

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

**RE: File No. S7-22-19, Amendments to Exemptions from the Proxy Rules for Proxy Voting Advice
July 7, 2020**

Dear Secretary Countryman,

Please find attached a report by the American Council on Capital Formation (ACCF), *“Are Proxy Advisors Still a Problem? 2020 Proxy Season Analysis Shows Companies Believe Errors Continue”*.

The paper provides an analysis of supplemental filings to companies’ proxy statements in the 2020 proxy season and shows at least 42 instances where companies believe proxy advisors have issued recommendations based on erroneous information or flawed analysis. These findings are consistent with a similar report published by ACCF which analyzed supplemental filings companies submitted to their proxy statements during the 2016, 2017, and 2018 proxy seasons, which we have previously submitted into the comment docket.

Concerningly the allegations of errors continue despite the Commission’s August guidance which reaffirmed that investment advisers who rely on proxy firms must ensure the integrity of the firms’ analysis to fulfill their proxy voting responsibilities. Clearly the implication is that the guidance has not had the intended effect and that the Commission is correct to propose its rule on the Amendments to Exemptions from the Proxy Rules for Proxy Voting Advice.

Specifically, we believe that the proposed rule is necessary because supplemental filings are *not* a sufficient mechanism for companies to voice their concerns on recommendations from proxy advisors. Submitting a supplemental filing is a laborious and time-consuming process which entails voluntarily increasing a company’s anti-fraud risk and requires the dedication of notable company resources to submit the filing within the limited deadline. Further, the process adds another step to the information gathering process for investors themselves.

The results also underscore the point that the practice of automatic-voting also needs to be addressed in the final rule as a priority, if the proposed changes are to be effective. We believe that the final rule should include a “speed bump” or time period where proxy advisors must disable any mechanisms they have to “robo-vote” during contested recommendations, so that investors have access to the full suite of information.

Thank you for facilitating this robust comment period. We believe the SEC’s proposed rule to regulate proxy advisors will address the critical issue of erroneously informed recommendations from proxy advisors by enhancing the information available to institutional investors without compromising the independence of proxy advisors. Once finalized, the rule will facilitate greater transparency and accountability amongst public companies and their investors.

We commend the SEC on the comprehensive process undertaken to arrive at these proposed rules and encourage the Commission to finalize them. We would be happy to discuss the findings in more detail with members of the Commission.

Kyle Isakower
Senior Vice President of Regulatory & Energy Policy
The American Council on Capital Formation



ARE PROXY ADVISORS **STILL A PROBLEM?**

2020 PROXY SEASON
ANALYSIS SHOWS
COMPANIES BELIEVE
ERRORS CONTINUE

July 2020



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ARE PROXY ADVISORS **STILL A PROBLEM?**

2020 PROXY SEASON ANALYSIS
SHOWS COMPANIES BELIEVE
ERRORS CONTINUE

CONTENTS

Introduction	4
Summary of Findings	4
Case Studies	5
Background/Analysis and Importance of SEC Proposal	6
Conclusion	8
Appendix	9

ARE PROXY ADVISORS **STILL A PROBLEM?**

2020 PROXY SEASON ANALYSIS SHOWS COMPANIES BELIEVE ERRORS CONTINUE

INTRODUCTION

A new analysis of companies' supplemental filings to their proxy materials with the U.S. Securities and Exchange Commission (SEC) during the majority of the 2020 proxy season shows at least 42 instances where proxy advisors have formulated recommendations based on errors¹ or analysis disputed by the companies themselves.

For example, in one supplemental filing, a proxy advisor generated a recommendation using a disputed figure for a company's net income, a basic but critical number. Another highlighted how a proxy advisor based its recommendation on a peer group that did not include the company's actual competitors. Other filings showed instances where proxy advisors issued recommendations that appear to be contradictory with their stated policies.

These results are consistent with the [prior analysis of supplemental filings](#) we conducted into the 2016, 2017, and part of the 2018 proxy seasons, and which uncovered a total of 139 apparent errors.

