Comments on 4-725 SEC Staff Roundtable on the Proxy Process
https://www.sec.gov/cgi-bin/ruling-comments

To the members of the Commission and SEC Staff:

Thank you for the opportunity to consider the effectiveness of the shareholder proposal and proxy system.[1] We will defer to the expertise of the Council of Institutional Investors and its members on the plumbing issues and incorporate by reference their filing. We also join in James McRitchie's comment and proposals as well.

Our general view on the proxy plumbing issue is that the focus of any rulemaking based on the testimony of the roundtable should be a complete overhaul of the mechanics of a proxy process that is still based in technology and structures that have been outmoded for decades. There is no justification for the now-private NYSE to play a role in setting fees for proxy intermediaries and we encourage the Commission to either treat the proxy plumbing system as a natural monopoly and regulate it as a utility or open it up to competition.

Furthermore, we suggest a separate hearing solely on the subject of lending stocks as we do not believe that the vote should be loaned. As the Commission may know, in at least one case the stock loaned over the record date was voted in support of a short position. This is

[1] ValueEdge Advisors is a corporate governance advisory firm. Its Chair, Robert A.G. Monks and Vice Chair, Nell Minow, were founders of the proxy advisory firm Institutional Shareholder Services and left in 1990, going on to create three other governance-related firms, always working on behalf of shareholders. They have also written dozens of articles and several books on corporate governance including five editions of the leading MBA textbook on the subject. With ValueEdge Advisor President and CEO Rick Bennett, they have decades of experience working on behalf of investors on corporate governance issues. We do not sell proxy advisory services and have no connection to any firm that does.

contrary to the fundamental notion of proxy voting as tied to the economic interest of the investor. Either the vote should remain with the lender or lending stock over the record date should be prohibited.

We strongly endorse the universal proxy and more easily accessible information on the proxy voting policies and votes cast by fund managers, so that beneficial holders and retail investors can have the clearest possible understanding of how their shares are being managed and, for example, see the distinctions between mutual funds or index funds that are otherwise identical in terms of fees and performance. (We would like to see better disclosure of fees as well, but we suggest a separate hearing on that topic.) Retail investors should be able to select fund managers based on how they vote proxies, whether objecting to or in support of CEO pay packages and shareholder resolutions on governance, political contributions, climate change, and other proposals to make sure those votes accurately represent their priorities.

The primary focus of our comment is on shareholder proposals, from the perspective of the proponents and from the perspective of those who vote on them, including access to the only source of independent research available for institutional investors, proxy advisors.

Accountability to shareholders via the items on proxies, both management and shareholder proposals, is an essential element of the credibility of the capital markets and part of what has made the American economy the most robust and resilient in the world. It is the most powerful of the mechanisms we have to minimize agency costs. Because shareholder proposals are almost always non-binding, the Commission should err on the side of inclusion to make sure that investors have the opportunity to express their views, questions, and concerns to corporate managers and directors. In particular, we are concerned about a recent tactic by some corporate executives to obstruct proposals by soliciting similar but more insider-friendly proposals so that they can get no-action letters on proposals they fear will get too much shareholder support. We believe the staff should do everything they can to facilitate genuine shareholder proposals, especially those from individual investors who do not have access to lawyers and other advisors.

The opening remarks at the roundtable spoke of making sure that "a broad range of investors" are represented in the proxy system. We support this idea and hope the Commission will make it easier for individual investors to submit and support shareholder proposals by urging issuers to simplify the submission process and posting instructions and sample proposals on the Commission's website.

We oppose any suggestion that there is not a commonality of interests between investors who pick out individual stocks on their own, those who invest via intermediaries, and the intermediaries themselves. Fund managers are fiduciaries with economic and legal incentives to put the interests of their customers first – and if that is not clear enough to them, we strongly encourage the SEC to take enforcement action to remind them, especially since rescinding the two 2004 letters to proxy advisory firms may have sent the opposite message.

We are not aware of a single proposal that has been voted on by investment managers or other intermediaries that is not explicitly a choice made on the basis of protecting and enhancing share value, and despite vague accusations of "political" votes contrary to economic value, none of the comments filed has provided one. Just as one fund may be buying a stock while another is selling, financial professionals will not always agree on how to vote on a proposal, but the goal is always the same and votes are always justified in the same calculus, minimizing risk and maximizing long-term returns. Our many requests to those who complain that fund managers vote for arbitrary or "political" reasons or the recommendations by proxy advisors are not tied to share value for a single example have been met with silence and not one of the participants at the proxy roundtable came up with any specifics.

We begin with three key points as context for this comment, all with one theme: the superiority of market tests over regulation whenever possible (unless there is a collective choice problem distorting the market, which is not the case here).

1. **The determining issue for the level of stock ownership required to submit a shareholder proposal should not be**

how many proposals are filed by any individual but the level of support those proposals get from non-affiliated investors. Large institutions may for many reasons be unwilling to submit shareholder proposals but still wish to support them.

If proposals filed by a shareholder whose holdings are in the low thousands of dollars get support from a wide range of sophisticated financial professionals who are fiduciary investors with holdings in the hundreds of millions of dollars, that is the ultimate expression of exactly the kind of oversight that capitalism depends on.

Furthermore, the resubmission thresholds should remain where they are. A resolution does not have to get a majority vote to have merit or impact. As Michael Garland testified at the roundtable, resolutions are just one tactic in shareholder engagement, and a proposal can often lead to conversation and compromise that would not have been possible otherwise. If shareholder proposals constitute only four percent of proxy items and most companies receive none, the qualifying ownership and resubmission levels are clearly appropriate, if anything too high.

2. **We are very deeply concerned by the distortion of this hearing by instantly discredited, CEO-funded, fake dark money front groups including the Main Street Investors Coalition ("MSIC") which has no connection to Main Street or investors and is not a coalition, and its affiliate (same funders, same executive) the American Council on Capital Formation ("ACCA"). We note that a significant number of the comments purportedly coming from individual investors have been orchestrated by these groups.** We are also very concerned that the 2004 letters to proxy advisors were rescinded before the proxy roundtable testimony with no explanation and apparently no underlying memoranda or meetings (see Appendix 2g).

   Clearly, corporate executives would like to have the access to capital and limitations on liability of public financing while avoiding the oversight that is an essential component of the capitalist system, and they have had to give up on trying to defend outrageous pay packages and climate change denial directly and on the merits, even with full access to corporate resources and unlimited space in the company's proxy to do so.

They have thus resorted to using corporate funds to set up these sham and shoddy entities devoted to suppressing shareholder votes. But that is all the more reason that the SEC should be highly skeptical of these groups and their claims, which we address in more detail in the Appendices.

We note that at the roundtable, those who were complaining about proxy advisors used vague terms like "political," provided no credible supporting data, and included misleading claims and outright falsehoods in their testimony. For example, Senator Gramm said at least twice that index funds are not subject to a fiduciary standard, which the Commission knows to be false, and Tom Quaadman from the Chamber of Commerce absurdly claimed that proxy advisors like shareholder proposals because they get paid by the proposal so it increases their revenue. On the contrary, proxy advisors get paid a flat fee, so if they have any incentive with regard to the number of proposals on the proxy it would be to reduce them. Quaadman's surprise at the roundtable that there were individual shareholder proponents before James McRitchie and John Chevedden further demonstrated the superficiality of his understanding of the history and purpose of shareholder proposals.

