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December 27, 2021

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

Re: Proxy Voting Advice
Release No. 34-93595
File No. S7-17-21¹

Dear Ms. Countryman:

We wrote to you back in February of 2020 regarding the SEC's proposed rule on proxy advisors and have referenced it again for your review.² We continue to believe that investors and advocacy organizations have become more active in using corporate governance structures, such as proxy voting, to affect business decisions on issues ranging from environmental protection to gun control to human rights. This trend, which shows no sign of abating, begs the broader question of the extent to which the private sector should engage on public policy issues, and more specifically whether the current corporate governance structure was designed to facilitate these activities.

In 2019 BPC launched our corporate governance project. One of the focuses of the project has been examining how companies address rising stakeholder pressures, while continuing to maximize shareholder value. One issue is that a growing number of stakeholders are seeking to influence companies through the shareholder proposal process. Given the SEC's recent policy change with regard to the issuance of No-Action letters³, we believe that now more than ever accurate, transparent, and complete information in the proxy process is paramount to *all* investors in this changing environment.

We continue to support maintaining the clarification of the fiduciary duty owed to the investors, facilitating increased engagement between proxy advisory firms and issuers, including a reasonable review-and-comment period for objections and although not included in the final rule, a suggestion that the SEC consider disabling automatic voting capabilities when there is a valid

¹ SEC's "Proxy Voting Advice" (Nov. 26, 2021), available at, <https://www.federalregister.gov/documents/2021/11/26/2021-25420/proxy-voting-advice>

² BPC comment letter to the SEC on "Amendments to Exemptions from the Proxy Rules for Proxy Voting Advice," (Feb. 3, 2020), available at <https://www.sec.gov/comments/s7-22-19/s72219-6742780-207791.pdf>

³ SEC's "Shareholder Proposals: Staff Legal Bulletin No. 14L (CF) (Nov. 3, 2021)" ("... staff will realign its approach for determining whether a proposal relates to 'ordinary business' with the standard the Commission initially articulated in 1976, which provided an exception for certain proposals that raise significant social policy issues,[3] and which the Commission subsequently reaffirmed in the 1998 Release.")("... proposals squarely raising human capital management issues with a broad societal impact would not be subject to exclusion ..." ; available at <https://www.sec.gov/corpfin/staff-legal-bulletin-14l-shareholder-proposals>.



objection raised as to the accuracies of the information so that investors are fully informed. We believe that accountability in ensuring transparency of conflicts of interests serves not only the clients of the proxy advisory firms, but *all* investors.

In addition to our reiterated concerns in our previous comment, we also wanted to address the SEC taking further action on this finalized rule.

Bipartisanship

What some may not realize is that reforming the proxy advisory process has been a bipartisan decade long process through both President Obama's and President Trump's administrations. While different administrations have taken slightly different approaches to these issues, one consistent aspect has been a bipartisan desire to address the proxy advisory process.

In addition to current SEC Commissioners Elad Roisman and Hester Peirce, there have been several Republican and Democrat appointed SEC Commissioners that have supported reforming the proxy process including additional oversight over proxy advisory firms, or as the proposed rule also refers to them as PVABS (proxy voting advice businesses).

- Former SEC Chair Mary Jo White (2013-2017): Statement at the SEC 2013 roundtable that she was “particularly interested in the discussion of conflicts of interest that may or may not arise in connection with the participation of proxy advisers in our system ...”⁴
- Former SEC Chair Mary L. Schapiro (2009-2012): Led 2010 concept release which identified issues with proxy advisers.⁵
- Former SEC Commissioner Luis A. Aguilar (2008-2015): Statement at the SEC 2013 roundtable indicating that the SEC “... noted certain potential concerns relating to the activities of proxy advisors, including among other things the potential effects on shareholders of any conflicts of interest by the proxy advisory firm... It is reasonable to ask if such actual or potential conflicts of interest can be effectively cured by disclosure and by efforts to insulate proxy advisory recommendations from a firm’s consulting business.”⁶
- Former SEC Commissioner Roel Campos (2002-2007): Participated in BPC’s 2019 event “The Role of a Corporation: The Shareholder versus Stakeholder Debate” and stated that “proxy advisors have a problematic business model.”⁷