The findings are significant as they show that disputes between companies and proxy firms have continued despite significant scrutiny from Congress, the SEC, and an array of impacted stakeholders. They suggest that these efforts have not fully had the intended effect and that further intervention is needed in order to ensure that investors have as accurate information as possible before voting their securities.

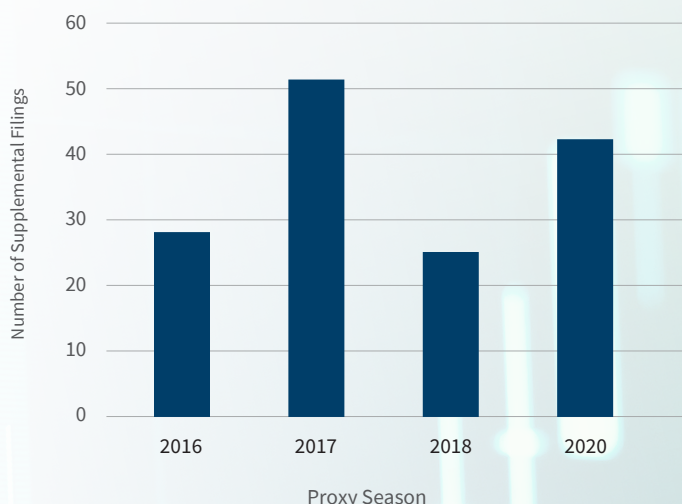
SUMMARY OF FINDINGS

A search of the [SEC's EDGAR database](#) through July 9, 2020 found 42 examples of public companies filing supplemental proxy materials this proxy season in order to correct the record regarding a proxy advisory firm vote recommendation. Because supplemental filings are subject to antifraud provisions of SEC regulations this study views them as accurate.

The companies that have made these filings cut across virtually every sector of our economy and most are small or mid-cap entities that do not have the significant legal and compliance resources of their larger counterparts.

These filings are consistent with our previous research into this topic, which showed 29 supplemental filings in 2016, 52 in 2017, and 26 during the period examined in 2018. They demonstrate that companies are still encountering proxy advisor recommendations that they argue are based on factual and analytical errors, as well as serious disputes, all of which should be considered by investors before casting their votes in corporate elections.

Company Supplemental Filings Per Year Analyzed



¹ In this report, any use of the term "errors" refer to cases where companies' supplemental filings plainly stated that a proxy firm's analysis contained either an outright factual mistake or fundamental errors or omissions in analysis when developing vote recommendations. Companies who submitted such filings are subject to antifraud provisions within SEC regulations and are legally liable for any misstatement of fact. A full accounting of the supplemental filings analyzed for the report is contained in the appendix.

CASE STUDIES

It is important to note that the number of supplemental filings highlighted in this and previous ACCF reports may well represent the “tip of the iceberg” and still undercount the overall instances of errors or other methodological flaws contained in proxy advisory firm recommendations.

Specifically, the data includes only those companies that have taken the extraordinary step of filing a supplemental proxy. Doing so not only entails voluntarily increasing the company’s anti-fraud risk, but also requires diverting significant company resources to submit the filing in the limited window available. [Anecdotal evidence](#) suggests that many companies who face issues with proxy advisers are either unable or choose not to submit supplemental filings.

We would suggest that the current system of submitting supplemental filings does not represent the most efficient solution to correcting errors or disputed analysis in proxy advisers’ recommendations. The process is both laborious and time consuming and perhaps most importantly imposes added demands on investors to identify necessary information before voting. As such, an update to the proxy voting process would certainly appear to be warranted.

Factual Errors: Plains All American disputed the decisions by two proxy advisers to issue votes against the company’s say on pay proposal, noting that one report was “*wrong and (is) based on a flawed and error-filled analysis.*” The company claimed that amongst other errors, the pay for performance analysis in the proxy report was based on an erroneous net income figure that was off by \$1.7 billion. This was the second year the proxy advisor based their analysis off a disputed figure, even though the company previously pointed out the issue to the advisor.