Futhermore, Adam Kokas complained that a substantial number of votes for his company came in within a couple of days. But all of the items to be voted on that proxy were routine. There were no shareholder proposals or complex matters. How much time does he want his company's shareholders to spend reviewing the election of unopposed directors and the approval of the auditor? Aren't corporate executives satisfied that routine matters are treated as routine by their shareholders? If over 90 percent of recommendations from proxy advisors are to vote with management and proxy advisor clients depart significantly from recommendations to vote contrary to management, then what is the problem?

We note further that the shareholders and proxy advisors at the roundtable used actual data and factual references, including Jonas Kron's testimony that companies average over seven years between shareholder proposals and that shareholder proposals make up less than four percent of proxy items voted on. We strongly urge the Commission to insist on

more specifics in examining the claims and data from the business community, particularly the corporate-funded astroturf (fake grassroots) front groups. Even the ACCF's own commissioned report on the accuracy and timing of proxy advisory analyses acknowledges, "[T]he relatively small data set (and the non-random survey methodology) do not allow statistically significant conclusions to be drawn."

Furthermore, MSIC advisory committee chair Bernard Sharfman's proposal to counter their specious and unsupported claims of "robo-voting" (link in Appendix 2g below) is to vote all proxies as the issuers recommend. In what way is that not "robo-voting" and a complete abandonment of any exercise of judgment a legitimate choice as a matter of legal obligation or risk/return assessment? For large institutional investors, the transaction costs of selling out of companies with whom they disagree is often far greater than the cost of voting a proxy and of course passive investors do not have that option. Voting only as management recommends gives them no choice but to watch the value of their holding diminish, with costs far greater than evaluating the proxy issues (with or without independent outside research) or engagement.

Abdicating the essential role of shareholder oversight on corporate governance would severely damage our corporations, our markets, and our credibility in the global economy. We recommend the Commission consider the findings in *Citizens Disunited*, written by our Chair, Robert A.G. Monks, showing that companies underperform when their primary investors are completely passive. We have included an excerpt in Appendix 3 for the record.

We note as well the extraordinary statement by Nick Dawson, Managing Director of ProxyInsight, definitively repudiating the bogus "study" released by the Chamber of Commerce and MSIC funder the National Association of Manufacturers purporting to show that professional fund managers were unduly influenced by proxy advisory firms. Not only was the data grossly distorted, it was used by third parties in violation of ProxyInsight's client agreement. We trust that the Commission will find this as powerful an indicator of the Chamber's and NAM's absence of credibility on these issues as we do. We can only hope that the executives behind this fake

news "report" are more competent in their in-house corporate work than they have been here. If they are not, as long as the SEC resists this pressure to suppress shareholder oversight, investors will be able to respond via proxy proposals and proxy votes.

3. As we pointed out eight years ago, when these same issues were being considered by the Commission (full text of the original comment appended below), **proxy advisory firms produce research no one has to buy and recommendations no one has to follow. Their clients are sophisticated financial professionals subject to the strictest fiduciary standards, and those clients have a choice of providers.** That is a textbook example of free market efficiency and the exact opposite of a justification for government intervention.

   The data show that (a) overwhelmingly, the proxy advisory services recommend votes consistent with the recommendations of the issuer boards and executives, and (b) when they do not, the financial professionals who purchase the reports make their own minds about how to vote. The more complex and controversial the proxy issue (with business combinations at the top of both lists), the more the votes vary, showing that critics of the proxy advisory services have it exactly wrong; proxy advisory services are guided by their clients more than the clients are guided by the proxy advisory services. (See Appendix 2) Ning Chiu of Davis Polk reports, "On shareholder proposals, ISS recommended for social and environmental proposals 55.4% of the time, but funds only supported those proposals 25.2% of the time. Overall, ISS was in favor of shareholder proposals 64.7% of the time, yet funds voted for them only 34.6% of the time. But average support for shareholder proposals during the 2017 season was 39%," indicating that of that 39% a substantial group may not be ISS clients at all.

   The best determiners of the value of proxy proposals are shareholders and the best determiners of the value of proxy advisory services are the financial professionals who are freely able to decide whether to buy the reports, who to buy them from, and whether to follow their recommendations. Proxy advisory firms are the *only* independent source for evaluation of proxy issues. Shareholder

proposals and say-on-pay votes are non-binding, so even if proxy advisors are as powerful as critics say (but are unable to prove as the data is all to the contrary), and even if there is a 100 percent vote against the wishes of management, the corporation does not have to do anything about it, as the testimony at the roundtable showed. Worst case scenario is that if all of the wild (and unsupported) allegations of proxy advisory firm critics are true, there is no risk of harm other than the hurt feelings of corporate insiders; and that is literally the reason we pay them the big bucks – to be able to respond to challenges with courage and integrity.

> The very last people we should ask to evaluate the worth of proxy advisory services are the people they evaluate: corporate executives and board members. We don't let students grade their own papers, and we don't let manufacturers decide what toxins to pour into the air and water. We cannot let the squeamishness of corporate insiders about assessments they do not control (plus the millions of corporate dollars they spend on lobbyists and fake front groups) lead to any impediment to that independent assessment. The real question the SEC, as the investors' advocate and protectors of the free flow of capital, should investigate here is why executives and directors do not want to hear from their shareholders in the most low-key, low-risk, low-cost manner possible.

As ProxyInsight's thorough rebuttal to the bogus Chamber/NAM study proves, there is no evidence that fund managers or other institutional investors "robo-vote" as directed by proxy advisors. On the contrary; ISS has made it clear that it revises its recommendations annually according to client priorities, so the causation goes the other way. Even so, we reiterate our recommendation that the Commission (and the Department of Labor in its authority over ERISA funds) make clear the fiduciary obligation of money managers to vote proxies for the exclusive benefit of their customers. While there has been progress, in part because of the independent research by proxy advisors, the risk is still far greater that fund managers will vote to benefit executives of portfolio companies who are current or potential

clients than that they will vote too aggressively against management recommendations.

There is no greater authority on this issue than Vanguard founder John Bogle, who has been and continues to be very outspoken on this issue. We strongly encourage the Commission to investigate the proxy voting policies and records of fund managers and consider penalties or other enforcement actions against any who are unable to show a robust, independent process for evaluating proxy issues or who vote more frequently with management of portfolio companies when those companies are also clients (or prospective clients) of the funds' own company. As even the rescinded letters made clear, that does not necessarily mean subscribing to proxy advisors. But it does mean the same standard of fiduciary and professional responsibility that is required for buy/sell/hold decisions.

Critics of proxy advisory firms like the CEO funded fake front group Main Street Investors Coalition (which has no connection to Main Street or investors and is led by an energy lobbyist with no background in corporate governance) like to charge the proxy advisors with conflicts of interest, and yet **proxy advisors are far more scrupulous about minimizing and disclosing conflicts than their critics**, who divert corporate resources to suppress shareholder votes and access to independent analysis and fail to disclose the labyrinth of connections between the various sock puppets (cites to or support from sources who are undisclosed affiliates) they claim as supporters (see Appendix 2). More than 80 of the largest investors in the members of the National Association of Manufacturers have written to object to the use of corporate money to fund groups like the Main Street Investors Coalition because they know how vital independent research is to the integrity of the markets. The CFA Institute wrote on Twitter: "Chamber of Commerce plans to over-regulate proxy advisors would add unneeded costs to the investing process. These costs would be passed on to customers and hurt investments and 401K returns."

