



NATIONAL INVESTOR RELATIONS INSTITUTE

April 30, 2019

Ms. Vanessa Countryman  
Acting Secretary  
U.S. Securities and Exchange Commission  
100 F Street, NE  
Washington, D.C. 20549

Subject: Roundtable on the Proxy Voting Process, SEC File No. 4-725

Dear Ms. Countryman:

I am writing on behalf of the National Investor Relations Institute (NIRI) to offer additional comments on proxy advisory firms.<sup>1</sup> Founded in 1969, NIRI is the professional association of corporate officers and investor relations consultants responsible for communication among corporate management, shareholders, securities analysts, and other financial community constituents. Our more than 3,300 members represent over 1,600 publicly held companies and \$9 trillion in stock market capitalization.

Our members play a vital role in communicating with institutional and retail investors on proxy voting matters. This role is especially critical when a company needs to engage with shareholders during a proxy contest or a “vote no” campaign, or after receiving a negative proxy advisor recommendation on an equity incentive plan or during a Say-on-Pay vote.

We are pleased to join with 318 issuers<sup>2</sup> around the country and a broad coalition of corporate organizations, including the Shareholder Communications Coalition, the Society for Corporate Governance, the U.S. Chamber of Commerce, Nasdaq, the Business Roundtable, the National

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<sup>1</sup> NIRI also provided comments prior to the roundtable. Please see NIRI, Letter re SEC Staff Roundtable on the Proxy Process, November 13, 2018, available at: <https://www.sec.gov/comments/4-725/4725-4640463-176452.pdf>. In previous letters to the SEC, NIRI has raised concerns about the proxy advisors’ automated voting platforms and the selective disclosure of report excerpts by proxy advisor clients during proxy fights and other contested situations. See NIRI, Letter to Chair Jay Clayton re Proxy Advisory Firms – Shareholder Voting Practices, August 3, 2017, available at <https://www.niri.org/NIRI/media/NIRI-Resources/NIRI-SEC-Letter-PA-Firms-August-2017.pdf>; and NIRI, Letter to Chair Mary Jo White re SEC Proxy Advisory Services Roundtable, File No. 4-670, December 17, 2015, available at: <https://www.sec.gov/comments/4-670/4670-17.pdf>

<sup>2</sup> See Nasdaq and Issuers Letter to Chair Jay Clayton, February 4, 2019, available at: <https://www.sec.gov/comments/4-725/4725-4872519-177389.pdf>

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Association of Manufacturers, the Biotechnology Innovation Organization, the Center On Executive Compensation, and Nareit, in urging the Commission to exercise greater oversight over proxy advisors.

While other corporate advocates have provided various recommendations for improving the proxy research process, we focus this letter on the urgent need for the Commission to mandate a draft review process so that public companies can verify the accuracy of proxy advisor reports before investors start voting. During an August 2018 survey of NIRI's investor relations practitioner members, more than 95 percent of respondents agreed that the Commission should require proxy advisors to provide a draft review opportunity to all issuers.<sup>3</sup>

Given the more than 25,000 ballot items at Russell 3000 companies that proxy advisors opine on each year, the condensed annual meeting schedule during the spring U.S. proxy season, the limited number of full-time research analysts at the two major proxy firms, and the complexity of executive pay practices, it is inevitable that proxy reports will have some factual errors or misunderstandings over corporate disclosures.<sup>4</sup> Unfortunately, most U.S. companies don't have an opportunity to review draft reports for accuracy before investors start voting. Institutional Shareholder Services (ISS) provides draft reports only to S&P 500 firms that request drafts, while Glass Lewis & Co. does not allow any companies to see draft reports before publication.<sup>5</sup> Glass Lewis also charges companies a fee to obtain their final reports.

The need for greater SEC oversight has increased in recent years as ISS and Glass Lewis institutional clients have started using automated proxy voting systems whereby votes are cast based on preset voting policies without investment managers having to take any further action.<sup>6</sup>

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<sup>3</sup> That NIRI member survey was conducted over a three-week period in August 2018 and had 199 responses.