Analytical Errors: Five9 was puzzled when it found that a proxy adviser had issued a ‘withhold’ recommendation against one of its directors, due to her membership on four audit committees. The reason for the confusion was the proxy firms’ own guidance, which states a director should not serve on more than three public audit committees, “*unless the audit committee member is a retired CPA, CFO, controller or has similar experience, in which case the limit shall be four committees.*” The director who was subject to the ‘withhold’ recommendation is a retired finance professional and holds no operating positions with any company – clearly within the proxy firm’s guidance on the subject.

Serious Disputes: Hecla Mining challenged a proxy adviser over its peer group selection for a say-on-pay recommendation. One of the oldest US incorporated mining companies, it stated that although the North American industry is dominated by Canadian businesses, a proxy adviser chose to use a peer group which only featured US incorporated companies, including those in the chemicals and agricultural products sectors.

ANALYSIS OF THE SEC'S PROPOSED RULEMAKING

It is important to recognize that proxy advisory firms perform a critical function in the U.S. capital markets. They provide institutional investors with research and vote recommendations regarding board of director elections, executive compensation, mergers and acquisitions, and other corporate governance matters at public companies. A well-functioning proxy advisory system can enhance the long-term value of businesses and ultimately benefit Main Street investors.

However, over the last decade, the practices of proxy advisory firms have come under increased scrutiny from market participants, Congress, academics, and the SEC. The quality of vote recommendations, a concern that proxy firms may issue “one size fits all” vote recommendations, and apparent conflicts of interest within the industry have led policymakers to propose reforms that would increase transparency and ensure proxy advisors provide high-quality voting advice that promotes the long-term best interests of investors.

Questions regarding the independence of proxy advisor firms have also been raised over the years. For example, proxy advisor “specialty reports” – provided to certain proxy firm clients based upon “socially responsible” or faith-based investment guidelines – are alleged to give preference to certain shareholder resolutions and have the potential to influence reports provided to other clients.

Companies typically have little insight into the content of such specialty reports and how it may affect the advice being provided to their shareholders.

These concerns have led the SEC to clarify the responsibilities of asset managers who hire proxy advisory firms. Asset managers owe a fiduciary duty to retail investors that put their savings into mutual funds, exchange-traded funds, or other managed investment vehicles. Asset managers must prioritize the economic interests of these shareholders when casting votes and take steps to affirm that any advice they rely on from proxy advisory firms is based upon factual and accurate information.

As the Commission explained through [guidance issued in August 2019](#), a regular assessment by asset managers regarding, “*the extent to which potential factual errors, potential incompleteness, or potential methodological weaknesses in [a] proxy advisory firm’s analysis...materially affected the proxy advisory firm’s research or recommendations*” could assist them in fulfilling their fiduciary duty to shareholders. In other words, when asset managers rely on vote recommendations that contain errors or analytical weaknesses, it could ultimately harm retail investors.

In November 2019, the SEC [proposed rules](#) that would implement long-overdue reforms to the proxy advisor industry. The proposal is the culmination of a decades-long effort by the Commission to examine the practices of proxy advisory firms and those who rely on their recommendations, and has been informed by several SEC roundtables and solicitations for public comment, as well as Congressional hearings dating back to 2013. The proposal is properly calibrated to improve the overall quality of proxy advice received by institutional investors without imposing undue costs on market participants.

An important component of the SEC’s proposed rule is a mechanism granting companies the ability to provide feedback on draft vote recommendations. This would provide companies the opportunity to correct any apparent errors or raise serious points of disagreement prior to a final report being issued. While nothing in the proposal grants companies any type of “veto” over a recommendation, a draft review process would ensure that recommendations are based on facts and that investors have both company and proxy adviser viewpoints available when making voting decisions. At a stroke, this will address not only factual disputes, but also the differences of opinion which proxy firms contend make up the majority of supplemental filings and other company complaints. Importantly, we see no reason as to why this would hinder proxy advisers’ independence.