Unlike other "independent" outside evaluators of corporate assets and communications, like auditors and ratings agencies, proxy advisors are paid only by the end user of the information and their services are not mandatory. The customers are the most

sophisticated professional investors in the country and are in the best position to determine the value of proxy advisory services. This is the essence of free market capitalism and there is no possible justification for government interference. Furthermore, the criticism of proxy advisors is factually wrong, vague (references to "political" votes without any specifics), unsupported, and fatally self-serving. The only reason they are putting so much money into this effort is that the CEOs behind the Main Street Investors Coalition and the bogus Chamber of Commerce/NAM "study" do not want shareholders voting (non-binding) "no" on their pay plans and "yes" on (non-binding) shareholder resolutions about climate change. These votes contrary to management recommendations occur a tiny fraction of the time. It is an inarguable truism that four percent of CEOs will be in the bottom four percent of pay-performance linkage. Do the so-called Main Street Investors want to argue that the bottom four percent of CEO pay packages should get "yes" votes from investors? What would satisfy them? The bottom two percent? None? We urge the Commission to ask the critics of shareholder proposals and proxy advisor recommendations in favor of those proposals to explain exactly what they think shareholders should do other than hold the stock and cash dividend checks.

If CEOs do not want to hear from shareholders on even this mildest of levels, they can take their companies private (at a full value price), though we can assure them that private equity investors will be far more up in their business. Literally.

The CEOs behind MSIC are not very specific about their complaints or their recommendations (other than Bernard Sharfman's idea that professional fund managers should blindly acquiesce to all of the recommendations of corporate board members). Sometimes the idea of pass-through voting comes up. We have some concerns about that.

First: why shouldn't retail investors be able to delegate voting authority to the same investment professionals they entrust with their buy/sell/hold decisions, the full-time fund managers with the greatest understanding of the portfolio companies and the greatest access to resources?

Second: Given that MSIC's own figures show that only 29 percent of retail investors vote proxies with 71 percent just throwing them away, how are companies going to get a quorum?

Third: Economists speak of "rational ignorance," the collective choice problem as applied to issues like proxy voting. Berle and Means raised the issue of the separation of ownership and control. CEOs want to kill the messenger and divide and conquer to diminish any meaningful oversight, but we think it makes more sense to leave proxy voting to professionals. We know that is an option that should be easy for beneficial holders and pension plan participants to exercise.

Critics of proxy advisors are whining for regulation to restrict shareholder proposals and proxy advisors, which is remarkable because CEOs love to complain about regulation and rhapsodize about the purity of the free market when it restricts their own operations. They also love to try to impose regulation on other businesses to entrench themselves from any oversight or competition. Silencing the only independent voice on proxy issues is in their view an excellent reason for regulation. We emphasize the comments at the roundtable on this subject: proxy advisors are already regulated as investment advisor or NRSRO, for the benefit of their clients, not for the benefit of the companies they evaluate. But when a report with advice is independently produced, purchased voluntarily by financial professionals who have a choice of providers, and provided as a courtesy to some public companies to give them time to comment before it is distributed, no regulation is necessary and any attempt would only distort essential market-based feedback.

Critics complain that ISS makes mistakes, but their own "reports" have more mistakes than they have been able to document in thousands of proxy advisories. The ISS error rate is under one percent, and we challenge the CEOs who fund MSIC and ACCF to meet that record.

CEOs complain that they should have more time to respond to draft proxy analyses, which are provided to some of them as a courtesy. What entitles this group of companies to any opportunity at all and how could that possibly be a subject for government regulation? If they are going to schedule their annual meetings for the middle of

proxy season, they are going to have to expect that ISS will be very busy and that if they want to comment, they had better be ready to turn it around quickly – or move their annual meeting a couple of weeks. And they cannot explain why they do not want to hear from their shareholders or why shareholder votes on non-binding proposals make them so weak in the knees that they demand government regulation. Instead of responding to shareholder concerns with facts, logic, and engagement, they use money they should be spending on developing new products or better pay for employees on publicists and lobbyists. **Their only tactics for responding to shareholder concerns are either kill the messenger or divide and conquer, removing themselves from precisely the market tests that keep companies vital and sustainable.**

We also want to caution the Commission that any regulation requiring proxy advisors to provide their draft reports to companies with or without a specific amount time for response risks violating the 1st Amendment, which prohibits government infringement of or prior restraint on freedom of speech, including commercial speech.

At the proxy roundtable the Commission heard testimony from three distinctly different and very competitive proxy advisory firms with a range of ideas about conflicts of interest, opting into different registration/regulatory systems. This may have been the most significant element of the roundtable because it demonstrated that financial professionals have the opportunity decide which approach is best suited for their own policies and priorities. If they want a proxy advisory firm, they can choose one that has (and discloses) its conflicts through consulting services or one that does not do consulting. They can choose one registered as an investment advisor or one that is not. We note that another competitor was not there because it failed several years ago. That proxy advisor was funded by corporations. Although its products were excellent, it failed because the sophisticated financial professionals who purchase proxy advisory services did not want proxy advice that had any connection to the executives who produce the proxies. This is definitive proof of exactly what markets do best – provide options for consumers and let the market determine which ones succeed.

Government involvement can only reduce the efficiency of the market for proxy advisory services, which is working very well.

The claims made by the critics of proxy advisory firms are vague, contradicted by the data, and supported only by their affiliates, most of whom do not disclose their affiliations. Senator Gramm and others based their comments on an unsupported assumption that shareholder proposals and proxy advisor reports are not directly connected to shareholder value. They provided no support of any kind for this assertion, and we submit that the people in the best position to determine whether a proxy proposal is related to shareholder value are not the corporate executives or the Commission but the shareholders themselves. That is what the shareholder proposal process is for. We note that sustainability concerns are in no way "fringe" and are in fact the fastest-growing investment strategy, with offerings from all of the major financial institutions. Furthermore, the Business Roundtable itself has responded to market demand for more sustainable operations. This may be why the Main Street Investors Coalition and other groups complaining about "personal" or "political" proxy votes have been unable to come up with any specific examples.

We urge the Commission to insist on details and look upon the "reports" provided by issuers and their front groups with skepticism. We have repeatedly asked the Main Street Investors Coalition for more information about their funders, their definition of a "political" agenda proposal or recommendation on a shareholder proposal, for any evidence of outreach to groups with a record of advocating for retail investors. They do not answer because they have no answer. If they had a good case to make to their shareholders, they would make it directly instead of hiding behind groups with intentionally obfuscatory names and fake news "reports" with no statistical validity or data legitimacy.

Summary: Critics of proxy advisors are far more guilty of the sins they accuse proxy advisors of than the proxy advisors are themselves. **Conflicts of interest?** Fake dark money front groups funded by diverting corporate assets to promote suppression of shareholder votes and access to independent research are using shareholder money to insulate themselves from non-binding votes on CEO pay,

climate change, and other corporate governance issues directly related to risk and return. **Accuracy?** We challenge any of the corporate funders of the fake front groups and their sock puppet chorus of undisclosed affiliated or the K Street firms that package these astroturf organizations that pour money into lobbyists, “oppo” and disinformation campaigns, PR operatives, and full-page newspaper ads to meet the ISS error rate record of under one percent. **Undue delegation of authority to third parties?** More than 80 large institutional investors have asked the member companies of NAM why they are funding this shareholder suppression effort. We suspect many of them have no idea they are doing so.

The SEC is holding this hearing because the Commissioners want to hear the comments, experiences, and suggestions of their most important constituency – investors. The Commission’s commitment to transparency and accountability to investors is what keeps our markets strong, responsive, and the envy of the world. The testimony and comments you receive are advisory only, but the feedback will be essential for shaping any needed reforms. Corporate annual meetings, like this roundtable proceeding, provide an opportunity for investors to provide advisory, non-binding feedback to executives and directors who might otherwise be too insular to understand their experiences, priorities, and perspectives. The burden of proof is very heavy on any effort to suppress that feedback, the critical element of public markets that gives investors confidence that agency costs will be minimized, especially as here, where it comes from slick, K Street dark money front groups that produce distorted, discredited data and claims that are slanted, self-serving, and factually wrong. Many of the comments from groups and purported individual investors can be traced back to them as well, with undisclosed connections. People who have nothing to hide do not try to hide who they are and how they are related to one another.

