

Vanessa A. Countryman  
Secretary Securities and Exchange Commission  
100 F Street NE  
Washington  
DC 20549  
United States of America

By email: [rule-comments@sec.gov](mailto:rule-comments@sec.gov).

Dear Madam Secretary:

**Re: Supplemental Comments, File No. S7-22-19: Amendments to Exemptions from the Proxy Rules for Proxy Voting Advice**

Further to the comment letter submitted by Minerva Analytics Ltd on 2<sup>nd</sup> January 2020, I am writing with additional information which we hope will be useful in the Commission's considerations of the above proposed regulations.

By way of brief introduction, Minerva is a UK-based proxy voting agency which provides research, data and vote agency solutions for institutional investors in Europe. From 1996-2003 our coverage was focussed on UK securities, however since 2003 we have provided services for all global markets including the USA.

Unlike the US vendors which, according to the commentary provided by the US Department of Justice, account for over 97% market share<sup>1</sup>, Minerva does not provide "one size fits all" house voting recommendations. Instead all Minerva's clients benefit from an advanced policy engine or "voting template" which provides tailored voting guidance based on their individual choices. The voting template is comprised of over 2,000 policy questions, the majority of which offer custom variables to ensure that guidance is as nuanced as possible according to company size and or country of incorporation.

Until 2005 Minerva partnered with the Investor Responsibility Research Council (IRRC) until it was sold to the ISS. Thereafter we partnered with former IRRC staffers who joined Proxy Governance Inc until its closure and sale to Glass Lewis in 2010. Since then, although we have continued to provide US research and voting services, Minerva has not been able to enter the market to serve US-domiciled clients in any meaningful way, a consequence of the barriers to entry which currently prevail. We are mindful of the recent comments by the Department of Justice regarding the need to balance regulation which aims to support "accuracy" with the likely effect on competition, particularly in an already constrained market. So, once again, we must regretfully say that as much as we would like to formally enter the US market, the current regulatory uncertainty is a material issue for us, particularly with the threat of litigation for "errors" which largely amount to differences of opinion.

**Proxy Research "Errors"**

We applaud the SEC's intent to ensure high quality markets, we share the Commission's belief that research and proxy processing accuracy is a vital ingredient for market confidence. Regardless of the quality of the inputs into our research and voting processes i.e. proxy and financial statements, Minerva strives for consistency, accuracy and objectivity in its work. However, as many investment analysts will testify, these inputs can be of highly variable quality.

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<sup>1</sup> <https://www.sec.gov/comments/s7-22-19/s72219-6772519-208112.pdf>

SEC officers will no doubt be aware of the work of accounting academics and commentators in respect of the errors which emerge from SEC filings. In December 2019, for example, Jean Eaglesham alerted Wall Street Journal readers to the fact that: ***“companies have been playing down the importance of their accounting issues. For minor problems, the SEC requires “Little r” revisions, in which the company updates its past financial statements without having to alert investors. Back in 2005, less than a third of all restatements were revisions; last year it was about three-quarters, the Audit Analytics data show.”***<sup>2</sup>

Furthermore, Preeti Choudhary, associate professor of accounting at the University of Arizona and a co-author of the study identified that revisions carried out to correct potentially serious misstatements were associated with share price falls. Critically, Professor Choudhary states that: ***“The significant share price movement suggests that managers and investors disagree about the importance of the errors.”***<sup>3</sup>

There may be many reasons for looking past these errors. Some research points to the fact that they might trigger remuneration “clawbacks” which would allow companies to recoup remuneration paid to executives in the event of a Big R restatement. Analysis has found that corporations with compensation clawbacks were more than twice as likely as others to use revisions for potentially material errors rather than restatements.<sup>4</sup>

**It is striking to us that many of the arguments presented to the SEC in respect of proxy research “errors” are focussed (perhaps fixated might be a better description) on remuneration and peer groups.** It seems only reasonable to question whether the problem is really one of “mistakes” made by hard-working proxy analysts, or whether in fact corporate secretaries, investor relations officers and remuneration committee members are under undue career pressure to deliver voting certainty to deliver the CEO’s remuneration demands.