In a [speech](#) on the proxy advisor rule, SEC Commissioner Elad Roisman indicated that the proposal would likely be tweaked so that companies and institutional investors would both receive

the proxy advisor reports at the same time and review them contemporaneously. If companies find errors or have serious disagreements with the recommendations, they could submit their response to proxy advisors and the advisors would then distribute the response to their institutional investor clients to consider before voting their shares. To ensure companies have time to submit their response before investors vote, Roisman indicated that the final rule would also likely include a “speed bump” or time period where proxy advisors would disable any mechanisms they have to “robo-vote” their clients’ shares on their behalf.

If the final rule is updated to include this contemporaneous review period, it will represent a significant compromise by the business community. It removes companies’ ability to review reports prior to publication and will not allow investors to assess both sides of the argument simultaneously. However, it will address concerns raised that the rule as proposed will slow down the voting process and give companies an opportunity to raise the concerns currently reflected in the often-overlooked supplemental filings highlighted in this report.

Currently, the largest proxy advisory firm permits only companies included in the S&P 500 the opportunity to review and comment on draft recommendations. Other proxy advisory firms have established subscription services for companies that wish to review draft reports. Both practices implicitly acknowledge the value of company feedback in the process. However, despite the importance of ensuring accurate information is included in final reports, there is no regulatory standard for providing companies with a way to correct errors and submit comments before a final vote recommendation is issued.

As noted by the SEC in the proposal, this lack of a standard has led to concerns that, “*there are not meaningful opportunities to engage with the proxy voting advice business and rectify potential factual errors or methodological weaknesses in the analysis underlying the proxy voting potential to improve the accuracy, transparency, and completeness of the information available to make those voting decisions.*” Ensuring that the clients of proxy advisor firms receive the most accurate and up to date information on critical proxy matters fits squarely within the SEC’s mission and will promote the long-term best interests of investors.

CONCLUSION

The supplemental filings submitted by companies thus far in the 2020 proxy season provides a public glimpse of potential proxy firm errors and serious disputes they face each year.

These disputed data and analyses are critical pieces of information that must be evaluated by the institutional investors who vote on behalf of their clients in order to uphold their fiduciary duty. Left unevaluated, errors can cost companies instead of increasing their value as intended.

The factual disputes identified in this new report are consistent with previous years' findings, and demonstrate that recent efforts, including the SEC's August guidance, will not on their own be sufficient to resolve the problem. Further action is needed.

The SEC's proposed rule to regulate proxy advisors will address this critical issue by enhancing the information available to institutional investors without compromising the independence of proxy advisors. Once finalized, the rule will improve the workings of corporate governance by facilitating greater transparency and accountability amongst public companies and their investors.