I joined ISS in 1986 as its first General Counsel and fourth employee, and later became its second President. I have not worked there since 1990, and I have not always agreed with some of its policies and strategies. But I well remember that in its first year, as we tried to sell a very different product that no one wanted, over and over the institutional investors we visited said that what they really needed

was advice and analysis on proxy issues. That year, poison pills were first being adopted by most public companies and anti-takeover defenses were presenting investors with unprecedented complexity and controversy in proxy voting. It has been rewarding to see the growth of this industry. There are no barriers to entry, there is healthy competition, and a corporate-funded competitor failed despite good products because it did not have the credibility of ISS, Glass-Lewis, and the smaller proxy advisory firms. This is how markets are supposed to work. The SEC has a long record of recognizing and supporting free markets, and that is what it should do here.

One Commissioner's opening statement at the roundtable missed the point: "We have to strike a balance, though, between proponents who seek to increase shareholder value with their proposals and those who exploit the process to further their personal agenda." First, the rules already strike that balance by strictly limiting the subject matter of shareholder proposals, which, let us say once again, are almost always non-binding, and by imposing restrictions to make sure that proposals without any significant support cannot be re-submitted. Personal agenda proposals are already specifically prohibited. And we challenge the Commission, as we challenge the CEOs behind the fake dark money front groups claiming to represent investors, to provide actual examples of shareholder proposals that make it onto proxies that they consider exploitive or in furtherance of a "personal agenda."

The Commission, like the shareholders, does not judge shareholder proposals on the motive of the proponents; they are judged on their value proposition. If someone proposing annual election of directors or a report on risk assessment of climate change can get substantial support from the other shareholders, it is immaterial whether it was submitted because of a passionate commitment to the issue it presents or because the proponent does not like the CEO. If the Commission further tries to restrict the subject matter of shareholder resolutions, it will not reduce the number of proposals or the level of support. The same proponents will just submit more of the Commission-approved proposals as a way to promote engagement on the real issues.

More important, it is not the Commission's job to strike that balance. It is the purview of the shareholders themselves, who are in the best position to determine whether shareholder proposals are related to risk and return. Government intervention is called for when there is a collective choice problem or when disclosure is necessary to make markets more efficient. Neither is the case here. There are already plenty of protections in place to make sure that there are no shareholder proposals about personal (or personnel) matters or any other "ordinary business" concerns and that even a proposal receiving 100 percent support cannot be disruptive because the board and management are free to ignore it. The number of and level of support for shareholder proposals right now shows that the system is working as intended. Any additional restrictions would just remove the already sharply limited protections shareholders have to promote transparency and accountability and the credibility of American capital markets. We are not asking for a level playing field between investors and executives. We just ask the Commission not to make it perpendicular.

On the other hand, it is not only appropriate but essential to consider the "personal" interests of the CEOs funding the intentionally obfuscatory Main Street Investors Coalition and American Council on Capital Formation. Both pretend to be about public policy and advocating for investors but both are in reality, like all astroturf organizations set up by lobbyists and PR firms, really about protecting entrenched interests not of corporations but of the executives at the top. (We note the commonality of funders between the groups involved here and the group Facebook used for oppo/disinformation.) Every claim they make is self-interested and should be viewed with the utmost skepticism. This is the reason more than 80 shareholders wrote to the member companies of the NAM to ask about their contribution to the Main Street Investors. Without the right to file shareholder resolutions on political and lobbying expenditures, letters like that would have far less impact.

We thank the Commission for this opportunity to address these issues and we are happy to provide further comments or information if the Commissioners or staff would like to follow up. We also reserve the right to supplement this submission as other comments come in.

Sincerely,

Nell Minow
Vice Chair
ValueEdge Advisors

November 30, 18

Appendices

1. 2010 comment (filed by The Corporate Library, our predecessor organization)

Comments regarding proxy voting system reform
File Number S7-1410

Ladies and Gentlemen of the U.S. Securities and Exchange Commission:

I am delighted that the SEC is looking at the proxy system to consider updates that reflect changing technology and circumstances, and hope we can move to a system that recognizes the essential role that investors must play in providing oversight to minimize the agency costs and perverse incentives inherent in capitalism.

For too long, the system has been designed for the benefit of issuers, and it is not too strong a statement to say that the devastation of the financial meltdown could have been mitigated or even prevented if investors had been able to prevent the perpetuation of boards selected, compensated, informed (and misinformed) by insiders.

With regard to the list of items on which the SEC has invited comment, I would like to object in the strongest possible terms to the possible regulation of proxy advisory services. As the original general counsel and for one year CEO of ISS, I have observed this industry from the beginning. Having left ISS in 1990, and having been a proponent and dissident who has failed to gain the support of the ISS analysts more often than I have been successful, I have had the opportunity to develop some objectivity.

The core founding principle of our democracy is freedom of expression. The recent Citizens United decision by the Supreme Court emphasized the importance of unfettered speech, justifying corporate participation in the political process explicitly through its accountability to investors because shareholder objections raised through the procedures of corporate democracy can be more effective today because modern technology makes disclosures rapid and informative (citation omitted). The core founding principle of our economy is to allow the market to determine the value of goods and services. Infringement of either free expression or the free market should only be done in the most extreme circumstances and no such justification is present here.

ISS developed the proxy advisory business because as we were trying to sell another product entirely institutional investors kept telling us that what they wanted was an independent assessment of management and

shareholder proposals. At the time, many of them subscribed to the IRRC reports, which analyzed proposals but did not give recommendations. In those days of hostile takeovers and management entrenchment, they wanted advice that was as knowledgeable and as objective as what they were receiving from securities analysts and other independent advisors.

When I left ISS in 1990, both our employees and our clients were in the low two digits. The fact that it became such a powerful international presence in the two decades that followed demonstrates just how badly its customers wanted those products. The fact that two other substantial competitors have entered the market shows that there are very low barriers to entry. The firms often disagree with each other. They are transparent and highly competitive about their different approaches, and each does not hesitate in sales calls to explain in detail why their product is superior. Most clients choose the firm that best suits their own policies the rest prefer to do business with more than one and compare the recommendations to assist them in arriving at their own decision. This is exactly what markets do best and there is no reason to interfere.

The issuers claim that these firms are too influential. Of course, they do not complain that they are too influential when they support management recommendations in the overwhelming majority of cases. They only complain that they are too influential in those selected occasions when they oppose managements' recommendations. Do not confuse correlation with causation. Clients follow the advice of proxy advisory services because they like and trust the recommendations even, it is fair to say, because in those instances the issuers are proposing matters that are not in the shareholders interest. And it is absurd to suggest that the proxy advisory services take a one size fits all approach. That is demonstrably not true. The SECs own rule-makings and the stunning conformity and lowest-common-denominator benchmarking approach of the issuer community is far more one size fits all than the proxy advisors, who provide detailed and highly specific analysis of matters like executive compensation that are tailored by sector, market-capitalization, and other factors.

