

13 May 2020

Vanessa A. Countryman
Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090
By Email: (rule-comments@sec.gov)

Re: Supplemental Comment, File No. S7-22-19: Amendments to Exemptions from the Proxy Rules for Proxy Voting Advice

Dear Ms. Countryman:

CFA Institute respectfully submits this comment letter to the Securities and Exchange Commission (“SEC” or the “Commission”) to supplement its two earlier letters responding to proxy adviser regulation and the SEC’s current rule proposal, *Amendments to Exemptions from the Proxy Rules for Proxy Voting Advice* (the “Proposal”).¹ We appreciate the Commission’s invitation to comment on contemplated changes to the Proposal, as initially presented by Commissioner Elad Roisman in his speech² at the Council of Institutional Investors (“CII”) conference and later reported by various business publications.

It is our understanding that the contemplated changes to the Proposal include: (1) an elimination of issuer pre-review in favor of a contemporaneous investor-issuer review; (2) a requirement that proxy advisers alert clients as to where they can find any issuer response/objections to the proxy report; and (3) a requirement that proxy advisers temporarily disable automatic proxy vote submissions in order to allow issuer time to review and respond to the proxy report, subject to client override (“speed bump”).

Below, we provide our initial thoughts on these developments. For a detailed discussion of our view on the Proposal, please refer to our comment letter dated February 3rd, 2020.³

Transparency and Public Input in the Rulemaking Process

As a general matter, CFA Institute encourages the Commission to publish a formal text detailing all changes before finalizing the Proposal so that the public can offer thoughtful and complete comments to the Commission. At minimum, we ask the Commission to articulate the changes it expects to introduce. We believe revisions of the complexity contemplated by Commissioner

¹ See *Amendments to Exemptions from the Proxy Rules for Proxy Voting Advice*, Proposed Rule, Release No. 34-87457 (Nov. 5, 2019) (“Proposal”), <https://www.sec.gov/rules/proposed/2019/34-87457.pdf>.

² See Commissioner Elad L. Roisman, “Speech at the Council of Institutional Investors’ (“CII”) Conference” (March 10, 2020), <https://www.sec.gov/news/speech/speech-roisman-cii-2020-03-10>.

³ See CFA Institute comment letter on the “Proposal” (Feb. 3, 2020): <http://www.cfainstitute.org/-/media/documents/comment-letter/2020-2024/20200203.ashx>.

Roisman will generate substantial stakeholder interest. Without providing clarity on these changes, however, the Commission risks shutting out stakeholders from meaningfully participating in the rulemaking process, leaving the public comment file incomplete.

Notwithstanding the fact that the Commission and its staff have already invested considerable time and effort, we welcome the opportunity to comment further and encourage the Commission to consider amending the Proposal for further public comment prior to finalizing the rule. This will ensure a more complete administrative process and fulsome input from public stakeholders.

Elimination of Issuer Pre-Review of Proxy Advice is a Step in the Right Direction.

CFA Institute supports the elimination of mandatory issuer pre-review of proxy advisory reports. In our February comment letter, we underscored our strenuous objection to the Proposal's requirement through regulation that proxy advisers would have to share their full reports with target companies, do so for the universe of listed companies, and give issuers two opportunities over the course of five to seven days to rebut the advisers' analyses and recommendations. We believe it is contrary to investor protection, infringes on commercial rights to contract between investors and analysts, and overrides important state-law corporate governance protections. We stress again today that such a requirement would violate our professional Code of Conduct relating to conflicts of interest and would have a chilling effect on analyst independence by setting inappropriate precedents for prior review and clearance by issuers.

Because the Commission has recognized proxy advice as a form of investment advice subject to the Investment Advisers Act, fiduciary obligations and independence of proxy research, analysis, and recommendations are paramount to investor protection and market integrity. We summarized the importance of these principles and related concerns in our comment letter to the Commission in connection with its 2018 SEC Roundtable on the Proxy Process⁴:

Institutional investors rely upon the analyses of proxy advisers in much the same ways that they and other investors rely upon sound and independent investment research. When the judgment of these advisory sources was impaired in the past due to a lack of independence, investor trust plummeted along with share prices, pricing multiples, and the overall economy... As a practical matter, forcing asset owners and investment managers into thinking that they'd have to preclear the proxy analysis and advice with the issuer before it is "safe" to use as a fiduciary will undermine investor confidence and potentially undermine carefully developed standards on other forms of investment research.

