

December 6, 2018

The Honorable Mike Crapo
Chairman
U.S. Senate Committee on Banking,
Housing, and Urban Affairs
Washington, DC 20510

The Honorable Sherrod Brown
Ranking Member
U.S. Senate Committee on Banking,
Housing, and Urban Affairs
Washington, DC 20510

Re: Committee Hearing Regarding Proxy Process and Rules

Dear Chairman Crapo, Ranking Member Brown, and Members of the Committee:

The Investment Adviser Association¹ (IAA) is submitting this letter in connection with today's Committee Hearing regarding the proxy process and rules (**Hearing**). SEC Chairman Jay Clayton recently reaffirmed the fundamental importance to the public capital markets of an accurate, transparent, and efficient proxy process.² The consensus view among issuers, investors, intermediaries, and academics is that the proxy infrastructure is broken and in need of urgent attention. We hope that the Committee will use the Hearing to examine how best to tackle the weaknesses in the infrastructure of the proxy system. The recent SEC Staff Roundtable on the Proxy Process confirmed the importance of addressing the problems with the proxy infrastructure, including issues such as end-to-end vote confirmation and verification. Our members want assurances that their proxy votes are in fact counted and counted accurately. Investors and those voting on behalf of investors should be able to rely on the integrity of the proxy process. We strongly believe that it will be a missed opportunity if the Committee instead focuses on issues such as the politically heated, but far less systemically important, subject of proxy advisory firms.

To the extent that the Hearing nevertheless focuses on proxy advisory firms, we are disappointed that no representatives from such firms or from SEC-registered investment advisers which use their services are listed as witnesses for the Hearing. IAA members routinely vote proxies on behalf of and in the best interest of their clients and necessarily rely on the various services that proxy advisory firms provide, particularly voting mechanics. Indeed, investment advisers would face extreme difficulty if they were unable to use these services, especially those

¹ The IAA is a not-for-profit association dedicated to advancing the interests of investment adviser firms registered with the Securities and Exchange Commission (SEC). The IAA's more than 650 member firms manage more than \$25 trillion in assets for a wide variety of individual and institutional clients, including pension plans, trusts, mutual funds, private funds, endowments, foundations, and corporations. For more information, please visit our website: www.investmentadviser.org.

² See Statement Announcing SEC Staff Roundtable on the Proxy Process, *available at* <https://www.sec.gov/news/public-statement/statement-announcing-sec-staff-roundtable-proxy-process>. In that statement, Chairman Clayton said "Shareholder engagement is a hallmark of our public capital markets, and the proxy process is a fundamental component of that engagement."

that relate to the administration of proxy voting. We strongly object to efforts to restrict advisers' use of these firms and to regulation that would make these firms' services more expensive for advisers and their clients and increase barriers to entry. We also believe that the SEC's limited resources would be better used to address proxy infrastructure issues rather than focus on the regulation of proxy advisory firms.

I. Advisers Use Proxy Advisory Firms for a Range of Administrative and Research Services

Investment advisers use proxy advisory firms for a number of significant administrative services, such as voting of proxies, data aggregation, and workflow management. These administrative services are critically important for advisers that manage hundreds, if not thousands, of proxy votes each year.

Certain investment advisers provide their own proxy voting guidelines to proxy advisory firms, and those firms customize their recommendations to the advisers' guidelines and execute the proxy votes. Other advisers receive research and recommendations from proxy advisory firms. Advisers may elect to receive information based on standard benchmark policies or more specific policies, such as socially responsible investing. For these advisers, the research and recommendations provided by the proxy advisory firms are inputs they use to make their own independent decisions on how to vote proxies consistently with their own policies and client guidelines. For proxy issues that are routine and not contested, it should not be surprising that most shareholders vote consistently with one another, and with recommendations of proxy advisory firms. On contested issues, especially shareholder proposals, evidence shows that there is diversity among shareholder votes.³ Thus, it is not accurate to characterize investment advisers as "robo voting" in lockstep with the recommendations of proxy advisory firms.