<sup>4</sup> To meet its heavy workload during past proxy seasons, ISS has hired dozens of temporary workers (some of whom are recent college graduates) and outsourced research work to employees in the Philippines.

<sup>5</sup> Glass Lewis does allow companies to sign up for its Issuer Data Report service, which gives issuers access to a data-only version of its draft reports. However, this offering is not an adequate substitute for a draft review process as these reports do not include any voting analysis or recommendations. For the 2019 proxy season, Glass Lewis has introduced a new pilot program, known as the Report Feedback Statement Service, whereby companies can pay for the privilege to provide comments on final proxy reports *after* publication. While NIRI is encouraged that Glass Lewis is taking steps to allow for more corporate feedback, our members strongly believe that issuers should not be charged a fee for the opportunity to review full report drafts for accuracy. A review process after publication is not as helpful to issuers and investors, as many investment managers vote shortly after receiving published proxy reports.

<sup>6</sup> NIRI first raised concerns about these automated voting platforms in a 2017 letter to the Commission and asked the SEC to examine whether these voting practices were consistent with the requirements of Staff Legal Bulletin 20. See NIRI Letter to Chairman Jay Clayton re Proxy Advisory Firms – Shareholder Voting Practices, August 3, 2017, available at <https://www.niri.org/NIRI/media/NIRI-Resources/NIRI-SEC-Letter-PA-Firms-August-2017.pdf>

The use of these automated systems appears to be growing among small and mid-size institutions. According to the American Council for Capital Formation, public companies reported that almost 20 percent of their shares were voted within three days of the issuance of an adverse proxy advisor recommendation during the 2016 and 2017 proxy seasons, “suggesting that many asset managers follow proxy advisory firms without taking the time to conduct their own due diligence.”<sup>7</sup>

In June 2014, the Commission published Staff Legal Bulletin 20, which placed a greater onus on institutional investment managers to oversee the work of the proxy advisors they hire. While that staff guidance was a helpful first step, the reality is that few small and mid-size institutions have the internal staff resources to doublecheck the work of proxy firms during the height of the spring proxy season. That staff guidance also has not significantly changed how proxy advisors interact with issuers. In NIRI’s August 2018 member survey of investor relations practitioners, only 4 percent of respondents said they had received improved treatment (e.g., fewer errors in proxy reports, more responsiveness to concerns) from the proxy advisors. In addition, 66 percent of respondents said they had noticed factual errors or misunderstandings in their company’s (or client’s) proxy reports since June 2014.

We believe that a draft review safeguard for all issuers would be the most efficient way to reduce the number of factual errors or misunderstandings in proxy advisor reports. In some cases, there may not be a factual dispute, but the company and the proxy advisor may disagree over how a voting policy is applied, so we believe that final proxy reports should include a hyperlink to a company rebuttal (if the company chooses to provide one) so that investors can be fully informed before they vote.

We are encouraged that some institutional investors, including BlackRock, agree that a draft review mechanism would be beneficial. As BlackRock observed in its November 16, 2018 comment letter, “[a]ccurate information is critical to decision making.” BlackRock urged the Commission to consider “technology solutions such as a digital portal for the review of draft company reports” and allow companies to provide rebuttals.<sup>8</sup>

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<sup>7</sup> See American Council for Capital Formation (ACCF), Letter re SEC Staff Roundtable on the Proxy Process, November 14, 2018, available at: <https://www.sec.gov/comments/4-725/4725-4649199-176473.pdf>. This letter cited a November 2018 ACCF report, “The Realities of Robo-Voting,” which found that 175 institutions with more than \$5 trillion in assets under management voted with ISS more than 95 percent of the time between July 2012 and 2018. This report can be found at: [http://accfcorgov.org/wp-content/uploads/ACCF-RoboVoting-Report\\_11\\_8\\_FINAL.pdf](http://accfcorgov.org/wp-content/uploads/ACCF-RoboVoting-Report_11_8_FINAL.pdf)

