



May 9, 2020

Vanessa Countryman, Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-0609

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

To: Ms. Countryman and the Commission

This is a supplement to our earlier filing to add some updated information and comments.

We were pleased to hear from Commissioner Roisman and in some published accounts that the Commission is not planning to move forward with some of the most pernicious and legally unsupportable aspects of the original proposal, particularly the requirement that proxy advisors submit their analyses to the covered corporations before sending to clients. As we noted in our earlier comment, this would clearly have been an unconstitutional prior restraint on speech and the press.

We are almost as strongly opposed to the reported alternative, however. It is, in its requirements and highly questionable legal and factual supporting basis, so significantly different from the original proposal that it clearly requires an entirely new period of notice and comment.

To reiterate: the original proposal was based on a fundamental distortion of the law, the economics, and the facts, heavily promoted by fake dark money front groups and, as Bloomberg put it "fishy" letters signed by individuals who, it turned out, had no connection to the letters but did have connections to corporate-funded "communications"

firms. And yet, even so, no one, corporate or Commission, has been able to come up with a single example of a "wrongly" voted on proxy proposal or a "wrong" proxy advisory opinion. Not only is there no evidence of "robo-voting" but those claims have been thoroughly and decisively disproved, casting into the most severe doubt the credibility of those making those claims. What we do know now is that proxy advisor clients tend to vote according to their recommendations on routine matters (not coincidentally according to management recommendations, too), and for non-routine matters, they consider the proxy advisory firm analysis and recommendation and come to their own conclusions. Just as they do in reviewing securities analysis and buy-sell recommendations.

Even if this was not true, even if there was any evidence that fund managers subject to the strictest standard of our legal system, the fiduciary standard, are voting proxies for any reason other than their best assessment of the interest of beneficial holders, the Commission has failed to show why it has not used any of its ample investigation and enforcement authority, far more effective than this Rube Goldberg of a proposed rulemaking, to address it.

If what the Commission wants to do is clarify the importance of voting proxies and exercising other share ownership rights "for the exclusive benefit" (to use ERISA language) of beneficial holders, again, a much more direct and cost-effective way to address any issues, we question why the two 2004 guidance documents were rescinded. A reminder: those were issued to respond to the massive conflicts of interest fund managers had with portfolio company management who have other commercial connections with fund managers, with substantial data documenting the skewed votes that resulted. We would welcome a rulemaking along those lines, perhaps affirming the fiduciary obligation to make all proxy voting decisions, including whether to vote or not, solely in the interest of beneficial holders. We would also welcome an upgrade to the disclosure requirements. Posting each fund's proxy voting policies on the home page of the financial institution, with a search function on the last three years of votes by stock symbol, would be a good start.

We concur with and incorporate by reference the April 30, 2020 signed by Tim Smith and others. Their points about the need to re-evaluate the underlying issues and priorities in light of COVID-19 and the CARES Act are especially important. The issues of risk management, inadequate reserves, and use of CARES funds are going to be of particular interest to investors and proxy advisors, as the sole source of independent research on corporate governance, will be of vital importance.

Sincerely,

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Vice Chair