January 30, 2020

<u>Via email to rule-comments@sec.gov</u>

Vanessa A. Countryman, Secretary
U.S. Securities and Exchange Commission
100 F Street N.E.
Washington D.C. 20549

Re: Comment File No. S7-22-19 -- Amendments to Exemptions from the Proxy Rules for Proxy Voting Advice, and File No. S7-23-19 -- Procedural Requirements and Resubmission Thresholds under Exchange Act Rule 14a-8

Dear Ms. Countryman:

We respectfully submit this letter to provide our reasons for dissenting from the recommendation of the Investor Advisory Committee regarding the recent Commission guidance and proposals on proxy advisers and shareholder proposals.

In 2003-2004, the SEC made a mistake. In its adopting release for Investment Advisers Act Rule 206(4)-6 and in a pair of no-action letters, it effectively insulated investment advisers from liability for conflicts of interest if they adopt a policy of following the voting recommendations of an independent third party, regardless of any conflicts of interest that third party might have.

These actions, as then-Commissioner Daniel Gallagher put it in 2013, encourage "more of a compliance mindset than a fiduciary mindset" when it comes to proxy voting. Put more bluntly, the SEC inadvertently created a demand for proxy advisors that does not depend on the merit of their recommendations or the quality of their analysis. Relying on any independent recommendation, whatever its basis or substance, confers conflict-of-interest liability protection.

Once the purchase of a service becomes in effect a regulatory mandate, experience teaches that the market for that service becomes or remains highly concentrated. The providers, meanwhile, expand into higher-margin consulting services that compromise the very independence that formed the basis for their special regulatory position.

The dominance of the two major proxy advisors makes it difficult for the market to discipline their recommendations. Both proxy advisors generally make similar recommendations. The likelihood that any given shareholder's vote will determine the outcome is small. The incentive is therefore to follow proxy advisor recommendations and obtain the accompanying

liability protection, even if the voter is not persuaded that the recommended policy will enhance shareholder value.

Fixing regulatory missteps is hard. In the present instance, investment advisers and proxy advisory firms have organized their activities in reliance on the existing regulatory framework. Revising that framework could raise costs for the former and reduce the profitability of the latter. It is also possible that new regulations will make entry into the proxy advisory business more costly and help sustain the oligopoly in the short term.

There is accordingly room to debate the best path from where we are to where we should be—a system in which the value of proxy voting advice is determined solely by its tendency to increase shareholder value. At a minimum, the SEC should address conflicts of interest in proxy advisory firms. The comment process may reveal less costly alternatives to some of the other proposals.

We disagree, however, that the SEC has not adequately specified the problems to be solved or that solving those problems should take a back seat to the proxy plumbing issues that were the subject of a prior IAC recommendation. No amount of private ordering can undo the effects of existing regulations that encourage investment advisors to rely on proxy advisory firms for reasons apart from the quality of their advice.

Paul G. Mahoney

J.W. Verret