There is no reason to suspect that sophisticated institutional investors are abdicating their obligation as professionals and fiduciaries to consider these issues as carefully as they do their buy-sell-hold decisions, also based in part on the opinions of independent analysts like the proxy advisory firms. Indeed, the data show that while clients do often follow the recommendations on routine matters (which means voting with management), the more high-profile and controversial a proposal or proxy contest, the more likely that clients are to read the analysis and come to their own conclusion, often departing from the proxy advisory services recommendation, demonstrating the independence of their judgment. Just as two investors can look at the same data and make different conclusions about whether to buy, sell, or hold, they can look at

a proxy advisory recommendation and make a different decision about whether to vote yes, no, or abstain.

The arguments made by the other side show such a stunning statistical illiteracy that they are either disingenuous, ignorant, or both. Issuers seem stung to discover that investors may not believe management is acting in their best interests and believe that the answer is not to change their behavior or improve their communication but to smother outside analysis of their proposals. If issuers object to the recommendations made by the proxy advisory firms, the answer is for them to respond directly and substantively in their communications with their shareholders, not to cut off outside assessment.

An ABA assessment of ISS recommendations noted that they supported dissident candidates two-thirds of the time, suggesting that this reflected an anti-management bias. On the contrary. Given that proxy contests occur only in a fraction of a percent of companies each year and by definition those are companies with the most severe performance issues, the fact that ISS supports management one-third of the time demonstrates that they take a very measured approach. Overwhelmingly, proxy advisory firms support management candidates. And overwhelmingly, their clients have shown that the firms pass the ultimate market test of credibility and legitimacy by buying their products.

No one has shown any evidence that the proxy advisory firms have been anything but transparent about their approaches and the way they deal with conflicts of interest as indeed it is in their best interest to do so in seeking sales. Some of them meet the stringent standards of registration as investment advisors. There is no reason to regulate their analyses and recommendations.

If the SEC has any concerns about institutional investors failing to meet fiduciary standards in exercising their share ownership rights, including not just proxy voting but making decisions about initiating shareholder proposals, running dissident candidates for the board, and filing lawsuits, the Commission should address those issues directly. As the Court noted in Citizens United, the remedy is not to restrict speech but to consider and explore other regulatory mechanisms. I would support the UK approach of putting the burden of proof on institutional investors to show why they have not been actively engaged in exercising those rights, and I would support a vigorous enforcement program to address the issues of conflicts of interest we have documented in the repeated failure of institutional investors to vote against value-destroying compensation plans (even when proxy advisory services tell them to do so). But any regulation of proxy advisory services is contrary to our commitment to freedom of expression and the free market, and it is a pity that the issuer community, which would rather cut off exactly the kind of information the

market needs to be efficient than make a substantive response, needs to be reminded of this.

Again, I appreciate the Commission's examination of this and other topics relating to the proxy system and request that before issuing a proposed rulemaking the Commission hold hearings to explore these matters more thoroughly. I welcome the opportunity to answer questions on this comment or any of the other issues under consideration.

2. Rebuttal/responses to various claims made by MSIC and ACCF

a. From the Harvard Law School Forum on Corporate Governance and Financial Regulation

The Main Street Investors Coalition is an Industry-Funded Effort to Cut Off Shareholder Oversight

Nell Minow, Vice Chair of ValueEdge Advisors

Here’s a tip from a long-time Washington DC lawyer: the more folksy or patriotic the name of the group, the more likely that it is funded by people who are promoting exactly the opposite of what it is trying to pretend to be. And thus we have the Main Street Investors Coalition, which bills itself as “bring[ing] together groups and individuals who have an interest in amplifying the voice of America’s retail investor community.”

In reality, it is a corporate-funded group with no real ties to retail investors, and its advocacy is as fake as its name. MSIC uses inflammatory language, unsupported assertions, and out-and-out falsehoods to try to discredit the institutional investors who file and support non-binding shareholder proposals. While these proposals are filed at a very small fraction of publicly traded companies and even a 100 percent vote does not require the company to comply, somehow, this very foundational aspect of free market checks and balances is so overwhelming a prospect to corporate executives that they are unable to provide a substantive response and instead establish what in Washington is referred to as an “astroturf” (fake grassroots) organization, setting up a false dichotomy between the interests of large and small shareholders.

MSIC says:

[A]s the size and influence of these massive institutional holders has grown, so too has their power, influence and share of voice—drowning

out the voices and interests of Main Street investors who, despite controlling the single largest pool of equity capital in the world, have almost no ability today to influence the decisions these funds make on their behalf, with their money.

Of course this completely overlooks the fact that institutional investors are fiduciaries representing everyday working people like teachers, firefighters, and employees of publicly traded companies. What the folksy-sounding, corporate-front Main Street Investors want to do is divide and conquer. They know they can no longer rely on the support of investors smart and focused enough to tell when corporate management has gone off the track and big enough to make their views meaningful. So, they pretend to be concerned about some mythic, stock-picking investors who will read through the proxy statements and decide to vote for management's recommendation. If MSIC really cared about the power of individual shareholders, and if in fact they controlled the single largest pool of equity capital in the world, it would help them to vote their proxies more effectively. It would help them provide oversight to the institutions who manage their money, perhaps circulating reports on the annual disclosures of how the funds vote. After all, index funds have the same fees and returns, but there are differences in how they vote their proxies. Then the investors could decide whether, for example, Vanguard's votes on CEO pay were more appealing than Fidelity's.

MSIC's faux populism about the "real" investor being mom and pop and their little basket of stocks ignores the reality that most working people invest through intermediaries like mutual funds because they perform better. The whole idea of institutional investors is based on the reality that they do better than individuals who do not have the time, resources, or expertise. And it makes sense that the same people who make the buy, hold, and sell decisions should make the decisions about how to vote on proxies as well.

Capitalism, after all, is named for the investors who provide capital, not the executives. And it is founded on the idea of accountability to ensure confidence that the capital they provide will be used honorably. But now that investors are pushing back on issues like excessive CEO pay, ineffective boards, and failure to consider climate risk via advisory shareholder proposals, corporate executives are trying to kill the messenger. Corporate executives love to talk about the free market until it delivers a response they do not like.

MSIC is not a membership organization. Its board does not include representatives of the groups that actually do work with small investors, like, for example, the American Association of Individual Investors, which has excellent educational materials for its members, or Motley Fool and FolioInvesting, which provide services for individual investors. Instead, MSIC has "partners" like the powerful corporate lobbying group the

National Association of Manufacturers and the anti-public pension fund American Council for Capital Formation, which says on its website that its purpose is "exposing the politicization of corporate governance."

So we should be skeptical about their assertion that investors do not care about issues like the environment. PWC's annual report on boards found, to the contrary, that investors are much more concerned about incorporating environmental risk into corporate strategy than boards are. This is exactly why we have a system allowing for shareholder proposals: to send a message when there is a disconnect between investor and director priorities.

The Main Street Investors Coalition has been tweeting about a new academic study that purports to show that shareholder resolutions have an adverse impact on share price. And where do we find that study? On the website of the NAM, which paid for it. That subsidy alone should make anyone skeptical about its findings.

There are further flaws as well. One is MSIC's constant use of the term "political" to describe shareholder resolutions to indicate that their purpose is counter to shareholder value. On the contrary. These proposals, filed by fiduciaries who represent large, sophisticated financial institutions acting on behalf of millions of small pension plan participants in most cases, are explicitly grounded in the promotion of long-term shareholder value. SEC rules strictly limit the subject matter of these non-binding shareholder proposals to matters directly relating to legitimate areas for investor feedback. Every one of the proposals is explicitly tied to investor concerns about long-term, sustainable growth.

If corporate management would like to explain on the merits why their positions are incorrect, they have as much room in the proxy statement as they like to rebut it (while shareholders are limited to 500 words). But so far, they have not been persuasive, which is why shareholder resolutions on better disclosure of climate risk, for example, have had support from almost two-thirds of investors. No wonder—78 percent of directors at the largest companies have said that climate change was never or seldom discussed in their board meetings. If corporate executives want to explain why that is appropriate, they will have to do better than they have so far.