### **Proxy Season Workloads**

Informed voting is a significant undertaking and one which everyone in the industry takes seriously reflecting the importance of good governance and stewardship. We do not trivialise the importance of getting it right – which is why we deploy considerable resource to systems and training to supporting accuracy, consistency and timeliness. From an individual corporation’s perspective, it appears rare for them to consider the totality of the investor workload. So, to support the Commission’s cost-benefit and economic analysis of the implications of the proposed regulations, we are enclosing two charts and underlying data tables which show the workload of proxy analysts and their clients across a full year.

In 2019 Minerva collected data on 6,558 shareholder meetings, of which 1,106 were for the largest US corporations.<sup>5</sup> As can be seen from the charts, the global AGM season is intensely concentrated; 71% of all shareholder meetings take place between March and June. The data also shows that the US proxy season is particularly compressed with 85% of meetings taking place over the same period. This is clearly an inefficient use of time and effort for all participants and we believe that the SEC should look at this compression to find ways of alleviating the inevitable bottlenecks. We think these graphs also demonstrate clearly why investors use services such as proxy advisors to ease their workload.

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<sup>2</sup> [https://www.wsj.com/articles/shh-companies-are-fixing-accounting-errors-quietly-11575541981?mod=hp\\_lead\\_pos5](https://www.wsj.com/articles/shh-companies-are-fixing-accounting-errors-quietly-11575541981?mod=hp_lead_pos5)

<sup>3</sup> Choudhary, Preeti and Merkley, Kenneth J. and Schipper, Katherine, Do Immaterial Error Corrections Matter? (October 3, 2019). Available at SSRN: <https://ssrn.com/abstract=2830676> or <http://dx.doi.org/10.2139/ssrn.2830676>

<sup>4</sup> Thompson, Rachel, Reporting Misstatements as Revisions: An Evaluation of Managers’ Use of Materiality Discretion (August 29, 2019). Available at SSRN: <https://ssrn.com/abstract=3450828> or <http://dx.doi.org/10.2139/ssrn.3450828>

<sup>5</sup> Methodological statement: Meeting numbers are for individual corporations, not resolution counts or count of types of securities.

Outsourcing data gathering and vote administration is a rational economic decision which is not synonymous with outsourcing fiduciary responsibility. The Council of Institutional Investors, Glass Lewis and ISS have already presented detailed workings on the impact of the SEC's proposals for giving issuers mandatory preview rights for checking proxy research. We have no reason to disagree with their estimates and conclusions. Leaving aside the double standards of sell side research or other financial data vendors not being required to have their work reviewed by issuers, the costs being imposed on investors through their vendors simply cannot be justified by any rational calculation.

### **Proxy Advisor Mythology**

We have studied the consultation responses submitted to the SEC and continue to be alarmed and disappointed by the mythology being circulated as "fact" by the anti-proxy advisor lobby – which should really be called the anti-shareholder lobby.

It is not the first time, however. Such tactics dominated the Canadian and European consultations in 2014. When your colleagues in the Canadian SEC concluded their investigation into the allegations against the industry, they responded with some very wise observations<sup>6</sup> which were informed by the evidence presented by issuers, investors and proxy analysts (including Minerva<sup>7</sup> (as Manifest)). In their response, the Canadian regulators specifically addressed two important points about issuer/investor engagement which are just as relevant today:

#### **Who is responsible for voting?**

*We wish to remind **issuers** that they **may engage with their shareholders, who have the ultimately responsibility of determining how to exercise their right to vote**, to explain why they have adopted a given corporate governance practice. Where appropriate, issuers may discuss corporate governance and proxy voting matters with institutional investors to address their concerns. If issuers have practices that are different from the standards set out in the proxy advisory firms' proxy voting guidelines, these practices can be discussed with institutional investors.*

