

February 3, 2020

Ms. Vanessa A. Countryman
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549-1090

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

Dear Ms. Countryman:

The Independent Directors Council¹ appreciates the opportunity to comment on the Commission's proposed proxy voting advice rule amendments.² Fund boards of directors serve an important role in the voting of proxies for their funds' portfolio securities. Thus, IDC has a strong interest in regulatory proposals that may affect funds' proxy voting processes.

IDC supports the proposal's essential goal to help ensure that investors, like funds and fund advisers (fund complexes), that use proxy voting advice receive more accurate, transparent, and complete information on which to make their voting decisions, in a manner that does not impose undue costs or delays that could adversely affect the timely provision of proxy voting advice. We are concerned, however, that the proposed framework and timeline for companies to review and comment on proxy advisory firms' draft advice before that advice is provided to clients (including fund complexes) would create delays in the delivery of finalized advice to fund complexes. We, thus, recommend that the Commission consider alternative approaches that would enable fund complexes to continue to receive the advice in a timely manner.

¹ IDC serves the US-registered fund independent director community by advancing the education, communication, and policy positions of fund independent directors, and promoting public understanding of their role. IDC's activities are led by a Governing Council of independent directors of Investment Company Institute member funds. ICI is the leading association representing regulated funds globally, including mutual funds, exchange-traded funds, closed-end funds, and unit investment trusts in the United States, and similar funds offered to investors in jurisdictions worldwide. ICI's members manage total assets of US\$25.2 trillion in the United States, serving more than 100 million US shareholders, and US\$7.0 trillion in assets in other jurisdictions. There are approximately 1,600 independent directors of ICI-member funds. The views expressed by IDC in this letter do not purport to reflect the views of all fund independent directors.

² See *Amendments to Exemptions from the Proxy Rules for Proxy Voting Advice*, Release No. 34-87457; File No. S7-22-19 (Nov. 5, 2019) ("Proposal"), available at <https://www.sec.gov/rules/proposed/2019/34-87457.pdf>.

Background

A fund's board of directors, acting on behalf of the fund, is responsible for the voting of proxies for the fund's portfolio securities but typically delegates proxy voting responsibilities to the fund's adviser in recognition that proxy voting is part of the investment management process. As the Commission has noted, investment advisers are fiduciaries that owe each of their clients duties of care and loyalty with respect to services undertaken on the client's behalf, including proxy voting.³ The board maintains ongoing oversight of this function as part of its fiduciary duties to the fund.

Fund boards and fund advisers take their proxy voting responsibilities seriously. Because of the number of portfolio securities that funds hold and the annual proxy proposals related to those securities, efficient and informed proxy voting is a significant undertaking. Typically, fund complexes do not have the infrastructure and expertise to handle efficiently *all* functions related to proxy voting, and therefore they hire third parties such as proxy advisory firms to assist them in carrying out their proxy voting responsibilities, which may include handling the administrative tasks of the voting process and/or providing research, analysis, and voting recommendations.

A proxy advisory firm's report can facilitate fund complexes' own evaluation of a proposal by, among other things, organizing the information in a way that facilitates analysis, providing additional information and insights, and identifying additional issues. The time that fund complexes have to evaluate proxy advisory firms' analyses and recommendations before casting their votes is already relatively compressed. As discussed below, the proposed review framework would likely shorten that timeframe even more and, accordingly, shorten the time that fund complexes have to evaluate that advice and further engage with companies, as appropriate.

Proposed Review Framework

Under the proposal, proxy advisory firms must provide companies an opportunity to review and provide feedback on proxy advice before it is provided to clients (including fund complexes).⁴ The length of time provided for review would depend on how far in advance of the shareholder meeting date the company has filed its definitive proxy statement.⁵ The proposed

³ See *Commission Guidance Regarding Proxy Voting Responsibilities of Investment Advisers*, Release Nos. IA-5325; IC-33605 (Aug. 21, 2019).

⁴ The SEC proposes to codify its interpretation that proxy advisory firms engage in proxy solicitation and are thus subject to filing and information requirements under the proxy rules, unless certain conditions are met. The proposal would modify the conditions to require proxy advisory firms to provide companies a limited amount of time to review and provide feedback on the advice before it is disseminated to the firms' clients. See Proposal, *supra* n. 2.

⁵ The proposed rule would require a proxy advisory firm to:

- Provide companies with an opportunity to review and provide feedback on proxy advice before it issues its advice to its clients (including fund complexes), with the length of review generally as follows:

review framework would introduce a new and time-consuming step that would very likely delay a proxy advisory firm's distribution of its advice to fund complexes and, thus, reduce a fund complex's time to evaluate the recommendation before needing to cast a vote.

Alternative Review Timelines

The Commission has invited comments on the proposed review framework and, specifically, how it could be revised to improve the information available to investors and better serve the needs of the various parties involved in the proxy process.⁶ We urge the Commission to consider comments offering alternative company review timelines that would enable fund complexes to receive information from proxy advisory firms in a timely manner. For instance, ICI suggests an alternative review framework that requires proxy advisory firms to share with companies concurrently the report it shares broadly to its clients (such as fund complexes) and to notify their clients if the company raises any objections.⁷ This approach would allow a fund complex to receive a proxy advisory firm's report, as well as any company objections, in a timely manner.

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- no less than five business days before issuance, if the company has filed its definitive proxy statement at least 45 calendar days before the meeting date; and
 - no less than three business days before issuance, if the company has filed its definitive proxy statement less than 45 calendar days, but at least 25 calendar days, before the meeting date.
 - Provide companies a second and final notice of voting advice (no earlier than the applicable review period and no later than two business days prior to delivery to clients). This final notice must include a copy of the proxy voting advice that will be delivered to clients, including any revisions made after the review and feedback period.
 - Include in the final proxy voting advice a hyperlink that leads to a statement with the company's views on the advice, upon the company's request.

⁶ See Proposal, *supra* n. 2, at 52-3.

⁷ See Letter from Paul Schott Stevens, President and CEO, ICI, to Vanessa A. Countryman, Secretary, SEC (February 3, 2020), regarding Amendments to Exemptions from the Proxy Rules for Proxy Voting Advice (File No. S7-22-19) and Procedural Requirements and Resubmission Thresholds under Exchange Act Rule 14a-8 (File No. S7-23-19).

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If you have any questions about our comments, please contact Annette Capretta, Deputy Managing Director, at (202) 371-5436 or me at (202) 326-5463.

Sincerely,

A handwritten signature in black ink, appearing to read "Thomas T. Kim". The signature is fluid and cursive, with a long horizontal stroke at the end.

Thomas T. Kim
Managing Director

cc: The Honorable Jay Clayton
The Honorable Robert J. Jackson Jr.
The Honorable Hester M. Peirce
The Honorable Elad L. Roisman
The Honorable Allison Herren Lee

Dalia Blass, Director
Division of Investment Management