Even with strong support for a few advisory resolutions, there is no evidence that financial institutions managing billions of dollars have all of a sudden turned into the Sierra Club. Approximately half of top asset managers opposed more than 50 percent of key climate-related proposals in 2017, and several top managers voted against more than 85 percent of key climate proposals. Eight of the top ten asset managers failed to support key climate votes more than 50 percent of the time. At the very least, this shows that the institutions MSIC is so shrill about are reviewing

the proposals carefully and making distinctions between those they do and do not want to support. And that means that the votes are not in any way "political."

The study MSIC is promoting uses highly suspect metrics to purport to prove that these proposals do not help and can hurt shareholder value. The study looks at the reaction of companies' stock prices to both increased disclosure of climate-change-related information and shareholder proposals calling for such disclosure.

In what way is that a relevant measure? There are innumerable factors that go into the pricing of stock on a given day, and no one is suggesting that the adoption of particular policies urged by shareholders will have the immediate positive stock price impact that, say, a generous tender offer would. These are complex, multi-layered issues and, more important, these are essentially permanent shareholders. They are not trying to time or manipulate the market. As corporate governance expert Beth Young points out, "The yardstick should not be whether a company's stock price goes up upon disclosure of climate-related risk/opportunity disclosure; investors might see the disclosure and think that the company has more risk than previously understood, or decide that the risks are being poorly managed, in which case the right direction for the stock price is down." It is not in investors' interests to have the stock price inflated due to inadequate disclosure. If more information results in a more accurate stock price, that will help managers and directors make better decisions going forward.

And then there is the study's "finding" that these proposals can impose millions of dollars of cost onto the corporations. We reiterate that these proposals are not binding, so there is no obligation to spend any money at all. And we fully expect that corporate executives, as a matter of professional responsibility and fiduciary obligation, would never authorize expenditures unless they were supported by cost-benefit analysis. Yet we do not see benefits from complying included in these calculations. More important, we suspect that self-reported, unsubstantiated reports of costs may be inflated to a considerable degree.

Perhaps the next step should be a shareholder proposal to stop wasting money on fake public interest groups and poorly designed studies.

And yet, they are trying to undermine shareholder votes here. What is especially outrageous is their argument that mutual funds are "uninformed," because what they are suggesting here is that individual investors are somehow more informed. On the contrary, individual investors entrust their money to managers who have the expertise, resources, and fiduciary obligation to buy, sell, hold, and vote their shares.

In a post on this blog, MSIC asserts without any substantiation that retail investors don't know and don't approve of the way fund managers vote. They assert contrary to documented data that fund managers outsource their votes to proxy advisors. In reality, the data show that while institutional investors appreciate the analysis they receive from proxy advisors, they vote according to their own proxy voting policies, and the more complex or controversial the issue, the less likely they are to follow the proxy advisors' recommendations. Proxy advisors are like securities analysts. No one has to buy their products. No one has to follow their recommendations. But their clients find them a valuable resource. It is also not true that proxy advisors are unregulated. We often see corporations object to any regulation except that which protects them from competition or other market tests, so we note that proxy advisors are subject to stringent restrictions when they register as investment advisors.

MSIC engages in the slimiest possible rhetorical trick by assuming without evidence and contrary to the record that fund managers are somehow voting against the economic interests of their customers. They assert without any evidence that the people who manage money do not know what their customers want but they do.

We do agree with one point made by MSIC: the best decisions about proxy voting are made by those with the most significant economic interest. MSIC has none; indeed its interests are entirely the other way. So until they fully disclose all of their sources of funding and put some actual retail investors on their board they should leave it to those who have not only economic interest but fiduciary obligation, and are thus in the best position to provide what even they acknowledge is "an important component of efficient corporate governance." The only way to make that vital component effective is to respond to votes against management's recommendations by engaging with shareholders, not creating fake advocacy groups to try to undermine them.

[NOTE: In the interest of providing the transparency I am urging on MSIC, I am co-founder of four companies focused on corporate governance that provided services to institutional investors, including proxy advisory services at ISS, which I left in 1990. I have no ownership interest in any of those companies. I do not currently receive any income from institutional investors or expect to receive any in the future. I also serve on the board of a non-profit called the 5050 Climate Project that advises large shareholders on climate change-related matters, but accepts no payment from them.]

b. Even ACCF's Fancy Law Firm Can't Muster Any Real Evidence Against Proxy Advisors

CEO funded fake dark money front group American Council on Capital Formation hired a partner at a DC law and lobbying firm, Squire Patton Boggs (actual slogan: Local connections, global influence) to produce a report on proxy advisory firms. It concludes that proxy advisory firms sometimes make mistakes and do not give the companies they cover enough time to respond with comments and corrections. But the key takeaway from this bespoke "study" from a law firm with no expertise in statistical analysis or peer review process is its own conclusion that: "[T]he relatively small data set (and the non-random survey methodology) do not allow statistically significant conclusions to be drawn." We also note that the determination of what is "enough" time to respond is highly subjective, self-reported and easily inflated. We also note that the error rate the study finds is about one percent, and we challenge the member companies of ACCF funders, including the National Association of Manufacturers, to do as well.

The response from ISS:

ISS clients vote their views and do so in an informed and timely manner that factors in a variety of inputs including data and analytics available upon publication of ISS' benchmark research. Nearly nine in 10 shares voted by ISS on behalf of its clients are tied to custom policies created by our clients and not by ISS, and ISS has no discretion to determine a vote decision in the absence of a client's instructions on a given ballot item.
Despite the misleading assertions in this paper, ISS has strong fact-checking protocols and a lengthy track record for accuracy. In calendar 2017, ISS covered over 6,400 meetings in the U.S. and more than 38,000 meetings worldwide. The error rate, as defined by the publication of research Alerts resulting in a change to ISS' initial recommendation, was under 1 percent (0.76 percent).
Proxy advisers are valued by investors, who hire and retain firms like ISS for our expertise, thorough research and analysis, and unbiased recommendations. Importantly there is no requirement that investors follow the recommendations of proxy advisers.
It's no surprise that the ACCF, a corporate lobbying group and key backer of the Main Street Investors Coalition that is campaigning to hinder the rights of shareholders, has commissioned a paper that advocates for weakening the current system that protects the flow of information and research between proxy advisers and their investor clients, a system intentionally kept independent from influence by the very companies being analyzed.

UPDATE: The same law firm has contributed an opinion piece to The Hill, materially misrepresenting the extent to which fund managers "rely" on proxy advisory firms and omitting the key conclusion that the data "do not allow statistically significant conclusions to be drawn." In other words — it's anecdotal, subjective, self-reported, and meaningless.

c. Main Street Investors Coalition's Latest Lie

They have no connection to Main Street or investors, and the only coalition they represent is the group of corporations and CEOs who fund them. They adopt a fake folksy name and use "we" about investors and put endearing stock photos of ordinary people and slick graphics in their tweets. They cite their affiliate organizations like the American Council on Capital Formation (same funders, same director, same agenda).

They are trying to make it look like there is a critical mass on their side, but it is all coming from the same person sitting at the same desk.

And their (subsidized) research is slanted, their conclusions are unsupported, and sometimes they just outright lie.