#### **What channels do issuers have for communicating their views?**

*The information circular is the primary means for issuers to communicate their corporate governance practices to their shareholders. An issuer can include in its information circular a comprehensive discussion of its approach to corporate governance, including the practices of the board of directors and the issuer's executive compensation programs.*

*Issuers may also choose to participate in consultations organized by proxy advisory firms and to communicate their views on corporate governance issues and proxy voting guidelines. Such contacts may help both parties to better understand each other's positions.*

This last paragraph in particular gives the lie to the allegation that proxy advisors use black box methodologies which disadvantage issuers. According to independent research published in 2015, the average IR budget in North America was in the region of \$799,000 and quite tellingly: "That's before IR staff expenses in an environment when a top-flight investor relations officer might command a salary of \$175,000"<sup>8</sup>. It is perhaps no surprise that the SEC has received so many responses from NIRI chapters on

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<sup>6</sup> [https://www.osc.gov.on.ca/en/SecuritiesLaw\\_csa\\_20140424\\_25-201\\_rfc-proxy-advisory-firms.htm](https://www.osc.gov.on.ca/en/SecuritiesLaw_csa_20140424_25-201_rfc-proxy-advisory-firms.htm)

<sup>7</sup> <https://www.manifest.co.uk/wp-content/uploads/2014/06/1406CSA-MIS.pdf>

<sup>8</sup> <https://www.nasdaq.com/articles/how-much-does-good-investor-relations-cost-2015-09-10>

behalf of its 3,000 (unregulated) members<sup>9</sup>. While admittedly NIRI does operate a 12-point code of ethics<sup>10</sup>, we find little evidence of any form of public consultation or independent oversight process that proxy analysts have adopted. Nor do we find any proposals that proxy analysts should be afforded advance access to corporate disclosures in order to ensure their accuracy.

### **If not the current SEC proposals – what next?**

Naturally, we respect the SEC's authority in regulating US markets, however since the Financial Crisis bodies such as the Financial Stability Board<sup>11</sup> have facilitated considerable collaboration between regulators to protect the global financial system, of which governance and proxy voting is but one small part. Whenever the issue of proxy advisors has been raised by global regulators, the consultations and policy conclusions have trodden similar ground. Minerva has been an active participant in these deliberations as we do agree that confidence in the system is necessary for the market to operate efficiently and in the best interest of the investors that we and asset managers serve.

There is a recurring theme in the final recommendations – industry-led principles which can adapt to changing circumstances and transparency to aid and foster understanding. While facts don't always have as much effect on entrenched opinions as might be hoped<sup>12</sup>, transparency can help divided constituencies come to terms with their differences so that they can at least “agree to disagree” and find a workable way forward. In this regard, both the Canadian and European securities regulators concluded that transparency would be a cost effective and workable solution to building trust and confidence. The Shareholders Rights Directive<sup>13</sup>, for example, has a number of approaches which are shared by the Canadian approach. These centre on:

**Transparency of Proxy Advisors:** Minerva, Glass Lewis, ISS, Proxinvest and PIRC have worked with global regulators over a number of years to develop an independent and transparent code of good practice for proxy research. This code is global in scope and is aligned with the Shareholder Rights Directive and the Canadian recommendations. The code is overseen by an independent chairman, currently Dr Stephen Davis of Harvard Law School<sup>14</sup>.

**Transparency of Asset Managers:** We recognise that beneficial owners, and in particular retail investors, have been told some extraordinary untruths about proxy voting research, ESG and corporate governance during this debate. It would therefore be helpful for savers and providers of capital to have the facts so that they can judge for themselves. Public reporting by asset managers is becoming a standard part of monthly or quarterly reporting by asset managers in global markets. Compared with the dense and inaccessible data sets typical of Form NPX, these reports are web-based, narrative rich and provide detailed insights as to how good governance creates value and protects shareholders' long-term investment objectives.

