



The Forum for Sustainable and Responsible Investment

December 23, 2021

Vanessa Countryman
Secretary
US Securities and Exchange Commission
100 F Street, NW
Washington, DC 20549-1090

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

Dear Ms. Countryman,

On behalf of US SIF: The Forum for Sustainable and Responsible Investment, I welcome the opportunity to provide comments in response to the Securities and Exchange Commission (the "SEC") proposed rule, "Proxy Voting Advice" (Release No. 34-93595; File No. S7-17-21) (the "Release").

US SIF is the leading voice advancing sustainable investing across all asset classes. Our mission is to rapidly shift investment practices toward sustainability, focusing on long-term investment and the generation of positive social and environmental impacts. Our members, comprised of investment management and advisory firms, mutual fund companies, asset owners, research firms, financial planners, advisors and broker-dealers, represent more than \$5 trillion in assets under management or advisement. Sustainable investing assets now account for \$17.1 trillion—or 1 in 3 dollars—of the total US assets under professional management, according to the US SIF Foundation's 2020 biennial *Report on US Sustainable and Impact Investing Trends*. This change represents a 42 percent increase over 2018.¹

The Release proposes to: 1) amend Rule 14a-2(b)(9) by deleting paragraph (ii) and rescinding Rule 14a-2(b)(9)(ii) conditions; and 2) delete Note (E) to Rule 14a-9.

US SIF's members take seriously their obligation to vote shares in a thoughtful and informed manner, consistent with their fiduciary responsibilities to their investors. US SIF members have found proxy advisors to provide a high level of independent analysis on the myriad issues that must be voted on at the thousands of shareholder meetings held each year.

Background

We commend the SEC for issuing the Release to modify the flawed final rule on proxy advisors issued July 22, 2020.² If implemented, the 2020 rule would have made it more expensive and time-consuming for proxy advisors to provide their research.³ The rule would have stifled independent views, thus impacting the ability of institutional investors to obtain the information they require and fulfill their voting duties. In addition, the final rule would have codified proxy voting advice as a solicitation, allowing corporations to intimidate proxy advisors with the threat of litigation, thus shifting power to corporate management and away from investors.

¹ Report on US Sustainable and Impact Investing Trends 2020: <http://www.ussif.org/trends>

² Exemptions from the Proxy Rules for Proxy Voting Advice, Release No. 34-89372; File No. S7-22-19 (July 22, 2020)

³ US SIF comment letter, Exemptions from the Proxy Rules for Proxy Voting Advice, Release No. 34-89372; File No. S7-22-19. (January 31, 2020)

<https://www.ussif.org/files/US%20SIF%20proxy%20advisor%20comment%20letter%201-31-20.pdf>

Most importantly, the 2020 rule was based on a flawed premise and lacked evidence of a market failure needing a regulatory solution. In response to the 2020 proposal, US SIF noted: "the [2020 proposed rule] does not state whether the Commission has analyzed the issue sufficiently to assess whether there really is a problem or whether these alleged errors are material to voting decisions – or whether the proposed cure would solve the problem without diminishing the value of communications from independent advisors to investment advisors."⁴

In addition, the SEC Investor Advisory Committee (IAC) recommendations confirmed that claims of proxy advisor errors having an impact on voting are unsupported by the data. "SEC data – summarized later in the rule release but undiscussed in the section that tries to outline the problems motivating the proposal – show the number of factual errors is likely to be trivially small."⁵

The SEC should also rescind the 2019 guidance

Thus, we believe the SEC is correct in reversing portions of the 2020 rule. We support the proposed changes in the Release to rescind the conditions under 14a-2(b)(9). These conditions allowed for the sharing of proxy voting opinions with issuers at or before being sent to proxy advisory firm clients. They also required proxy advisory firms to link to an issuer's response to the proxy voting information.

We also support the deletion of Note (E). The 2020 final rule codified that proxy advice is a solicitation and subject to Rule(a)-9. Note (E) expanded the examples of potential lawsuit liability for proxy advisors under Rule 14(a)-9 not just for material misstatements or omissions but also for "opinions, reason, recommendations or beliefs."

In addition to the proposed changes, we recommend that the SEC also rescind the 2019 Interpretive Guidance, which established that proxy voting advice is considered a "solicitation" under Rule 14a-9.⁶ Proxy advice is a form of investment advice and is not a solicitation. Unlike proxy solicitors, proxy advisers provide independent advice and do not have an interest in the outcome of a vote, nor whether the advice is followed. Investors seek this advice and reflect their clients' preferences.

Conclusion

The Release is an important step forward to protect the independence of proxy voting advice and reduce the liability proxy advisory firms are exposed to under the solicitation rules. The SEC should also clarify that proxy advice is not a solicitation by rescinding the 2019 Interpretive Guidance.

Sincerely,



Lisa Woll
CEO

⁴ Ibid.

⁵ Recommendation of the SEC Investor Advisory Committee (IAC) Relating to SEC Guidance and Rule Proposals on Proxy Advisors and Shareholder Proposals, p. 5 (January 24, 2020) <https://www.sec.gov/comments/s7-22-19/s72219-6698769-206000.pdf>

⁶ <https://www.sec.gov/rules/interp/2019/34-86721.pdf>