<sup>8</sup> In its comment letter, BlackRock made these recommendations: “We recommend that the SEC pursue solutions that ensure accuracy, completeness and a fair and consistent process with regard to the proxy advisory firm’s preparation of its company reports. Given the volume of proxy votes and the compressed time frame of U.S. public company annual general meetings, we recommend exploring technology solutions such as a digital portal for the review of draft company reports. We imagine a scenario where a portal would provide companies at least two

A draft review opportunity would not amount to a “corporate veto” or interfere with proxy advisors’ relationships with their clients, as some commenters have argued. In France, the national securities regulator, AMF (Autorité des marchés financiers), heard similar objections to draft reviews, but recommended in 2011 that proxy firms provide a draft review process for all issuers.<sup>9</sup>

To ensure that investors receive the most reliable proxy research, NIRI endorses the recommendations by the Shareholder Communications Coalition that the Commission add new conditions to the current exemption from the proxy solicitation rules that is used by the proxy advisory firms.<sup>10</sup> In particular, we strongly support the following conditions that relate to report accuracy:

- 1) The Commission should require proxy advisory firms to provide each public company (that requests such a review) with an advance copy—at least five business days before issuance—of any report that includes a proxy voting recommendation about such company. This advance disclosure would permit the company to review and comment on: (a) the factual accuracy of statements made in the report, and (b) the methodologies and assumptions used to develop any recommendations in the report.
- 2) Proxy advisory firms should be required to promptly correct any factual or other error in a report that is identified by a public company. The firms should disclose when comments have been received by a public company on the front page of a report about that company, with a hyperlink provided for investors to access such comments. This process would ensure that investors don’t vote based on inaccurate information or a flawed assumption by the proxy advisor.

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business days to correct factual errors prior to the recommendation being issued to clients of the proxy advisory firm. The same portal could also be used to enable companies to submit a ‘rebuttal’ that could be included in the final report.” See BlackRock, Letter re SEC Staff Roundtable on the Proxy Process; November 16, 2018, available at: <https://www.sec.gov/comments/4-725/4725-4656351-176506.pdf>

<sup>9</sup> ISS, which provides draft reviews to French companies that annually request such an opportunity, has touted the benefits of this safeguard. As the proxy advisor explains on its website, “ISS believes that this review process helps improving the accuracy and quality of its analyses, an outcome that is in the *best interests of both the institutional investors for whom the analyses are prepared, as well as for the issuers that are the subject of these reports*” (emphasis added). See Institutional Shareholder Services, French Market Engagement Disclosure, available at: <https://www.issgovernance.com/policy-gateway/french-market-engagement-disclosure/>

<sup>10</sup> For more on these recommendations, please see Shareholder Communications Coalition, Letter to Commissioner Elad L. Roisman, April 8, 2019, available at: <https://www.sec.gov/comments/4-725/4725-5406665-184492.pdf>

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We believe that a draft review process would help the proxy advisory firms meet the Commission's goal of providing high-quality, company-specific research for investors and ensure that proxy votes are not cast based on unverified information or misunderstandings of corporate disclosures.

Please feel free to contact us at NIRI if you need additional information or are interested in discussing these issues further. Thank you for your consideration of our views on this matter.

Sincerely,

A handwritten signature in cursive script that reads "Gary LaBranche".

Gary A. LaBranche, FASAE, CAE  
President and CEO  
National Investor Relations Institute

cc: The Honorable Jay Clayton  
The Honorable Elad L. Roisman  
The Honorable Robert J. Jackson, Jr.  
The Honorable Hester M. Peirce  
William Hinman, Director, Division of Corporation Finance  
Dalia Blass, Director, Division of Investment Management  
Brett Redfearn, Director, Division of Trading and Markets