On their blog, [they blame the proxy advisors for the failure of the Rite Aid/Albertsons merger]. This is indeed a lie. The merger failed because [it was opposed by one of the largest Rite Aid shareholders], Highfields Capital Management, which announced it would vote against the merger. Whether it was this announcement that other investors found compelling or, more likely, whether they independently came to the same conclusion based on the elements of the proposed deal (outrageous compensation for insiders, an unappealing price, flat sector growth), it failed because shareholders did not like the deal. There's a reason such business combinations are put to a shareholder vote — so that when insiders put together a deal that benefits them more than it benefits investors, they can say no. That is how markets work.

We find it very hard to understand why the Main Street Investors Coalition has such a problem with the non-binding independent research provided to sophisticated financial institutions who are not required to buy it or follow it. We cannot imagine why a group that says it represents investors is working so hard to prevent them from exercising the oversight that is the foundation of the system of checks and balances necessary for capitalism.

Actually, we can — it is because once again they are trying to promote anti-proxy advisor propaganda to make it even more difficult for shareholders to mitigate the inherent misalignment of interests between shareholders and managers.

The Main Street Investors Coalition knows very well that it cannot succeed by making its actual arguments out in the open, being honest about who it is and what it wants. And so they continue this pretense of hiding being the literal [apron strings of a stock photo model]. If they cannot tell the truth about themselves, you cannot trust them about anything else.

d. More Corp-splaining and Denial on ESG/SDG

Sean Di Somma, who has been commenting on my critiques of the fake, industry-funded front group [Main Street Investor Coalition] (hint: they are not from Main Street and they don't have any investors representatives on their board), now is endorsing their agenda by [complaining about ESG regulation and proxy advisors].

So-called "environmental, social, and governance" (ESG) has become to be so widely accepted (and generally unquestioned) that Blackrock CEO Larry Fink recently declared shareholder activism to be an integral part of the company's fiduciary duty towards its clients. But are these shareholder resolutions really the "all gain, no cost" strategy that

activist investors sell them as? For money managers, yes; for mom and pop investors, recent research suggests otherwise.

Another hint: those who use the term "virtue signaling" are really trying to find some way to make integrity and benefiting the community somehow look phony or bad. I've never seen anyone use that term who wasn't completely out of legitimate arguments on the merits. But that is what Di Somma, whose former firm provides services to corporate executives, is left with here.

He makes two points, and we're sure it's not a coincidence that they are the same two discredited points made by Main Street Investors Coalition. First, that voting in favor of non-binding shareholder resolutions on ESG issues is somehow "political" and not based on a legitimate, quantitative analysis of the issue, and second, that proxy advisors are conflicted and should be regulated.

We addressed those issues in detail here. We reiterate that:

Approximately half of top asset managers opposed more than 50 percent of key climate-related proposals in 2017, and several top managers voted against more than 85 percent of key climate proposals. Eight of the top ten asset managers failed to support key climate votes more than 50 percent of the time. At the very least, this shows that the institutions MSIC is so shrill about are reviewing the proposals carefully and making distinctions between those they do and do not want to support. And that means that the votes are not in any way "political."

We also point out that proxy advisory firms sell reports no one is obligated to buy and recommendations no one is obligated to follow. These firms expanded greatly in the hostile takeover era and the Enron era and the financial meltdown era and the excessive CEO pay era because they provide a vital service sophisticated financial institutions find worth the fees: independent analysis of the items on a proxy, both those put there by management and those put there by other shareholders. The proposals Di Somma and Main Street Investors are clutching their pearls over appear at a tiny fraction of companies and get substantial votes at only a fraction of those.

What we have here is corporate executives who know that their sophisticated large investors are on to them and cannot be misled about the realities of sustainable strategy and pay that is not linked to performance. And so instead of presenting their points of view in an honest and forthright manner, they hide behind a phony K Street creation led by a guy who couldn't get a security clearance to work in the White House and is a former energy company lobbyist and anti-climate change advocate. None of which, of course, qualifies him as an advocate for shareholders, whether on Main Street or anywhere else.

We note that these claims are made by people who represent and are or have been paid by corporate executives. Main Street Investors Coalition is not a membership organization and there are no investor advocates associated with it. This is corp-splaining, your basic

"investors are too dumb to understand what they want" argument, condescending to both large institutional investors and the retail investors who select them. That is because no matter what they try to call themselves, this is advocacy from, by, and on behalf of corporate executives, who, like the amusement park manager in Scooby-Doo, would get away with it if not for those pesky kids, the actual investors who are far better able to understand these issues than Di Somma and his friends at Main Street/K Street would like them to be.

e. Fake Front Group ACCF Clutches Its Pearls Over "Inconsistent" ESG Ratings

The American Council on Capital Formation, the equally fake front group affiliate of the Main Street Investors Coalition (funded by the same corporate sources, led by the same energy lobbyist) is upset because ESG ratings are "inconsistent."

We found a system that is fraught with problems, from inconsistent metrics, to ratings which continually fail to account for different regulatory regimes across distinct geographies. Perhaps of greatest concern, we found that each of the four agencies uses their own proprietary methodologies, metrics, weighting, and even definitions of what constitutes ESG. For example, a company may rate well below its peers according to one ratings agency while simultaneously out performing them according to another. This is exactly the case for Bank of America, which was rated "below average" by RepRisk, but "well above average" by Sustainalytics.

Each firm uses its own proprietary and inconsistent metrics! Oh no! How can capitalism survive?

Now is a good time to remind the people who purport to speak for capital formation that the assessment and recommendations of securities analysts are also "inconsistent" and, yes, "subjective" in the selection of indicators and the weight assigned to them. Indeed one can be recommending a buy and one can be recommending a sell! Proxy advisors can disagree as well, one recommending in favor of a proposed business combination or CEO pay plan and another recommending against. We also live in a country where there are "inconsistent" evaluations of restaurants, movies, political candidates, and contestants on "America's Got Talent."

Perhaps ACCF should take another look at the father of economics, Adam Smith, for a reminder that this is exactly what markets are for. The fact that so-called capitalists would be "concerned" about the fact that the market has offered competing approaches (while its affiliate, MSIC, whines about the lack of competition in proxy advisory firms) shows that their only goal is to silence critics. This is why they are recommending "meaningful reform" (really? government regulation for a publication no one has to buy?) instead of offering constructive engagement.

What ACCF should do, if it wants to live up to its name and its purported mission, is work on getting its funders to adopt SASB standards for disclosure of financials, to help

the still-nascent community of ESG raters to respond even more effectively to the market demand for those insights.

f. Main Street Investors: Now They're Just Desperate (Are There Too Few IPOs?)

The Main Street Investors Coalition can no longer argue that they have any connection to Main Street or investors as we have repeatedly made clear in articles, news stories, blog posts, and responses to their tweets, that they are a fake dark money front group funded by corporations, including the National Association of Manufacturers, and led by an energy lobbyist. We have pointed out the continual misrepresentations, distortions, omissions, misdirections, and outright fabrications of every argument they have made so far, all purporting to be on behalf of promoting more active involvement of retail investors even their own numbers show vote proxies only 29 percent of the time. We have repeatedly asked them to give us an example of a single proxy issue that was wrongly decided or even wrongly recommended by the proxy advisors they claim are "political." No answer. That's because there isn't one. They did try to claim that the failure of the Rite Aid/Albertson's merger was the result of bad advice from proxy advisors, and we explained why that was, well, a lie.

Now, they claim that it is activist investors who are responsible for a decline in IPOs. That is, again, simply not true. First, who says that the decline in IPOs is a bad thing? There were too many premature IPOs. Private equity is still an option for pre-IPO investing, and often a better one.

The rationalization of IPOs is the result of market forces, which, again we must remind MSIC, is how capitalism works. There are a number of factors, including geopolitical elements like trade wars and Brexit. So even if there should be more IPOs, the level of activism is not the obstacle MSIC claims.

