

Via Hand Delivery

August 15, 2019

The Honorable Jay Clayton  
Chairman  
U.S. Securities and Exchange Commission  
100 F Street NE  
Washington, DC 20549

*Re: August 21, 2019 Open Meeting*<sup>1</sup>

Dear Mr. Chairman:

We are writing to express concern about the recent public announcement that the Securities and Exchange Commission (Commission or SEC) will meet next week to consider publishing a “Commission Interpretation” and “Guidance.”<sup>2</sup> From the announcement, it appears that there will be no opportunity for public comment. Further, the Commission interpretation and guidance<sup>3</sup> would reportedly impose substantive new requirements that, as best as we can determine in the absence of a proposal put out for comment, may make it unnecessarily difficult for proxy advisory firms to provide timely, independent and cost-effective research to their paying customers—institutional investors.<sup>4</sup>

The Council of Institutional Investors (CII) is a nonprofit, nonpartisan association of U.S. asset owners, primarily pension funds, state and local entities charged with investing public assets and endowments and foundations, with combined assets of \$4 trillion. Our associate members include non-U.S. asset owners with more than \$4 trillion in assets and a range of asset managers with more than \$35 trillion in assets under management. CII members share a commitment to healthy public capital markets and strong corporate governance.<sup>5</sup>

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<sup>1</sup> U.S. Securities and Exchange Commission, Open Meeting Agenda, Wednesday, August 21, 2019, <https://www.sec.gov/news/openmeetings/2019/agenda082119.htm>.

<sup>2</sup> *Id.*

<sup>3</sup> *Id.* (the announcement makes no reference to a proposal).

<sup>4</sup> See Andrea Vittorio & Andrew Ramonas, News Article, SEC to Unveil New Oversight for Proxy Firms ISS, Glass Lewis, Bloomberg Gov’t, Aug. 14, 2019 (on file with CII) (quoting Julie Mediamolle, a partner at Alston & Bird LLP, that “it will be interesting to see’ how the commission addresses corporate concerns about the role proxy firms play”); Jessica DiNapoli, U.S. SEC to Consider New Guidance on Investor Use of Proxy Advisors, Reuters, Aug. 13, 2019, <https://finance.yahoo.com/news/u-sec-consider-guidance-investor-212018942.html> (reporting that the “new guidance could ultimately make it more difficult for proxy advisory firms to provide timely, independent and cost-effective research for investors.”).

<sup>5</sup> For more information about the Council of Institutional Investors (“CII”), including its members, please visit CII’s website at <http://www.cii.org/members>.

As we most recently commented in a July 18 letter to the SEC, we believe that adding regulatory requirements to the operations of proxy advisory firms is misguided and is not the best use of the Commission's limited resources.<sup>6</sup>

As you are aware, at the end of the SEC's November 15 public roundtable on the proxy process (Roundtable) when the SEC staff asked: "Is there anyone on the panel that thinks there should be additional regulation?"<sup>7</sup> No panelist—including those speaking on behalf of the corporate community—voiced any need for new regulations of proxy advisory firms.<sup>8</sup> One of those panelists was Patti Brammer, Corporate Governance Officer, Ohio Public Employees Retirement System (OPERS) and a current CII board member.<sup>9</sup> Consistent with her comments at the Roundtable,<sup>10</sup> a recent OPERS letter to the SEC explained:

Any regulation or restriction that erodes our confidence in the objectivity of the work product we receive from our proxy advisory firm, reduces the time we have to review their research, or otherwise infringes on our ability to fully utilize the services that we, as a conscientious investor and consumer, have determined we need will materially impact our ability to hold companies accountable for decisions made at the expense of long-term shareholder value.

We respectfully request that the Commission reconsider its decision to focus its efforts and limited resources on regulating proxy advisory firms. These entities provide a necessary and valuable service to investors that wish to fully participate in the governance process and more effectively engage as shareholders. The administrative costs of attempting to recreate or duplicate the services we receive from our proxy advisory firm would be prohibitive for a public institution like OPERS. Issuer concerns regarding proxy advisory firm methodologies and

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<sup>6</sup> Letter from Jeffrey P. Mahoney, General Counsel, Council of Institutional Investors to Vanessa Countryman, Secretary, Securities and Exchange Commission 12 (July 18, 2019), [https://www.cii.org/files/issues\\_and\\_advocacy/correspondence/2019/July%2018%202019%20SEC%20Reg%20Fle x%20Letter%20Final\(1\).pdf](https://www.cii.org/files/issues_and_advocacy/correspondence/2019/July%2018%202019%20SEC%20Reg%20Fle x%20Letter%20Final(1).pdf).

<sup>7</sup> U.S. Securities and Exchange Commission, Roundtable on the Proxy Process Transcript 250 (Nov. 15, 2018), <https://www.sec.gov/files/proxy-round-table-transcript-111518.pdf> (SEC Staff Michelle Anderson).

<sup>8</sup> *See id.* at 250-57; *see generally* Securities Exchange Board of India, Report of Working Group on Issues Concerning Proxy Advisors-Seeking Public Comment 17 (July 29, 2019), [https://www.sebi.gov.in/reports/reports/jul-2019/report-of-working-group-on-issues-concerning-proxy-advisors-seeking-public-comments\\_43710.html](https://www.sebi.gov.in/reports/reports/jul-2019/report-of-working-group-on-issues-concerning-proxy-advisors-seeking-public-comments_43710.html) ("It is difficult to justify taking [regulatory] action to limit . . . [proxy advisory firm] influence if that influence exists mostly in the mind of companies."); Matt Egan, Corporate America Loves Deregulation. Then Why Is It Pushing For These Rules?, CNN Bus., Mar. 29, 2019, <https://www.cnn.com/2019/03/29/investing/regulation-proxy-advisory-reform-sec/index.html> (commenting that some "say business groups are going after proxy advisers to silence shareholders by cutting them off from rigorous research needed to scrutinize gaudy pay packages and evaluate complicated proposals on topics such as climate change and minimum wage hikes").

