

Via E-Mail

December 20, 2018

Brent J. Fields
Secretary
Securities and Exchange Commission
100 F Street NE
Washington, DC 20549-1090

Re: File Number S7-25-18

Dear Mr. Secretary:

I am writing in response to the Securities and Exchange Commission's (SEC or Commission) invitation to comment on its "list of rules to be reviewed pursuant to Section 610 of the Regulatory Flexibility Act."¹

The Council of Institutional Investors (CII) is a nonprofit, nonpartisan association of 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 exceeding \$4 trillion. Our member funds include major long-term shareowners with a duty to protect the retirement savings of millions of workers and their families. Our associate members include a range of asset managers with more than \$25 trillion in assets under management.²

We offer comments on the following two rules scheduled for review by the Commission:

1. Internet Availability of Proxy Materials³

We believe the Commission could consider modifying its 2007 rule on "Internet Availability of Proxy Materials (2007 Rule)"⁴ In particular, the SEC could consider whether shareholders should have an "opt-in" to receive proxy materials electronically⁵, rather than the current rule

¹ List of Rules To Be Reviewed Pursuant to the Regulatory Flexibility Act, Securities Act Release No. 10,576, Exchange Act Release No. 84,640, Investment Adviser Act Release No. 5,067, Investment Company Act Release No. 33,298, 83 Fed. Reg. 60,791 (Nov. 27, 2018), <https://www.gpo.gov/fdsys/pkg/FR-2018-11-27/pdf/2018-25861.pdf>.

² For more information about the Council of Institutional Investors ("CII"), including its board and members, please visit CII's website at <http://www.cii.org>.

³ 83 Fed. Reg. at 60,793.

⁴ Internet Availability of Proxy Materials, Exchange Act Release No. 55,146, Investment Company Act Release No. 27,671 (final rule Jan. 21, 2007), <https://www.sec.gov/rules/final/2007/34-55146.pdf>

⁵ See, e.g., Proxy Process and Rules: Examining Current Practices and Potential Changes: Hearing before the S. Comm. on Banking, Housing & Urban Affairs, 115th Cong. (Dec. 6, 2018) (Statement of Michael Garland, Assistant

permitting companies, without shareholder consent, to “furnish proxy materials to shareholders by posting them on an Internet Web site and providing shareholders with notice of the availability of the proxy materials.”⁶

In our 2006 comment letter in response to the proposing release,⁷ we raised concerns that the proposed change might result in a “drop-off in the number shareowners voting” (2006 Letter).⁸ Unfortunately, our concern appears to have been validated by the data on voting trends.

Those trends reveal that since the 2007 Rule was adopted, retail voting participation has declined from 31.9% to 28.5%.⁹ The decline appears, at least in part, to be driven by companies choosing under the 2007 Rule to eliminate paper mailings of proxy materials as a cost savings measure.¹⁰ More specifically, the data reveals that retail shareowners are almost twice as likely to vote when they receive full paper proxy materials relative to e-delivery or notice and access mailings.¹¹

We acknowledge that modifying the 2007 Rule to provide for an opt-in to the receipt of electronic proxy materials, as we indicated in the 2006 Letter,¹² may not be a panacea for the stagnation in retail voting. To the extent the Commission is concerned on the level of retail voting, it also could consider exploring whether the reduction in retail voting might be reversed by other potential reforms, including any steps that may be required to facilitate voting on mobile devices, investor education campaigns, encouraging enhancements to brokers’ online platforms, and other uses of technology.¹³ However, it is important to prioritize keeping an even playing

Comptroller, for Corp. Governance and Responsible Inv., In the Office of the N.Y.C. Comptroller Scott Stringer at 12) (“the electronic delivery of proxy materials should be opt-in, not opt-out”), <https://www.banking.senate.gov/imo/media/doc/Garland%20Testimony%202012-6-18.pdf>.

⁶ *Id.* at 1.

⁷ Internet Availability of Proxy Materials, Exchange Act Release No. 52,926, Investment Company Act Release No. 27,182 (proposed rule Dec. 8, 2005), <https://www.sec.gov/rules/proposed/34-52926.pdf>.

⁸ Letter from Ann Yerger, Executive Director, Council of Institutional Investors to Nancy Morris, Secretary, U.S. Securities and Exchange Commission 1 (Feb. 8, 2006) (on file with CII).

