisors.

The SEC proposal would require a minimum three-business day review period for draft reports, including analysis and recommendations. For some companies, the minimum would be five business days. On top of that, the proposed regulatory scheme would require the "final" report be furnished to the company that is the subject of the report two business days before it can be provided to paying clients. The proxy advisor will be under pressure to consider comments from company management, which we presume would require at least one business day. Therefore, the actual delay for investors in receiving reports would be at least eight to 11 calendar days in our view, reducing the time for us to evaluate the reports and consider proxy votes to less than 10 calendar days at most companies, given that on average proxy advisory firms send reports about 20 days in advance of the meeting. We note that proxy advisor ISS has studied the requirements and argues the delays actually will be nine to 13 calendar days.

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Moreover, "on average" means that some reports will be delivered even later. We believe that it is important for investors who are clients of proxy advisory firms to have time to consider all sources, including reports from our paid advisors, when evaluating proxy voting issues. Proxy advisor reports are standardized, and play a vital role in enabling investors to focus efficiently on the important issues in evaluating proxy reports. Many investors receive proxy advisor reports geared to our own policies, providing further efficiencies.

Under current rules, casting proxy votes in a considered manner already is very challenging given timing constraints, particularly at the height of the spring proxy season. The SEC should be aware that not only are many institutional investors voting on U.S. meetings that peak at that time; voting in many other markets coincides with or is on the shoulders of the peak U.S. season. As is, the task currently puts pressure on voting for institutional investors. The delays that the SEC seeks to impose through government mandate will make thoughtful voting much more difficult or impossible, and likely add substantial costs that are not reflected in the SEC's cost/benefit analysis.

We are not convinced that the rules the SEC has set in place for the issuer right to the review and "final notice" periods will cause company management to file proxy statements sooner to any material extent. We also do not believe it will be helpful for the quality and accuracy of proxy advisor reports – the stated goal of the SEC in imposing a costly new regulatory structure – for proxy advisory firms to compress the period for their analysis.

We also are concerned that institutional investor costs to vote proxies will increase substantially for other reasons, including that the new regulatory structure clearly will create very significant barriers to entry for proxy advisory firms. We would like to see more proxy advisory firms competing for our business, not fewer, as is likely if the SEC enacts regulation as proposed.

We appreciate your consideration of these comments.

Sincerely,

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