⁴ Chair Mary Jo White, “Welcoming Remarks at Proxy Advisory Services Roundtable” (Dec. 5, 2013), available at <https://www.sec.gov/news/public-statement/open-meeting-statment-2013-12-06-mjw>

⁵ SEC’s “Concept Release on the US Proxy System” (Release Nos. 34-62495; IA-3052; IC-29340; File No. S7-14-10) (2010), available at <https://www.sec.gov/rules/concept/2010/34-62495.pdf>

⁶ <https://www.sec.gov/news/public-statement/open-meeting-statement-2013-12-05-laa>

⁷ BPC’s event “The Role of a Corporation: The Shareholder versus Stakeholder Debate” (Nov. 19, 2019), available at <https://bipartisanpolicy.org/event/the-role-of-a-corporation-the-shareholder-versus-stakeholder-debate/>



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- Former SEC Chair Elise Walter (2012-2013): Participated in BPC’s Feb. 7, 2019 event, “Corporate Governance’s Increasing Role in Public Policy: Opportunities and Limitations” and signaled openness to technical fixes regarding proxy advisors.⁸
- Former SEC Commissioner Joe Grundfest (1986-1990): indicated in a Nov. 15, 2019 Economist article that he was supportive of giving issuers opportunity to challenge factual basis of recommendations.⁹

There is a long and distinguished list of Democrat legislators who have supported proxy advisor reform over that past decade.

- Senator Jack Reed (D-RI): Led the bipartisan Senate legislation with 5 cosponsors on S.3614 the “Corporate Governance Fairness Act.”¹⁰
- Senator Krysten Sinema (D-AZ): Supported the “Corporate Governance Reform and Transparency Act” when it passed the House of Representatives in 2017¹¹
- Senator Jackie Rosen (D-NV): Supported the “Corporate Governance Reform and Transparency Act” when it passed the House of Representatives in 2017.¹²
- 12 Democratic members of Congress voted for H.R. 4015 the “Corporate Governance Reform and Transparency Act of 2017”¹³
- Former Congressman and now Governor John Carney (D-DE): Cosponsored H.R. 5311 the “Corporate Governance Reform and Transparency Act of 2016.”¹⁴
- Former Senator Heidi Heitkamp (D-ND): Cosponsor of bipartisan Senate legislation to regulate proxy advisors known as S.3614 the “Corporate Governance Fairness Act.”¹⁵

⁸ BPC’s event “Corporate Governance’s Increasing Role in Public Policy: Opportunities and Limitations” (Feb. 7, 2019), available at <https://bipartisanpolicy.org/event/corporate-governances-increasing-role-in-public-policy-opportunities-and-limitations/>

⁹ The Economist, “Proxy advisers come under fire” (Nov. 14, 2019), available at <https://www.economist.com/business/2019/11/14/proxy-advisers-come-under-fire>

¹⁰ S.3614, “Corporate Governance Fairness Act” 115th Congress (2017-2018)(Sens. Reed (D-RI); Perdue (R-GA); Heitkamp (D-ND); Tillis (R-NC); Jones (D-AL); and Kennedy R-LA), available at: <https://www.congress.gov/bill/115th-congress/senate-bill/3614?q=%7B%22search%22%3A%5B%22Corporate+Governance+Fairness+Act%22%5D%7D&r=1>

¹¹ H.R. 4015, “Corporate Governance Reform and Transparency Act of 2017” (115th Congress) (Dec. 20, 2017) available at <https://clerk.house.gov/Votes/2017702>

¹² *Supra* note 11

¹³ *Supra* note 11 (Members of Congress: Cooper (D-TN); Cuellar (D-TX); Delaney (D-MD); Foster (D-IL); Gottheimer (D-NJ); Himes (D-CT); Meeks (D-NY); Peters (D-CA); Peterson (D-MN); Rosen (D-NV); Sinema (D-AZ); Suozzi (D-NY) , available at <https://clerk.house.gov/Votes/2017702>