**Shareholder ID & Fixing the Vote Plumbing:** By far the biggest opportunity for improving investor relations would be a root and branch overhaul of the dysfunctional proxy plumbing. We urge the SEC to focus on fixing the plumbing which will have immediate and positive benefits for the entire financial system by making settlement and post-trade more efficient, facilitate cheaper investor communication and provide assurances of accuracy in vote counting.

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<sup>9</sup> <https://www.niri.org/membership/membership-overview>

<sup>10</sup> <https://www.niri.org/membership/code-of-ethics/regular-member-code-of-ethics.aspx>

<sup>11</sup> <https://www.fsb.org/about/fsb-members/>

<sup>12</sup> See for example: <https://www.newyorker.com/magazine/2017/02/27/why-facts-dont-change-our-minds> and <https://www.bbc.com/future/article/20180622-the-surprising-reason-people-change-their-minds>

<sup>13</sup> <https://www.fca.org.uk/publications/policy-statements/ps19-28-proxy-advisors-shareholders-rights-regulations-implementation-depp-and-eg> As transposed into UK law.

<sup>14</sup> <https://bppgrp.info/bpp-group-appoints-independent-oversight-committee-chair/>

**Concluding Remarks**

We recognise that the SEC has faced a barrage of lobbying over the proxy proposals which must be an expensive distraction from its many pressing priorities. Some feedback has been more informed and enlightened than others. The Department of Justice specifically, has identified the challenge of achieving regulatory objectives that can be balanced with the need to keep markets competitive and functioning for hard working savers and investors.

If there is a market failure in proxy, then we would suggest it is the undue concentration on the research side and the dysfunctional plumbing on the other. It is not lost on us that the two sides of the proxy industry face similar problems - market dominance and barriers to entry which are holding back innovation and diversity. We therefore urge the Commission to adopt the principle of *primum non nocere* – first do no harm - and consider routes to transparency which would enable all stakeholders to get to work and fix the plumbing.

Thank you for this opportunity to share our views with the Commission. Minerva remains at your disposal should you have any further questions.