II. Advisers Understand Their Obligation to Vote Proxies in the Best Interest of their Clients

Investment advisers are currently subject to substantial regulation in their voting of proxies on behalf of their clients. The Investment Advisers Act of 1940, which regulates investment advisers, establishes a federal fiduciary standard for investment advisers, which requires an adviser to act in its client's best interest with respect to all aspects of the advisory relationship. In 2003, the SEC adopted a proxy voting rule that is specifically "designed to ensure that advisers vote proxies in the best interest of their clients and provide clients with information about how their proxies are voted."⁴ Advisers are also required to implement and at least annually review the adequacy of comprehensive policies and procedures, including for

³ See *Funds and Proxy Voting: Funds Vote Thoughtfully and Independently*, Investment Company Institute (Nov. 7, 2018), available at https://www.ici.org/viewpoints/view_18_proxy_voting_results.

⁴ *Proxy Voting by Investment Advisers*, SEC Release No. IA-2106 (Jan. 31, 2003), 68 FR 6585 at 6585 (Feb. 7, 2003), available at <https://www.gpo.gov/fdsys/pkg/FR-2003-02-07/pdf/03-2952.pdf>.

proxy voting.⁵ The SEC staff also published a legal bulletin in 2014 that provides guidance to investment advisers regarding their responsibilities “in voting client proxies and retaining proxy advisory firms.”⁶ Advisers are thus subject to and take seriously the robust regulatory framework designed to ensure that they vote proxies in the best interest of their clients.

III. Additional Regulation of Proxy Advisory Firms that Would Increase the Cost of their Services for Advisers and their Clients, or Increase Barriers to Entry, is Not Appropriate

We strongly object to regulations that would increase the costs of proxy advisory firm services for advisers and their clients or raise barriers to entry. We do not believe such regulations are necessary and believe that any marginal benefit would be heavily outweighed by the adverse effect on access to these services for our members.

Some commentators point to conflicts of interest as grounds for regulation of proxy advisory firms. However, proxy advisory firms currently disclose their conflicts of interest transparently in a manner sufficient for investment advisers to review and evaluate them. Accordingly, this issue does not present a basis for a wholesale new and burdensome regulatory regime that would raise costs substantially and impose barriers to entry.

There have also been suggestions that proxy advisory firms should be required to distribute their reports to issuers to allow them to review and comment on the reports prior to their distribution to investment advisers and other users of these reports. While we certainly agree that factual accuracy of the reports is very important, we have two significant concerns with the solutions proposed. First, users of proxy advisory firm services do not necessarily want issuers interfering with the independence of the recommendations and analyses and influencing the content of the reports. Second, this approach is not likely to work in practice. In most cases, there will not be sufficient time to distribute reports to issuers, receive feedback from them, and then distribute reports to advisers and other users of the proxy advisory firm reports in time for them to vote. Indeed, the extremely tight timeline for the entire proxy voting process points to the need to address the process holistically as the first and highest priority.

As we discuss above, we believe that the issues regarding proxy advisory firms do not compare to the challenges related to proxy infrastructure. The SEC and the Committee should instead focus on how to improve and modernize that system to ensure effective shareholder engagement.

⁵ Advisers Act Rule 206(4)-7(b).

⁶ See *SEC Staff Legal Bulletin No. 20, Proxy Voting: Proxy Voting Responsibilities of Investment Advisers and Availability of Exemptions from the Proxy Rules for Proxy Advisory Firms* (June 30, 2014), available at <https://www.sec.gov/interps/legal/cfsfb20.htm>.

U.S. Senate Committee on Banking,
Housing, and Urban Affairs
December 6, 2018
Page 4 of 4

* * *

The IAA appreciates your consideration of our views. Please do not hesitate to contact us if we can be of further assistance.

Respectfully Submitted,

A handwritten signature in cursive script that reads "Karen L. Barr".

Karen L. Barr
President and CEO

cc: The Honorable Jay Clayton, SEC Chairman
The Honorable Kara M. Stein, SEC Commissioner
The Honorable Robert J. Jackson Jr., SEC Commissioner
The Honorable Hester M. Peirce, SEC Commissioner
The Honorable Elad L. Roisman, SEC Commissioner
Dalia Blass, Director, SEC Division of Investment Management