¹⁴ H.R. 5311, “Corporate Governance Reform and Transparency Act of 2016” (114th Congress), available at <https://www.govtrack.us/congress/bills/114/hr5311/cosponsors>



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- Former Senator Doug Jones (D-AL): Cosponsor of bipartisan Senate legislation to regulate proxy advisors known as S. 3614 the “Corporate Governance Fairness Act.”¹⁶

In addition, 10 Republican members of Congress cosponsored the “Corporate Governance Reform and Transparency Act of 2019”¹⁷ in support of reforming the proxy process. Moreover, along with the 12 Democrats previously cited, 226 Congressional Republicans supported H.R. 4015, the “Corporate Governance Reform and Transparency Act of 2017”¹⁸ also dealing with reforming the proxy process and oversight of proxy advisors.

At BPC we fully believe in the strength of bipartisanship to address issues that may otherwise get bogged down in the parochial politics of the day. BPC believes that even in the current hyper-partisan environment bipartisanship can be found. A recent example of this is Senate Banking Ranking Member Pat Toomey’s (R-PA) issued statement to Chairman Gensler asking that they “work together to achieve *bipartisan* consensus.”¹⁹

We ask that in determining how to address the concerns listed in the proposed rules that the SEC give consideration to the historically bipartisan perspective of these reforms to ensure that any changes continue to afford accurate, complete, and comparable data through a transparent process.

In addition to the historic bipartisan basis for the current finalized rule, it is of some significance that the SEC itself has been evaluating these proposed reforms for years. Without belaboring the details in the decade long analysis, it is worth citing for the record just a short list of public actions the SEC has taken to get to the point of having a finalized rule on this topic. Here is a list of those prior actions:

- 2009: Former Chairman Schapiro directed the SEC staff to undertake a comprehensive review of the U.S. proxy system.²⁰
- 2010: Concept Release: “proxy plumbing”²¹ which focused on “accuracy and transparency”

¹⁵ *Supra* note 10 (S.3614)

¹⁶ *Supra* note 10 (S.3614)

¹⁷ H.R.5116, “Corporate Governance Reform and Transparency Act of 2019” (116th Congress (2019-2020))(Members of Congress: Steil (R-WI); Wagner (R-MO); Riggleman (R-VA); Barr (R-KY); Gooden (R-TX); Budd (R-NC); Rose (R-TN); Timmons (R-SC); Hill (R-AZ); Hollingsworth (R-IN), available at <https://www.congress.gov/bill/116th-congress/house-bill/5116/cosponsors?r=2&s=1>

¹⁸ H.R. 4015, “Corporate Governance Reform and Transparency Act of 2017” (115th Congress)(Dec. 20, 2017), available at <https://clerk.house.gov/Votes/2017702>

¹⁹ See statement from Senator Pat Toomey (R-PA) to Chairman Gensler (Dec. 16, 2021), available at, <https://www.banking.senate.gov/newsroom/minority/12/16/2021/toomey-gensler-should-work-to-achieve-bipartisan-consensus>

²⁰ SEC’s Press Release, “SEC Votes to Seek Public Comment on U.S. Proxy System” (July 14, 2010), available at <https://www.sec.gov/news/press/2010/2010-122.htm>



- 2013: Public Roundtable²² on the proxy advisory industry.
- 2014: Staff Legal Bulletin 20²³
- 2018: Public Roundtable²⁴ and solicitation for comment on the proxy process
- 2019: Proposed Rulemaking²⁵

SEC should continue to support “transparency, accuracy, and completeness.”