<sup>9</sup> U.S. Securities and Exchange Commission, Roundtable on the Proxy Process Transcript at 8.

<sup>10</sup> *Id.* at 238 ("In terms of whether additional regulation is needed, I would just offer, it has not been our experience that there's a compelling need for additional regulation.").

decision-making processes should be addressed through collective dialogue between issuers, proxy advisory firms, and investors, not government regulation.<sup>11</sup>

Another of the Roundtable panelists was former Committee on Banking, Housing, and Urban Affairs (Banking Committee) Chairman, and current Visiting Scholar at the American Enterprise Institute, Phil Gramm.<sup>12</sup> Our members share the following view expressed by Senator Gramm at a post-Roundtable Banking Committee hearing:

[M]y dealings with proxy advisors basically have been good. I think they listen [and] . . . the problem is not proxy advisors.<sup>13</sup>

In addition, in a December letter to the SEC, T. Rowe Price Associates, Inc. stated: “We . . . would have significant concerns with any regulatory changes that would sacrifice the objectivity of proxy advisor reports or introduce delays in the proxy voting process that, in an already compressed and intensely seasonal voting cycle, could result in missed vote deadlines.”<sup>14</sup>

Moreover, additional regulation of proxy advisory firms appears to be in direct conflict with the recommendations of the SEC’s own Investor Advocate Rick Fleming.<sup>15</sup> In an April speech, Mr. Fleming stated:

In my view . . . the simple fact of the matter seems to be that proxy advisors have given asset managers an efficient way to exercise much closer oversight of the companies in their portfolios, and those companies don’t like it. That’s understandable, and it is also understandable that companies, rather than directly asking the SEC to suppress shareholder voting . . . would try to cloak their arguments under the mantle of investor protection. But the investors themselves—again, the ones paying for proxy advice—are not asking for protection. In fact, I keep hearing opposition from investors to proposals that might lead to interference in the proxy voting process.

. . . .

Again, no one is claiming that proxy advisors are perfect, but in light of all the important things that the Commission could spend its time on . . . I would

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<sup>11</sup> Letter from Karen Carraher, Executive Director, Ohio Public Employees Retirement System et al. to Vanessa Countryman, Secretary, Securities and Exchange Commission 2 (July 24, 2019), <https://www.sec.gov/comments/4-725/4725-4767821-176841.pdf>.

<sup>12</sup> U.S. Securities and Exchange Commission, Roundtable on the Proxy Process Transcript at 8.

<sup>13</sup> Transcript of Senate Banking, Housing and Urban Affairs Committee, hearing on The Application of Environmental, Social, and Governance Principles in Investing and the Role of Asset Managers, Proxy Advisors, and Other Intermediaries, Bloomberg Gov’t 14 (Apr. 2, 2019) (on file with CII).

<sup>14</sup> Letter from Donna F. Anderson, Head of Corporate Governance, T. Rowe Price Associates, Inc. et al. to Brent J. Fields, Esq., Secretary, Securities and Exchange Commission 3 (Dec. 13, 2018), <https://www.sec.gov/comments/4-725/4725-4792350-176928.pdf>.

<sup>15</sup> See Rick Fleming, Speech at The SEC Speaks in 2019: Important Issues for Investors in 2019 (Apr. 8, 2019), <https://www.sec.gov/news/speech/fleming-important-issues-investors-2019>.

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respectfully suggest that imposing new regulations on proxy advisers should be given a low priority.<sup>16</sup>

As indicated, we agree that pursuing further regulation of proxy advisory firms is not an effective use of the SEC's limited resources, particularly when the SEC could, among other things, complete its rulemaking on universal proxy as an interim step to improving proxy plumbing.<sup>17</sup>

Finally, the August 21 Commission interpretation and guidance would also appear to be in direct conflict with the views of the U.S. Department of Treasury (Treasury).<sup>18</sup> The Treasury's October 2017 report entitled "A Financial System That Creates Economic Opportunities, Capital Markets" states:

Treasury recommends that the SEC and CFTC make their rulemaking processes more transparent and incorporate improved economic analysis, updated consideration of the effects on small entities, and public input as appropriate. ***Treasury also recommends that the SEC and the CFTC avoid imposing substantive new requirements by interpretation or other guidance.***<sup>19</sup>

Thank you for your attention to our concerns. We would be welcome the opportunity to further discuss these issues. If you have any questions or need additional information, please contact me at 202-822-0800 or [jeff@cii.org](mailto:jeff@cii.org).

Sincerely,



Jeffrey P. Mahoney  
General Counsel

CC: The Honorable Robert J. Jackson Jr., Commissioner, U.S. Securities and Exchange Commission  
The Honorable Hester M. Peirce, Commissioner, U.S. Securities and Exchange Commission  
The Honorable Elad L. Roisman, Commissioner, U.S. Securities and Exchange Commission  
The Honorable Allison Herren Lee, Commissioner, U.S. Securities and Exchange Commission

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<sup>16</sup> *Id.*

<sup>17</sup> *See, e.g.*, Letter from Jeffrey P. Mahoney at 2-3, 14-15.

<sup>18</sup> U.S. Department of the Treasury, A Financial System That Creates Economic Opportunities, Capital Markets 9-10 (Oct. 2017), <https://www.treasury.gov/press-center/press-releases/Documents/A-Financial-System-Capital-Markets-FINAL-FINAL.pdf>.

<sup>19</sup> *Id.* (emphasis added).