

Via Email: andersonc@sec.gov; ovallj@sec.gov; foiapa@sec.gov

January 28, 2020

Office of FOIA Services
Securities and Exchange Commission
Station Place
100 F Street NE
Mail Stop 2465
Washington DC 20549

Re: Freedom of Information Act (“FOIA”) Appeal

Dear Ms. Anderson:

I am writing on behalf of the Council of Institutional Investors (“CII” or “we”) with regard to your January 22 letter communicating that a Division of Economic Risk and Analysis staff memorandum and accompanying data file (collectively, “DERA Staff Memo”) “has been identified as being responsive” to CII’s FOIA request.¹ Understanding the letter declines to identify the person, office or division making this claim of responsiveness, CII wishes to appeal the responsiveness determination for the reason described further below.

CII is a nonprofit, nonpartisan association of U.S. public, corporate and union employee benefit funds, other employee benefit plans, state and local entities charged with investing public assets, and foundations and endowments with combined assets under management of approximately \$4 trillion. Our associate members include non-U.S. asset owners with about \$4 trillion in assets, and a range of asset managers with more than \$35 trillion in assets under management.

As indicated in our FOIA request, CII seeks SEC staff’s analysis and related materials pertaining to Table 2 of “Amendments to Exemptions from the Proxy Rules for Proxy Voting Advice (“Proposed Rule”).² Specifically, our FOIA request sought “any and all documents, spreadsheets and other material produced by SEC staff, as well as any lists of proxy advisory firm 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 proxy advisory firm errors suitable for inclusion in the “Economic Analysis” section of the Proposed Rule.”

¹ Letter to CII, dated Jan. 22, 2020, available at https://www.cii.org/files/issues_and_advocacy/correspondence/2020/1-22-20%20Response%20to%20appeal.pdf. DERA Staff Memorandum, dated January 16, 2020, available at <https://www.sec.gov/comments/s7-22-19/s72219-6660914-203861.pdf>. CII’s FOIA request, No. 20-00336-FOIA, dated November 14, 2019, available at [https://www.cii.org/files/issues_and_advocacy/correspondence/2019/20191114%20CII%20FOIA%20request%20to%20SEC\(1\).pdf](https://www.cii.org/files/issues_and_advocacy/correspondence/2019/20191114%20CII%20FOIA%20request%20to%20SEC(1).pdf).

² 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, available at <https://www.federalregister.gov/documents/2019/12/04/2019-24475/amendments-to-exemptions-from-the-proxy-rules-for-proxy-voting-advice>.

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The DERA Staff Memo stops short of this request. It provides a description of DERA's methodology in creating Table 2, a list of registrants involved and a list of amended proxy statement filings analyzed. Missing from the DERA Staff Memo is the analysis itself—how each allegation was ultimately categorized by DERA into one of five DERA-defined groups. We presume DERA produced Table 2 only after generating some form of written or electronic documentation of how each registrant allegation was categorized by DERA staff.

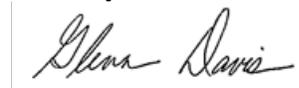
Background

Allegations of errors in shareholder meeting reports delivered to investor clients by proxy advisory firms represent a major prong of the SEC Commission's basis for the Proposed Rule, a sweeping set of regulatory burdens including a system to guarantee that registrants, who are the subjects of proxy advisory firms' reports, can access and add content to time-sensitive proxy advisory firms' reports before they become available to proxy advisory firms' clients.

On November 14, 2019, CII submitted a FOIA request—the first in its 35-year history of investor protection—for SEC staff analysis related to the creation of the Proposed Rule's Table 2, which summarizes registrant allegations of proxy advisory firm errors and other concerns using five SEC staff-defined categories. The request asked for expedited processing due to an urgent need to inform the public on a time sensitive matter. On December 31, 2019, having not received a response after 30 business days, CII appealed to the SEC Office of the General Counsel, seeking dispute resolution services from an SEC FOIA Public Liaison.³ The appeal reiterated the need for expedited service, noting the Proposed Rule's February 3, 2020 comment period deadline.⁴ On January 13, 2020, CII received a letter denying CII's request for expedited processing. On January 16, 2020, the Division of Economic Research and Analysis publicly released the DERA Staff Memo. On January 22, 2020, the SEC Office of FOIA Services communicated in a letter to CII that the DERA Staff Memo has been identified as being responsive to CII's FOIA request.

I am available at glenn@cii.org or 202-261-7097.

Sincerely,



Glenn Davis
Director of Research

CC: Jeffery Oval, FOIA Branch Manager, Office of FOIA Services

³ CII appeal to the SEC Office of the General Counsel, dated Dec. 31 2019, available at https://www.cii.org/files/issues_and_advocacy/correspondence/2019/20191231%20CII%20Appeal%20for%20Dispute%20Resolution.pdf.