APPENDIX

Company	Date of Supplemental Proxy Filing	Nature of Error	Summary of Error/Topic
Ares Capital	6/15/2020	Factual Error Analytical Error X Serious Dispute X	Company disputed proxy advisory firms' characterization of attendance by one board member, noting that the director had attended 100% of regularly scheduled meetings in 2019 and only missed meetings that were scheduled with limited notice.
United Therapeutics	6/15/2020	Factual Error Analytical Error Serious Dispute X	Company disputed several factors used in proxy advisory firm recommendations against say on pay and director nominees, stating interactions with the firms "were very productive, and we came away with the distinct belief that we had sufficiently addressed, through the compensation program adopted in March 2019, the concerns that gave rise to our 2019 Say-on-Pay vote. We also held calls with the proxy advisory firms in December 2019 to review our outreach efforts, the changes we were making in 2019 and to gather any additional feedback, and neither proxy advisory firm questioned our level of responsiveness to shareholders during those conversations."
Cowen Inc.	6/12/2020	Factual Error Analytical Error X Serious Dispute	Company received negative vote recommendations from proxy advisory firms regarding say on pay and incentive compensation plans. Explained a number of disagreements with recommendations, including: "Average and total 3-year CEO compensation for 2017-2019 includes payments and share vestings associated with the CEO transition and retirement of our former CEO in late 2017. This resulted in an increase in reported CEO compensation of more than \$10 million in 2017, which inflates the 3-year compensation metrics utilized" by one of the proxy advisory firms.
Dave and Buster's Entertainment	6/9/2020	Factual Error Analytical Error X Serious Dispute X	Company was seeking to increase shares eligible under its omnibus incentive plan by 3,000,000 shares. Company disputed proxy advisory firm using a pre-COVID calculation of the share price when issuing a vote recommendation against the proposal.
Criteo S.A.	6/9/2020	Factual Error Analytical Error X Serious Dispute X	Company states its position that a proxy advisory firm is "mistaken" in its claim that the company failed to disclose minimum vesting periods for stock options. Company points to its proxy statement, which explicitly states that "any options granted under the 2016 Stock Option Plan will be subject to a vesting period of at least one year."
Providence Service Corporation	6/4/2020	Factual Error Analytical Error Serious Dispute X	Company disputes proxy advisory firm classification as current director as non-independent. Company explains that the director's relationship with and compensation from a law firm that the company had retained are immaterial and do not impact her independence.
Evercore	6/2/2020	Factual Error Analytical Error X Serious Dispute X	Company points out a number of flaws and omissions in proxy advisory firm recommendation against amendments to equity incentive plan, including 1) "The Report excludes from its quantitative burn-rate and dilution analyses the anti-dilutive impact of our share repurchase "; 2) "The Report compares our equity compensation practices to a peer group with materially different capital structures and business models"; and 3) "The Report provides no assessment of the significance of the qualitative rationale for our broad-based equity plan relative to its quantitative tests."
Activision Blizzard Inc	6/1/2020	Factual Error Analytical Error X Serious Dispute X	Company believes analysis underlying vote recommendation was faulty due to 1) A peer group selection that is irrelevant to the company and misrepresents who it competes against for talent; 2) Treating stock options as non-performance based compensation; 3) Failing to take into account the company's shareholder-favorable approach to granting equity; and 4) Placing inappropriate emphasis on disclosure of competitively sensitive and confidential strategic goals.
Trident Acquisition Corp	5/26/2020	Factual Error X Analytical Error Serious Dispute	Trident filed the supplemental to clarify that if shareholders approved the amendment to the company's articles of incorporation, insiders or their affiliates must deposit \$.15 for each share of common stock that had not been redeemed. The company sought the clarification as it had been made aware that a proxy advisory firm vote recommendation stated the amount deposited would be \$500,000 in aggregate.
Mack-Cali Corporation	5/29/2020	Factual Error Analytical Error Serious Dispute X	Company disagrees with recommendations on director nominees put forward by Bow Street Opportunities Fund. Company claims that proxy advisory firms "failed to recognize the significant Board and governance enhancements that Mack-Cali has made over the last year" and claimed that the proxy advisors were "deceived" by Bow Street's "misleading commentary" regarding the Board.
Monolithic Power Systems	5/28/2020	Factual Error X Analytical Error Serious Dispute	Company provided detailed rebuttal to vote recommendation against company's 2014 equity plan. Stated that the characterization of the performance measurement period being two years was "simply incorrect" and that earnings per share had continued to grow despite an increase in outstanding shares, undercutting arguments that the equity plan was "cost excessive."
Neophotonics	5/22/2020	Factual Error Analytical Error X Serious Dispute X	Company received a negative vote recommendation for its 2020 equity incentive plan. The company notes that their three-year average adjusted and unadjusted burn rates are well below the benchmark used to inform the vote recommendation, and that 89% of their stock options are in the money, yet remain unexercised, reflecting a committed workforce.
Alexandria Real Estate Equities	5/21/2020	Factual Error Analytical Error Serious Dispute X	Company (a real estate investment trust governed under Maryland law) reiterates that its bylaws related to shareholder rights to amend bylaws are consistent with Maryland law; notes that the policy preference of one proxy advisory firm (which resulted in recommendation against board members) is contrary to longstanding Maryland law.

