

December 23, 2021

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

Re: Proxy Voting Advice (Release No. 34-93595; File No. S7-17-21)

Dear Ms. Countryman:

The undersigned organizations express our opposition to the Securities and Exchange Commission's (SEC) recently proposed rulemaking entitled "Proxy Voting Advice," (Proposal) which would cripple important reforms to the proxy advisory industry adopted by the SEC in 2020.¹ (2020 Reforms)

For over a decade, the SEC has examined the influence that proxy advisors wield over corporate governance in the United States and the significant flaws that exist within the proxy advisory industry. This examination included the issuance of the "proxy plumbing" concept release in 2010,² a public roundtable on the proxy advisory industry in 2013,³ the issuance of Staff Legal Bulletin 20 in 2014,⁴ a public roundtable and solicitation for comment on the proxy process in 2018,⁵ and a proposed rulemaking in November 2019.⁶ Additionally, during this period, the U.S. House of Representatives passed bipartisan legislation that would require proxy advisory firms to register with the SEC⁷ while similar legislation was considered in the U.S. Senate.⁸

The SEC and Congressional probes of the proxy advisory industry exposed several shortcomings that can only be rectified through regulation. These include a tendency by proxy advisory firms to make significant errors when developing vote recommendations, a general lack of transparency throughout the industry, and conflicts of interest that potentially compromise the "independence" of proxy advisors.

The 2020 Reforms addressed each of these shortcomings in turn but did so in a way that did not jeopardize the ability of proxy advisors to provide sound voting advice to their clients. Under those reforms, and to obtain an exemption from the SEC's proxy solicitation rules, proxy advisors would be required to maintain policies that allow issuers the ability to review and

¹ Exemptions From the Proxy Rules for Proxy Voting Advice (July 22, 2020)

² Concept Release on the U.S. Proxy System (July 22, 2010)

³ Proxy Advisory Services Roundtable (Dec. 5, 2013)

⁴ Proxy Voting: Proxy Voting Responsibilities of Investment Advisers and Availability of Exemptions from the Proxy Rules for Proxy Advisory Firms (June 30, 2014)

⁵ Spotlight on Proxy Process (Nov. 15, 2018)

⁶ Amendments to Exemptions from the Proxy Rules for Proxy Voting Advice (Nov. 5, 2019)

⁷ Corporate Governance Reform and Transparency Act, H.R. 4015, 115th Congress

⁸ Corporate Governance Fairness Act, S. 3614, 115th Congress

respond to vote recommendations and to properly disclose conflicts of interest to clients. Proxy advisors would also be required to notify their clients if an issuer disputed the facts underlying a recommendation. The SEC clarified that the dispensation of proxy advice falls under the SEC's antifraud rules for false or misleading statements.

It is important to note that the SEC made significant changes to its 2019 proposal when it adopted the 2020 Reforms. The final rule embraced a principles-based approach to compliance for proxy advisors in contrast to the more prescriptive provisions that were included in the 2019 proposal. As the SEC explained in the adopting release for the final rule, "We recognize the practical challenges faced by market participants—investors, registrants, investment advisers, proxy voting advice businesses, and others—to participate in, and fulfill their respective obligations...In light of this, we believe a more principles-based approach is appropriate."⁹ By many standards, the 2020 Reforms were a model rulemaking: an open, transparent process that considered and incorporated a diverse set of viewpoints, including from those interested parties that had serious reservations with the initial 2019 proposed rules.

Unfortunately, the Proposal does not come close to meeting those same standards. The SEC has not provided any meaningful explanation for why effectively undoing the 2020 Reforms is necessary, other than stating it has received "feedback" from market participants who are allegedly concerned with the rule. In fact, the Proposal cites as a source for this feedback comments it received on the *2019 proposal* which, as noted above, was significantly modified to accommodate concerns that were raised.

Even more troubling, the SEC decided to reverse the 2020 Reforms *prior to the reforms even going into effect*. It is impossible for the SEC to objectively judge the impact the reforms would have had in practice given the most significant provisions apply beginning with the 2022 proxy season. We echo the concerns of Commissioner Roisman, who stated that the Proposal "lacks many of the due process and procedural protections that usually guide Commission rulemakings" and does not "answer the question *why now*, before these rules have even taken effect."¹⁰

We believe the Proposal represents an erroneous effort by the SEC in terms of both substance and process. The 2020 Reforms reflected a years-long effort by the SEC and Congress to shine a light on the proxy advisory industry and were carefully crafted to minimize compliance costs and maintain the important role that proxy advisors play. The Proposal, by contrast, cites to concerns raised by a small number of commenters, most of which have already been addressed as part of the 2020 Reforms.

Accordingly, we urge the SEC to abandon this imprudent effort to preserve the status quo for proxy advice, which will undermine critical investor protections adopted by the SEC just last year. Instead, the SEC should re-focus on robust implementation and oversight of the 2020 Reforms.

Sincerely,

⁹ Proposal at 85-86

¹⁰ Too Important to Regulate? Rolling Back Investor Protections on Proxy Voting Advice (Nov. 17, 2021)

American Securities Association

Biotechnology Innovation Organization

Business Roundtable

Center On Executive Compensation

U.S. Chamber of Commerce

Nareit

National Association of Manufacturers

NIRI: The Association for Investor Relations