⁹ Broadridge, Analysis of Distribution and Voting Trends Fiscal Year Ending June 30, 2017, at 2 (2018), <https://www.broadridge.com/assets/pdf/broadridge-10-year-distribution-and-voting-analysis.pdf>.

¹⁰ *See, e.g.*, Statement of Michael Garland at 12 (“The recent decline in retail voter participation is directly correlated to companies choosing to eliminate paper mailings of proxy materials as a cost savings measure.”).

¹¹ *See* Analysis of Distribution and Voting Trends, Fiscal Year Ending June 30, 2017, at 4; *see also* Statement of Michael Garland at 12 (“Retail shareowners are twice as likely to vote when they receive paper proxy materials relative to e-delivery or notice and access mailings, illustrating that technology-based solutions can have unintended consequences.”).

¹² Letter from Ann Yerger at 1 (proposing and “opt-in voluntary system”).

¹³ Letter from Jeff Mahoney, General Counsel, Council of Institutional Investors to The Honorable Michael Crapo, Chairman, Committee on Banking, Housing, and Urban Affairs 9 (Dec. 5, 2018), https://www.cii.org/files/issues_and_advocacy/correspondence/2018/December%202018%20Letter%20to%20Senate%20Banking.pdf; *see, e.g.*, Nicky Morris, Broadridge Believes Blockchain, SEC Will Enable Greater Retail Investor Engagement, Ledger Insights, Nov. 22, 2018 (referencing comments of Rich Daly, CEO of Broadridge Financial indicating that the use of a “blockchain settlement system” will result in “greater engagement by retail investors”), https://www.google.com/search?q=retail+proxy+voting&rlz=1C1GCEU_enUS820US820&source=lnms&tbn=NEWS&sa=X&ved=0ahUKEwinkLCUjqrAhUinOAKHSXmDioQ_AUIDigB&biw=1284&bih=446; *see generally*, Letter from Kenneth A. Bertsch, Executive Director, Council of Institutional Investors to Brent J. Fields, Secretary, Securities and Exchange Commission 5 (Nov. 8, 2018) (explaining why the Securities and Exchange Commission should prioritize “exploration of distributed ledger technology based-voting”), <https://www.sec.gov/comments/4-725/4725-4630831-176413.pdf>.

field for voting. As we recently cautioned in a letter to the United States Senate Committee on Banking, Housing, and Urban Affairs, we would generally oppose any modification to SEC rules or guidance that would require that:

*[S]hareowners must choose among always voting with management, always voting against management, or always voting in accordance with a third party. We continue to believe that a robust system of . . . voting should be nimble enough to accommodate the nuances of a shareowner's true preferences, allow for the revocation of advance instructions, and involve periodic reaffirmation of those instructions.*¹⁴

All this said, we believe there are larger concerns on the proxy voting system. We were encouraged by discussion on reform of proxy infrastructure at the SEC's November 15, 2018, proxy voting roundtable, and by subsequent comments by SEC Chairman Jay Clayton. CII expects to submit a follow-up letter in January on next steps for consideration of broad reform that could be enabled by distributed ledger technology. If the SEC decides to review the 2007 Rule, it may make sense to do so in the context of a larger review of proxy voting mechanics.

2. Interactive Data to Improve Financial Reporting¹⁵

While we continue to believe that financial reports formatted in eXtensible Business Reporting Language (XBRL) should be subject to some level of assurance,¹⁶ we generally support the Commission's 2009 rule on "Interactive Data to Improve Financial Reporting" (2009 Rule).¹⁷ Moreover, we would oppose any Commission rulemaking that would exempt small entities from the 2009 Rule requirements.¹⁸

¹⁴ Letter from Jeff Mahoney at 9 (emphasis added).

¹⁵ 83 Fed. Reg. at 60,799-800.