APPENDIX CONTINUED

Devon Energy Corp	5/22/2020	Factual Error Analytical Error X Serious Dispute X	Company took exception on several factors related to a negative vote recommendation for say on pay plan. As one example, negative vote recommendation stated that company had a "problematic practice" of granting executive age credits for the company pension plan. Devon explained that has not, and has no plans to, make granting age credits a practice.
Vocera Communications	5/18/2020	Factual Error Analytical Error Serious Dispute X	Company counters claims from proxy advisory firms that its equity compensation plan is "cost effective" and permits the liberal recycling of shares. Company notes that its burn rate is below proxy advisory firm benchmarks and that unvested shares are forfeited and returned to the equity pool.
GCP Applied Technologies	5/18/2020	Factual Error Analytical Error Serious Dispute X	Company disputes recommendation in favor of hedge fund Starboard's slate of nominees; says that recommendation resulted from taking Starboard's arguments at "face value" and disregarded facts underlying the company's slate of nominees.
Netgear	5/18/2020	Factual Error Analytical Error X Serious Dispute	Company argues that vote recommendation against equity incentive plan applies inflated burn rate and dilution calculations, and fails to factor in implications for shareholders if incentive plan is adopted.
Invacare	5/15/2020	Factual Error Analytical Error X Serious Dispute	Company disputes proxy advisory firm dilution analysis for executive compensation plan, and states that "[the firm's] evaluation of the plan's estimated cost, the plan features, and our equity grant practices have resulted in a score that would have otherwise led to a favorable recommendation." Company states that if counting existing shares available for the grant and new shares requested at one-half value based on the plan terms, dilution would have been 18% - well below the limit the proxy advisory firm used as basis for negative vote recommendation.
Tredegar	5/13/2020	Factual Error Analytical Error X Serious Dispute X	Serious dispute with vote recommendation regarding pay of CEO; amongst other concerns, company notes that: "In addition, the...Report notes that Tredegar's three-year CEO pay was among the lowest 5% of its peers, while its performance was above 50% of peers. Based on these quantitative results, it is shocking that [the firm] would have a "high concern level" regarding a potential "misalignment between CEO pay and Company performance." The...Report makes clear that Tredegar - specifically the Compensation Committee - has historically paid well below "market" CEO compensation for above average performance."
Hecla Mining Company	5/13/2020	Factual Error Analytical Error X Serious Dispute X	Dispute over say on pay recommendation, including over peer group selection. Company states that: "Notwithstanding that the North American mining industry is dominated by Canadian companies, the...peer group only includes companies that are incorporated in the United States, and from industries such as chemicals to agricultural products (with the exception of one mining company)."
Plains All American Pipeline	5/12/2020	Factual Error X Analytical Error Serious Dispute	Both proxy advisory firms issued recommendations against company say on pay proposal: company claims report from one firm "is wrong and is based on a flawed and error-filled analysis." Amongst other errors company explains that the pay for performance analysis in the report is based on an erroneous net income figured that is off by a factor of 6.2x.
Align Technology	5/8/2020	Factual Error X Analytical Error Serious Dispute	Company states that when formulating a vote recommendation against members of the compensation Committee, the proxy advisory firm misclassified the departure of the former chief legal officer as a "voluntary" retirement.
GEO Group	5/6/2020	Factual Error Analytical Error Serious Dispute X	Serious dispute over recommendation on board members and classification of certain members as "independent." Company states that majority of directors would be independent under NYSE rules as well as the proxy advisory firms own standards regarding independence.
Northrup Grumman	5/5/2020	Factual Error Analytical Error X Serious Dispute	Company disagreed with a proxy advisory firm regarding a say on pay vote, saying "With regard to [the] Pay-For-Performance analysis disclosed on page 7 of the report, we agree [the firm] has disclosed the GAAP measures correctly as reported by Northrop Grumman. However, we contend [the firm] should also have considered pension-adjusted metrics in their analysis of our performance. As noted in our proxy statement, management uses pension-adjusted metrics, such as pension-adjusted net income, as internal measures of financial performance and for performance-based compensation decisions. This has been our consistent practice for many years as it adjusts our earnings for the non-operational impact of pension income and expense. Also, during 2018, the company changed its accounting for pensions to the mark-to-market method, which is the preferable method under U.S. GAAP, but can result in significant volatility in GAAP earnings."
Southwestern Energy	5/5/2020	Factual Error Analytical Error X Serious Dispute X	Supplemental proxy includes letter from chairman of comp committee "setting the record straight" regarding company's executive compensation plan in light of a negative recommendation on say on pay. Company explained that CEO pay was 44% less in 2019 than targeted compensation, as the stock price fell by 29%.
Five9	5/5/2020	Factual Error Analytical Error X Serious Dispute X	Company states that a proxy advisory firm "issued a withhold recommendation against Kimberly Alexy in the election of directors due to her membership on four audit committees, despite [the firm's] own guidance that a director should not serve on more than three public audit committees "unless the audit committee member is a retired CPA, CFO, controller or has similar experience, in which case the limit shall be four committees." Given that Ms. Alexy is a retired finance professional and holds no operating positions with any company, we believe that she fits squarely into the exception set forth in [the firm's] guidance."
Tanger Outlets	5/4/2020	Factual Error X Analytical Error X Serious Dispute	Company explains that the actual amount of equity awards for the company's former President and COO was 54% of what was speculated in proxy advisory firm vote recommendation against say on pay plan.
XPO Logistics	5/4/2020	Factual Error Analytical Error Serious Dispute X	Company describes a number of disagreements with a proxy advisory firm recommendation against equity compensation plan and describes recent actions taken in response to shareholder feedback.

