



UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

OFFICE OF THE
GENERAL COUNSEL

Stop 9613

April 29, 2020

Via electronic mail
glenn@cii.org

Mr. Glenn Davis
Counsel of Institutional Investors
1717 Pennsylvania Ave., NW
Washington DC 20006

Re: Appeal, Freedom of Information Act Request No. 20-00336-FOPA, and
designated on appeal as No. 20-00215-APPS

Dear Mr. Davis:

This responds to your Freedom of Information Act (FOIA) appeal of the FOIA Office's response to your November 14, 2019 FOIA request for SEC staff analysis and related materials pertaining to Table 2 on page 96 ("Table") of Release No. 34-87457; File No. S7-22-19, entitled "Amendments to Exemptions from the Proxy Rules for Proxy Voting Advice, filed on November 5, 2019" ("Proposed Rule"). Specifically, you asked for "any and all documents, spreadsheets and other material produced by SEC staff, as well as any lists of PAF shareholder meeting reports or SEC filings reviewed by SEC staff, in connection with obtaining some degree of assurance that the table contains an accurate depiction of PAF errors suitable for inclusion in the 'Economic Analysis' section of the Proposed Rule."

By letter dated January 22, 2020, the FOIA Office provided you with an electronic link to a Division of Economic Risk and Analysis staff memorandum and accompanying data file ("DERA Staff Memo"). On January 29, 2020, you filed this appeal questioning the adequacy of the search.

The FOIA requires agencies to conduct a reasonable search for records responsive to a request.¹ A reasonable search is one that is calculated to locate responsive documents.² The question raised by a challenge to the adequacy of a search is "whether the search was reasonably

¹ See *Ogelsby v. Dep't of the Army*, 920 F.2d 57, 68 (D.C. Cir. 1990).

² See *Weisberg v. Dep't of Justice*, 705 F.2d 1344, 1351 (D.C. Cir. 1983); *Steinberg v. Dep't of Justice*, 23 F.3d 548, 551 (D.C. Cir. 1994).

calculated to discover the requested documents, not whether it actually uncovered every document extant.”³ “[T]he adequacy of a FOIA search is generally determined not by the fruits of the search, but by the appropriateness of the methods used to carry out the search.”⁴

In considering your appeal, I find that the FOIA Office did not perform an adequate search. I am, therefore, remanding your request to the FOIA Office to renew its search. You should be aware that any responsive records that may be located may be exempt from disclosure, in whole or part, pursuant to various FOIA exemptions. You may contact Carmen Mallon, FOIA Branch Chief, at 202-551-7900, regarding the status of your request on remand. If you have any questions concerning my determination, please contact Mark Tallarico, Senior Counsel, at 202-551-5132.

For the Commission
by delegated authority,

A handwritten signature in black ink, appearing to read 'R. Humes', is positioned above the printed name.

Richard M. Humes
Associate General Counsel

³ *Safecard v. SEC*, 926 F.2d 1197, 1201 (D.C. Cir. 1991).

⁴ *Jennings v. Dep't of Justice*, 230 F. App'x 1, 1 (D.C. Cir. 2007) (quoting *Iturralde v. Comptroller of the Currency*, 315 F.3d 311, 315 (D.C. Cir. 2003)).