

February 19, 2020

Vanessa A. Countryman  
Secretary  
United States Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549-1090

Re: SEC File Number S7-22-19

Dear Ms. Countryman:

The American Business Conference (ABC) is a Washington-based coalition of midsize growth companies founded in 1981 by Arthur Levitt, Jr. The chairman of ABC is Alfred P. West, Jr., Chairman and CEO of SEI Investments, Oaks, Pennsylvania.

ABC has offered comments to the Commission on proxy advisers in previous communications, most notably in regard to the Commission's so-called "proxy plumbing" release of 2010.<sup>1</sup>

In our 2010 letter, we observed that proxy advisory firms are outsourcing firms of the sort that exist in many industries. In the words of the attorney Charles Nathan, their business is to be the "cheaper provider of the application of one-size-fits-all voting policies to the tens of thousands of proxy votes needed each proxy season."<sup>2</sup>

"The problem, presented by proxy advisory firms," we wrote, "is not their existence. It resides in their apparent lack of accountability to the beneficial

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<sup>1</sup> Letter of John Endean to Elizabeth M. Murphy, Secretary, U.S. Securities and Exchange Commission, Re: File No. S7-14-10, Concept Release on the U.S. Proxy System, September 22, 2010.

<sup>2</sup> Charles M. Nathan, The Future of Institutional Share Voting: Three Paradigms," *The Harvard Law School Forum on Corporate Governance and Financial Regulation*, July 23, 2010.

owners of the securities managed by the firms' institutional investor clients."<sup>3</sup> Of course, beneficial owners ultimately pay for the services of a proxy adviser.

To address this problem of accountability, we recommended that proxy advisory firms register as investment advisers. We also advocated two new disclosure reforms. First, we argued that proxy advisers "who vote shares on behalf of institutional clients to disclose the name, position, and responsibilities of the client representative who directed the proxy adviser to vote shares, as well as the nature of the direction given."<sup>4</sup>

In addition, we argued that the proxy advisory firm should provide the Commission with a client certification that the person who makes investment decisions for the client fund has been furnished all relevant proxy materials, has reviewed the voting decisions, and approves the vote or votes as consistent with the fiduciary duty of the fund to vote its shares in the interest of its beneficiaries."<sup>5</sup>

Given what we wrote in 2010, it should surprise no one that ABC supports the Commission's current rulemaking on proxy advisers as it pertains both to disclosing conflicts-of-interest and, more generally, improving the accuracy and fiduciary relevance of the reports that proxy advisers produce for their investor clients. We would encourage the SEC to design its final rule in a way that balances the benefits of enhanced transparency and accuracy with their cost.

For example, we hope that the Commission's efforts to clarify the nature of the fiduciary's duty to vote its shares will result in careful analysis by investment fund managers of the necessity of voting every share on every issue presented at every annual meeting. The cost of engaging proxy advisory services could be mitigated by more judicious use of proxy advisers and voting rights by fiduciaries. As the Commission has made clear, a fiduciary could properly conclude that voting in certain meetings or on certain issues is not an appropriate use of fund resources.

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<sup>3</sup> Letter of John Endean to Elizabeth M. Murphy, Secretary, U.S. Securities and Exchange Commission, Re: File No. S7-14-10, Concept Release on the U.S. Proxy System, September 22, 2010.

<sup>4</sup> Ibid.

<sup>5</sup> Ibid.

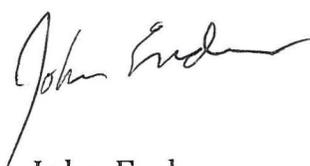
As we suggested in 2010, the perspective of active investment fund managers should determine fund decision-making on when and whether to vote the shares they manage. This is especially true regarding retention of a proxy adviser's assistance on matters that are peripheral to the interest of fund shareholders or beneficiaries.

For their part, index fund managers should carefully evaluate the question of whether their use of fund resources to pay proxy advisers is consistent with their fiduciary obligations under the stated purpose of a given index fund. If company activities that can be influenced by shareholder votes are immaterial to investment decision-making this may not be the case. A more selective approach to these decisions could offset some of the cost of proxy advisers by reducing the need for them.

On another matter, the accuracy of published proxy adviser reports have been a consistent concern of small and mid-cap companies for decades. Simply put, leaders of midsize and small public companies often believe that proxy advisers do not have the time or, perhaps, the inclination, to understand their firms and as a result the proxy adviser reports issued on their companies seem ill-informed and in some cases simply wrong.<sup>6</sup>

ABC supports wholeheartedly the Commission's proposal to afford issuers more opportunity to review and respond to proxy adviser reports on their companies prior to their release and to make those responses readily available. Additional information regarding proxy adviser reports is a prudent step toward improving the accuracy of those reports and the overall quality of information available to fiduciaries with voting power.

Sincerely,



John Endean  
President

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<sup>6</sup> A survey conducted by the Society for Corporate Governance of 134 member companies found that an astounding 42% of respondents reported finding errors in proxy adviser reports over the last three years. Errors included factual admissions, omissions of material facts, and errors in analysis. Letter of Darla M. Stuckey to Vanessa A. Countryman, Secretary, U.S. Securities and Exchange Commission, Re: SEC File Number S7-22-19, February 3, 2020.