APPENDIX CONTINUED

Stifel Corp	5/4/2020	Factual Error Analytical Error X Serious Dispute X	Company states that a proxy advisory firm's analysis and recommendation is "fundamentally wrong." States that the firm's "formulaic analysis would generate an "against" recommendation for our plan even if we were to ask for no additional share capacity because [the firm] ignores our controls that have successfully managed dilution.
AAON	4/29/2020	Factual Error Analytical Error Serious Dispute X	Regarding a vote recommendation against a proposal related to the company's 2016 long-term incentive plan, the company states that it "engaged in discussions with [the proxy advisory firm] and after such engagement, we believe [the firm] is interpreting language in the 2016 Incentive Plan in a manner which is inconsistent with the Company's intentions and administration of the 2016 Incentive Plan, specifically as it relates to the ten percent (10%) limitation on "Full-Value Awards" (as defined in the 2016 Incentive Plan)."
The Bancorp Inc	4/29/2020	Factual Error Analytical Error Serious Dispute X	Company notes that despite one of the company's directors meeting Nasdaq and SEC independence rules, a proxy advisory firm determined that the director did not meet its own independence guidelines.
Colony Capital	4/29/2020	Factual Error Analytical Error X Serious Dispute X	Company disputes vote recommendation against say on pay proposal, including clarifying that incentive fee allocations to CEO were one-time payments and not recurring, that the proxy advisory firm's report substantially inflates the value of the one-time CEO award, and that the recommendation failed to take into account meaningful changes to the executive compensation program.
Commscope Holdings	4/28/2020	Factual Error Analytical Error Serious Dispute X	Company responds to recommendations against say on pay proposal, including criticisms from proxy advisory firms that forward-looking goals on long-term awards were not provided. Company notes that such forward-looking statements cause competitive harm and is consistent with market practices in not making such statements.
Discover Financial Services	4/28/2020	Factual Error Analytical Error Serious Dispute X	Company stated that a vote recommendation against the independent chairman of the board was based on a perception that the Board was unresponsive to the outcome of competing proposals from 2019 related to shareholders' right to call a special meeting. The company stated that prior to the recommendation, "the Company had not received any feedback to indicate that investors are dissatisfied with their 25% special meeting right."
Nielsen Holdings	4/27/2020	Factual Error X Analytical Error Serious Dispute	The company - a U.S.-based business that is incorporated in the United Kingdom - notes that a major proxy advisory firm "[applied] UK governance guidelines that do not apply to us because we are not listed in the UK."
CNO Financial Group	4/27/2020	Factual Error Analytical Error X Serious Dispute X	Proxy advisory firm issued a vote against say on pay based on assertion that company made discretionary payments to a former CEO after a voluntary separation. As company explains: "This additional material clarifies that Mr. Holding's separation was an involuntary termination by the Company without "Just Cause" (as such phrase is defined in his employment agreement), which triggered the payment of severance in accordance with the terms of his employment agreement. The payments made by the Company to Mr. Holding in connection with his separation from the Company were contractually required pursuant to the terms of his employment agreement. Mr. Holding did not receive any discretionary payments in connection with his separation."