Once again, the Main Street Investors Coalition is a wolf of Wall Street in the sheep's clothing of the retail investor, promoting the interests of entrenched, overpaid CEOs and climate change denial by trying to prevent oversight by large, sophisticated investors with access to independent research. This last claim shows just how desperate they have become.

g. More Useless Sock Puppet Bluster from Fake Front Group Main Street Investor Coalition

Fake dark money front group Main Street Investment Coalition is really getting in a lather about the upcoming November 15 SEC Proxy Roundtable. The instantly discredited CEO-funded astroturf organization is struggling to find anyone who is not self-interested to try to make the case that the only source of truly independent research about corporate governance should be regulated and/or controlled by the corporations themselves. And so, we get a chorus of sock puppets pretending to some semblance of the very independence they are trying so hard to extinguish.

Over at the we'll print anything Seeking Alpha we have Jared Whitley who has not one single shred of actual point to make and so instead compares proxy advisory firms to rats in a restaurant. As my mother always says, insult is not argument. So we will refrain from returning in kind and stick to the substance, rather, the complete lack of substance in his sock puppet polemic.

Let's start with two factual errors. First, he says that the "report" commissioned by the Main Street Investors Coalition affiliate shows a significant error rate in the reports of proxy advisory firms. Apparently, he did not read it, though. As we have previously noted, the error rate is under one percent, significantly lower than the error rate in Whitley's essay. Unlike Whitley, we actually read the report and also unlike Whitley, we are able to quote it accurately, so we will remind him that its ultimate conclusion is: "[T]he relatively small data set (and the non-random survey methodology) do not allow statistically significant conclusions to be drawn." Even a subsidized, non-peer reviewed "report" from a law firm specializing in lobbying cannot come up with anything stronger than that. We suspect an actual independent review by any group with expertise in statistical analysis would be unable to find more significant problems with proxy advisors.

Second, Whitley says that the SEC requires fund managers to vote. This is also not true. Fiduciary obligation requires careful cost/risk-benefit assessment of proxy votes. The SEC has never said that all proxies must be voted or that fund managers must retain proxy advisors. Proxy advisors provide independent research no one has to buy and recommendations no one has to follow. Their recommendations are over 90 percent the same as management. When they recommend contrary to management, (1) it is almost always on a non-binding proposal and (2) the proxy advisory clients diverge from these recommendations significantly enough to demonstrate that the proxy advisory recommendations are just one factor in evaluating the issues.

Finally, Whitley leaves out a piece of information we consider significant enough that its omission calls into question the credibility of his opinions. He works for Main Street Investor Coalition advisory council member Ike Brannon, who has also written a flimsy attack on proxy advisors and is presumably the sock puppet inside the sock puppet on this one.

The chair of the Main Street Investor Coalition's advisory committee is Bernard Sharfman, and his sock puppet comment to the SEC is published on the Harvard Law School corporate governance blog. He says that these are his own views, and not necessarily those of the Main Street Investors Coalition. We hope that even the Main Street Investors Coalition would not try to make a credible argument that it is consistent with fiduciary obligation to defer proxy voting decisions to the very corporate boards being voted on. On the contrary, abdicating the fundamental oversight role of shareholders and failing to evaluate the risk/return of, say, a vote on mis-aligned CEO pay is a per se violation of fiduciary obligation. Fiduciaries must show "the punctilio of an honor the most sensitive" (Meinhard v. Salmon). Allowing decisions to be made by the very people who have the greatest incentive to benefit themselves over the

shareholders would be catastrophic for the credibility of the capitalistic system and not consistent with any judicial ruling on the fiduciary standard. If Mr. Sharfman has any case law on fiduciary obligation to suggest the contrary, we encourage him to cite it.

Sharfman also suggests that proxy advisors be considered "information traders." Since shareholder proposals are non-binding, even with a 100 percent vote in favor, and proxy voting has nothing to do with trading, that is not in the least analogous.

But what do we expect? They cannot get anyone who is not self-interested to support their positions and they cannot make a credible argument based on facts, logic, or the law. And so all they have is sock puppets, insults, distortions, misdirection and rats.

g. So The SEC's Decision to Rescind the 14-Year Old Proxy Advisory Rulings Was Apparently a Whim With No Documentation

The government in general and the regulatory agencies and independent commissions in particular have a heavy burden of transparency and documentation to justify their authority to promulgate regulations and issue judgments that have the force of law. Because they are not subject to the electoral oversight of the legislative bodies, there is a huge body of administrative law checks and balances in place to make sure that their actions are not corrupt or — and these are legal terms — arbitrary and capricious.

We cannot help concluding that arbitrary and capricious are the only possible explanations for the decision of the SEC to rescind two letters about proxy advisory services that have been in place since 2004. As we have noted earlier, they rescinded these rulings BEFORE the upcoming roundtable that will present expert testimony on many elements of the proxy system. It is mystifying to us that the Commission would act before receiving the benefit of this hearing. We followed up with the "for more information, contact" email in the very unforthcoming announcement of this decision and had a conversation right out of Monty Python. When we asked why the rulings that had been in place for 14 years were rescinded before the hearing, when the hearing would present testimony on the issue, the staff said it would "facilitate" the hearing. We asked how acting without evidence would "facilitate" the hearing and were told that it would facilitate the hearing.

Others share this concern, and so Rosanna Landis Weaver of As You Sow filed an FOIA request asking for any memoranda or notes from meetings from interested parties with staff (which must be kept and made publicly available with certain narrow exceptions). She received a reply saying that no such documents exist.

Curiouser and curiouser. Sounds pretty arbitrary and capricious to us.

3. Excerpts from Citizens Disunited, by Robert A.G. Monks

[The book provides the results of an extensive 2013 survey of "drone" corporations, companies with no stock ownership in excess of an indexed position, and therefore have no shareholders who have the interest or ability to exercise oversight.]

This list includes America's largest banks; its biggest oil companies; its leading communication, chemical, and pharmaceutical companies, and a wide-ranging assortment of key consumer goods and entertainment providers. These top 50 drone corporations—just 10 percent of the full S&P 500—represent nearly $5.2 trillion in market capitalization, approximately 40 percent of the S&P 500's total aggregate market cap. The CEOs of 35 of the top 50 sit on the Business Roundtable. Of the top 20, all but two, Wells Fargo and Philip Morris, belong to the BRT.

- Corporate drones are far more likely than non-drones to avoid taxes significantly or altogether. Of the 30 S&P 500 companies identified by Citizens for Tax Justice as having paid no U.S. federal taxes from 2008 to 2010, two thirds were drones. Twenty-six of these companies were able to avoid paying taxes in 2011 as well, including GE, even though it was among the 20 most profitable companies in America that year.
- Corporate drones, on average, laid off nearly 50 percent more workers for the same reporting period.
- Corporate drones are twice as likely as non-drones to have frozen or eliminated pension plans since 2005.
- In terms of regulatory and related fines and settlements paid over the past 20 years, the drones were more than twice as likely to have made such payments, and account for almost 85 percent of the total fines and settlements assessed and paid over the last two decades, more than $80 billion in all.

…

- Drones are more likely to have other, active corporate CEOs on their boards.
- Drones are also more likely to have present and former CEOs on their compensation committees.
- Non-executive director shareholdings at corporate drone boards average less than half the dollar value of their non-drone counterparts.

…

Most important, on average, over the period 2007-present, the 269 corporate drones that comprise a majority of the current S&P 500 *dramatically under-performed their non-drone counterparts in terms of investment returns to shareholders.*