¹⁶ See Letter from Jeffrey P. Mahoney, General Counsel, Council of Institutional Investors to Office of the Secretary, PCAOB 9 (Sept. 6, 2018) ("We believe financials formatted in Inline XBRL should have some level of assurance to increase investor confidence in the quality of information"), [https://www.cii.org/files/July%2019%202018%20SEC%20Strategic%20Plan%20final%20\(003\).pdf](https://www.cii.org/files/July%2019%202018%20SEC%20Strategic%20Plan%20final%20(003).pdf); see also Letter from Audrey Kuznetsov, Research Analyst, Council of Institutional Investors to Florence E. Harmon, Acting Secretary, Securities and Exchange Commission 2 (July 31, 2008) ("The language in the proposal fails to offer investors and other users of XBRL data with much comfort that the level of assurance provided by the validation software and the application of technology is equivalent to the level of assurance currently provided by the independent external audit and the CEO and CFO certification required for the traditional financial reports."), <https://www.sec.gov/comments/s7-11-08/s71108-41.pdf>.

¹⁷ Interactive Data to Improve Financial Reporting, Securities Act Release No. 9,002, Exchange Act Release No. 59,324, Trust Indenture Act Release No. 2,461, Investment Company Act Release No. 28,609 (final rule Jan. 30, 2009), <https://www.sec.gov/rules/final/2009/33-9002.pdf>.

¹⁸ See, e.g., Letter from Jeffrey P. Mahoney, General Counsel, Council of Institutional Investors to The Honorable Jeb Hensarling, Chairman, Committee on Financial Services, United States House of Representatives et al. 3 (June 6, 2018) (explaining the basis for CII opposition to proposed legislation that "would require the Commission to amend its regulations to exempt certain issuers from the requirements to format their SEC filings using machine readable XBRL"), <https://www.cii.org/files/June%206%202018%20Letter%20to%20Committee%20on%20Financial%20Services.pdf>.

We believe that SEC requirements to report in XBRL can be particularly beneficial to small entities.¹⁹ The automation afforded through XBRL allows small entities to be considered as investment opportunities at the same time as large companies. This is a significant step forward in leveling the playing field for small entities when seeking funding in the capital markets.

We believe the benefit to small entities became even more pronounced when the Commission adopted amendments requiring the use of Inline XBRL earlier this year.²⁰ As we explained in our comment letter in response to the Commission's draft 2018-2022 Strategic Plan:

[W]e view the Commission's recent adoption of amendments requiring the use of the Inline . . . XBRL format as an important development. Inline XBRL "allows filers to embed XBRL data directly into the document filed on EDGAR." This improvement in the functionality of EDGAR makes disclosure documents more valuable and cost-effective for a broad range of users, *including market analysts and data vendors that conduct research on smaller companies.*²¹

Some observers have expressed concern that investment in smaller public companies may be hobbled to some extent by limited sell-side analysis of smaller firms. XBRL data facilitates investors analyzing and taking positions in smaller companies, and in the context of limited sell-side coverage, XBRL arguably is especially important with reference to smaller companies, including increasing liquidity, reducing cost of capital and facilitating capital allocation.

Thank you for consideration of our views. If we can answer any questions or provide additional information with respect to this letter, please do not hesitate to contact me at 202.822.0800 or jeff@cii.org.

Sincerely,



Jeffrey P. Mahoney
General Counsel

¹⁹ See, e.g., XBRL Costs for Small Companies Have Declined 45%, According to AICPA Study, CPA Practice Advisor, Aug. 21, 2018 (indicating that the benefits of using XBRL for small entities exceed the costs because companies can reach more investors and provide analysts with easy access to more detailed financial disclosure information), <https://www.cpapracticeadvisor.com/news/12426056/xbrl-costs-for-small-companies-have-declined-45-according-to-aicpa-study>.

²⁰ Inline XBRL Filing of Tagged Data, Securities Act Release No. 10,514, Exchange Act Release No. 83,551, Investment Company Act Release No. 33,139 (final rule June 28, 2018), <https://www.sec.gov/rules/final/2009/33-9002.pdf>.

²¹ Letter from Jeffrey P. Mahoney, General Counsel, Council of Institutional Investors to Nicole Puccio, Branch Chief, Securities and Exchange Commission 2-3 (July 19, 2008) (emphasis added & footnotes omitted), [https://www.cii.org/files/July%2019%202018%20SEC%20Strategic%20Plan%20final%20\(003\).pdf](https://www.cii.org/files/July%2019%202018%20SEC%20Strategic%20Plan%20final%20(003).pdf).