The originally stated purpose of the final rules “were intended to help ensure that investors who use proxy voting advice receive more transparent, accurate and complete information on which to make their voting decisions” and nothing published since then indicates a change from that position.²⁶

Therefore, to maintain a *transparent, accurate, and complete* proxy process, we want to stress and reiterate the belief that the SEC must ensure that companies on the receiving end of a proxy firm’s recommendations have an opportunity to respond to inaccurate or arguably misinterpreted data. Most importantly that proxy advisors get this potentially updated data to their clients in a timely manner to make an informed investment decision. In addition to a proxy advisors’ clients, one would hope that proxy advisory firms themselves would want to have the most accurate data before they make voting decisions on behalf of their clients. Moreover, the SEC should be concerned not just with whether a proxy advisor has accurate and complete information before disseminating to the investors, but also what affect inaccurate and incomplete information can have on *all* investors and conversely the entire capital market.

As we have previously commented, there is a disagreement on the actual numbers and types of errors dealing with the accuracy and completeness of data according to both ISS and the U.S. Chamber²⁷. However, it is worth reiterating that “when tens of thousands of proposals are voted

²¹ SEC’s “Concept Release on the U.S. Proxy System” (July 22, 2010), available at <https://www.sec.gov/rules/concept/2010/34-62495.pdf>

²² SEC’s “Proxy Advisory Services Roundtable” (Dec. 5, 2013), available at <https://www.sec.gov/spotlight/proxy-advisory-services.shtml>

²³ SEC’s Staff Legal Bulletin No. 20 (IM/CF), “Proxy Voting: Proxy Voting Responsibilities of Investment Advisers and Availability of Exemptions from the Proxy Rules for Proxy Advisory Firms” (June 30, 2014), available at <https://www.sec.gov/investment/slb20-proxy-voting-responsibilities-investment-advisers>

²⁴ SEC’s Spotlight on Proxy Process, “Roundtable on the Proxy Process” (Nov. 15, 2018), available at <https://www.sec.gov/proxy-roundtable-2018>

²⁵ SEC’s Press Release, “Amendments to Exemptions from the Proxy Rules for Proxy Voting Advice” (Nov. 5, 2019), available at <https://www.sec.gov/news/press-release/2019-231>

²⁶ See Federal Register, “Proxy Voting Advice” (Nov. 26, 2021), (86 FR 67383), also available at, <https://www.federalregister.gov/documents/2021/11/26/2021-25420/proxy-voting-advice>

²⁷ On Jan. 27, 2020, BPC hosted [“The Proxy Process Reformed.”](#) a discussion of the previously proposed Proxy Rules for Voting Advice. We had panelists from Institutional Shareholder Services, Inc. (ISS) and the U.S. Chamber



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on every year, even a small percentage of errors could have profound effect on the information that is used to cast those votes.”²⁸ We therefore continue to encourage the SEC to maintain the established requirements that give companies time to identify errors and the requirement that issuers and investors be notified. As the use of shareholder proposals continues to evolve, we think it is important that the proxy process is as open and transparent as possible so that investors have as accurate and complete of information as possible to make an informed investment decision.

Conclusion

The development and basis of the finalized rules currently being evaluated by the SEC started under the Obama Administration and were finalized during Trump Administration. There has been bipartisan support for reforming the proxy process for well over a decade. With an effort to take a reasonable, measured, and arguably a bipartisan approach, the final rules were significantly amended in response to public comments addressing many of the concerns now articulated by the SEC. Given the bipartisan foundation upon which the final rules were published, we ask the SEC to act with heightened prudence in evaluating whether portions of these final rules need to be rescinded or modified at this time.

As always, we appreciate your attention to these issues and the opportunity to share our recommendations. BPC’s Corporate Governance Project will continue to facilitate discussions and work on bipartisan solutions to identified problems and inefficiencies in the capital markets.

Sincerely,

Michele Nellenbach
Vice President of Strategic Initiatives
Bipartisan Policy Center

of Commerce Center for Capital Markets Competitiveness. (U.S. Chamber). The debate between ISS and the U.S. Chamber forms the basis for BPC’s submitted comments regarding this rule.

²⁸ BPC comment letter to the SEC on “Amendments to Exemptions from the Proxy Rules for Proxy Voting Advice,” (Feb. 3, 2020), available at <https://www.sec.gov/comments/s7-22-19/s72219-6742780-207791.pdf>