RLI Corp	4/23/2020	Factual Error X Analytical Error X Serious Dispute	Company explained that a proxy advisory firm failed to take into account shares held by a wholly-owned insurance subsidiary of RLI when calculating the portion of company shares considered outstanding or reserved for issuance.
Arrow Electronics	4/23/2020	Factual Error Analytical Error Serious Dispute X	Company disputes proxy advisory firm recommendation regarding say on pay proposal, including a disagreement over the peer benchmark used to formulate voting recommendation.
Easterly	4/23/2020	Factual Error Analytical Error X Serious Dispute X	Company takes several issues with vote recommendation against incentive compensation program and points out that CEO pay has been well below thresholds for peer groups.
National Bank Holding Corp	4/22/2020	Factual Error Analytical Error X Serious Dispute X	"Company disagrees with vote recommendation on incentive plan citing, amongst other reasons, selection of peer group, stating the ""selected peer group is very different than the Company's peer group. We also note that the list of peers that [the firm] discloses for the Company is not updated from last year's peer group for the Company. The Company's new peer group for 2019 was revised by the Committee to address changes due to M&A activity, remove outsized peers and ensure the inclusion of smaller peers to ensure a proper mix. The Company believes that its peer group selected by the Committee reflects a group of peers that are reflective of the business model and service offerings of the Company, and is a better representation of the peer group."
Kaman Construction	3/23/2020	Factual Error Analytical Error X Serious Dispute X	Company lays out a number of arguments rebutting vote recommendation against say on pay proposal, including that a proxy advisory firm underestimated the company's free cash flow for 2019.
Panhandle Oil & Gas	2/24/2020	Factual Error Analytical Error X Serious Dispute X	Company disagrees with a proxy advisory firm analysis regarding amendment to restricted stock plan, including the firm's assertion that the amendment contains liberal change-in-control provisions.

ABOUT THE AMERICAN COUNCIL FOR CAPITAL FORMATION

For more than four decades, the American Council for Capital Formation (ACCF), a 501(c)(6) nonprofit, nonpartisan organization has advocated tax, energy, environmental, regulatory, trade and economic policies that encourage saving and investment, economic growth, and job creation. The ACCF is uniquely able to play this role because of its bipartisan credibility with Members of Congress and the White House, its highly respected research and analysis of legislative and regulatory initiatives, and the respect it has earned in the media.

For more information, please contact the [ACCF](#)
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About the Author

Kyle Isakower

Kyle is Senior Vice President of Regulatory & Energy Policy at the American Council on Capital Formation where he oversees activities related to energy regulatory policy and corporate governance.

Kyle possesses over 35 years of energy, environmental and regulatory policy experience. This includes work in trade association, consulting and government positions. In his trade association experience prior to ACCF, Kyle managed climate policy development, environmental regulatory policy and a review of U.S. tax policies. Furthermore, he oversaw economic and scientific research and the creation of statistical products covering the industry and energy markets.



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