⁴ See CFA Institute comment letter on the "SEC Staff Roundtable on the Proxy Process," File No. 4-725, submitted on 4 October 2019 letter: <http://www.cfainstitute.org/-/media/documents/comment-letter/2015-2019/20191004.ashx>.

Our Research Objectivity Standards (the “Standards”) stipulate that the most an analyst or firm should provide to the focus of research is information sufficient to ensure factual representation is provided. We are aware that some proxy advisers already provide a select group of issuers covering the vast majority of all market capitalization with the opportunity to review the advisers’ research in full, rather than just the facts. We do not support this and have expressed our objections to one of the proxy advisory firms on this issue.

CFA Institute would support as a step in the right direction if the Commission has indeed eliminated issuer “pre-review” in favor of “contemporaneous review.”

Inclusion in the Proxy Report of a Generic Alert to Issuer “Rebuttal” is Acceptable.

CFA Institute supports the inclusion of a generic notification by proxy advisers to their clients of the availability of an issuer statement on a proxy adviser’s report and/or recommendations. Specifically, we support the inclusion on the front page of a proxy advisory report of a hyperlink to an issuer’s *homepage*, alerting clients that an issuer response, if any, can be accessed via the hyperlink. We would not object to including this hyperlink to the electronic medium used by the adviser to deliver a report to its clients.

We believe this approach sufficiently satisfies the Commission’s goal of ensuring investors have access to a complete and accurate mix of information, as (1) issuers have many avenues to communicate with investors about their satisfaction, or lack thereof, with proxy advice; and (2) investors using proxy advisers are surely sophisticated enough to know how to access an issuer’s statement via a generic alert.

As we noted in our prior letters we do not support the proposed requirement of an effectively side-by-side inclusion of issuers’ opinions in the same reports proxy advisers will deliver to their investor clients, i.e. forcing advisers to print an issuer’s full rebuttal in the adviser’s work product. The generic alert solves these issues. Moreover, unlike the “active hyperlink” mechanism presented in the Proposal, our suggested generic alert has fewer implementation details to resolve and requires less coordination between proxy advisers and issuers, which we welcome.

Investors Must Maintain Full Control Under the “Speed Bump” Framework.

Finally, CFA Institute believes that investors must maintain full control of their proxy-voting decisions, including the ability to cast their votes any time they wish. The mere fact that the investor is a client of a proxy adviser should in no way limit the client’s ability to execute and submit proxy votes when and how they wish. Such proxy votes may be based entirely, partially, or not at all on a proxy-adviser views. Therefore, any contemplated “speed bump” on automatic vote submissions must be time-limited and subject to client override. As alluded to above, we believe it is problematic and inappropriate to condition proxy advisers’ eligibility for relevant exemptions on a requirement that they must, and by rule, block clients from freely exercising their voting rights.

We urge the Commission to encourage proxy advisers to include on the front page of their reports a reminder to clients that automatic voting will not occur for “n” number of days, unless

the client directs otherwise. Said differently, a client has the right to direct their proxy adviser to process their votes as desired, at any time.

CFA Institute also suggests the Commission consider a market-based alternative where investors “opt in” to pre-population and automatic submission of their proxy votes. This approach could be tiered for investors’ automatic votes to be cast as soon as possible, two days after receiving a proxy report, or “n” number of days after report receipt; the default option would be no automatic vote submissions. Regardless, we reiterate that investors must be free to exercise (or not) their votes at their discretion.

Conclusion

CFA Institute continues to encourage important changes to the original Proposal and supports several of the suggested refinements being discussed in recent Commission speeches and media reports. We appreciate the opportunity to comment and the importance of further productive dialogue between the Commission and the public on the balance, roles and responsibilities of all players in the proxy-voting process. These matters are essential to a properly functioning corporate governance system. We welcome the Commission’s further clarification and ideally a final round of public input through a notice-and-comment process.

Should you have any question about our positions, please do not hesitate to contact James C. Allen, CFA, at james.allen@cfainstitute.org or 434.227.1338, or Matt Orsagh, CFA, at matt.orsagh@cfainstitute.org, or 347.581.5211.

Sincerely,

/s/ Jim Allen

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