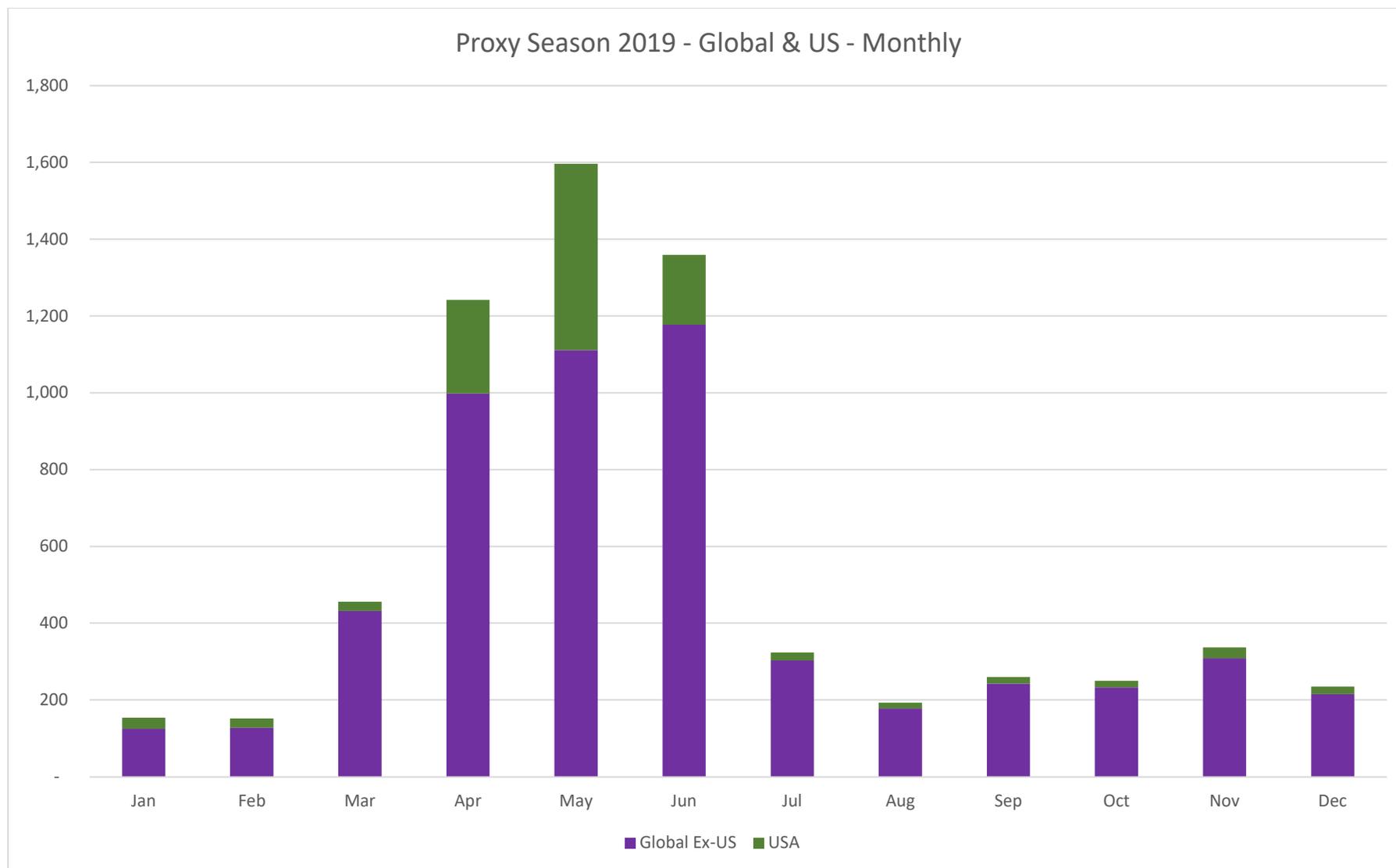
Yours sincerely

Sarah Wilson

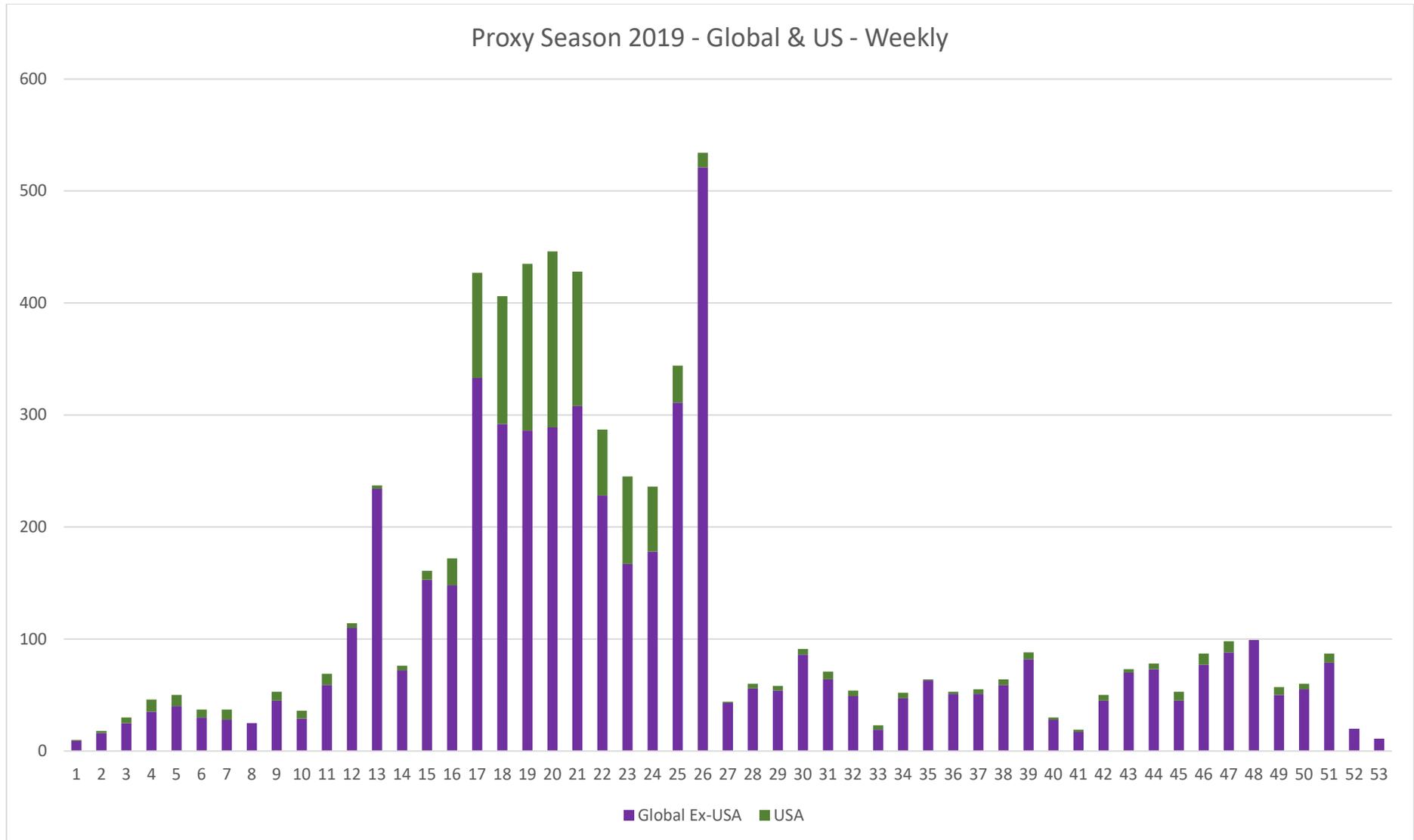
**Chief Executive - Minerva Analytics Ltd**

By email: [hello@minerva.info](mailto:hello@minerva.info)

Telephone: + 44 (0)1376 503500



Source: Minerva Analytics Ltd



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## Monthly

Month	Global Ex-US	USA	Total
Jan	125	29	154
Feb	128	24	152
Mar	432	24	456
Apr	998	244	1,242
May	1,111	485	1,596
Jun	1,177	182	1,359
Jul	303	21	324
Aug	178	15	193
Sep	243	17	260
Oct	233	17	250
Nov	309	28	337
Dec	215	20	235
<b>Grand Total</b>	<b>5,452</b>	<b>1,106</b>	<b>6,558</b>

## Weekly

Week	Global Ex-US	USA	Total
1	9	1	10
2	16	2	18
3	25	5	30
4	35	11	46
5	40	10	50
6	30	7	37
7	28	9	37
8	25	0	25
9	45	8	53
10	29	7	36
11	59	10	69
12	110	4	114
13	234	3	237
14	72	4	76
15	153	8	161
16	148	24	172
17	333	94	427
18	292	114	406
19	286	149	435
20	289	157	446
21	308	120	428
22	228	59	287
23	167	78	245
24	178	58	236
25	311	33	344
26	521	13	534
27	43	1	44
28	56	4	60
29	54	4	58
30	86	5	91
31	64	7	71
32	49	5	54
33	19	4	23
34	47	5	52
35	63	1	64
36	51	2	53
37	51	4	55
38	59	5	64
39	82	6	88
40	28	2	30
41	17	2	19
42	45	5	50
43	70	3	73
44	73	5	78
45	45	8	53
46	77	10	87
47	88	10	98
48	99	0	99
49	50	7	57
50	55	5	60
51	79	8	87
52	20	0	20
53	11	0	11

