February 3, 2020

Submitted via electronic filing: rule-comments@sec.gov

Vanessa A. Countryman, Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: File Number: S7-22-19

Dear Ms. Countryman:

The Ohio Public Employees Retirement System (OPERS or System) appreciates the opportunity to submit comments on the Securities and Exchange Commission's (SEC or Commission) proposed rule, entitled "*Amendments to Exemptions from the Proxy Rules for Proxy Voting Advice*," which was published in the Federal Register on December 4, 2019. OPERS is concerned that the Commission's proposal will adversely impact the objectivity and independence, cost-effectiveness, and timeliness of the research and recommendations we receive from our proxy advisory firm (Proxy Advisor). As such, OPERS is respectfully requesting that the SEC revisit and revise its proposal in an effort to address these concerns.

Introduction

OPERS is the largest public retirement system in Ohio, with more than one million active, inactive, and retired members. Currently, almost one out of every 11 Ohioans has some connection to our System. For many of these individuals, OPERS provides the only retirement income they will ever receive. We are trustees of their retirement security, and as they depend on us, we also depend on their continued trust and support.

In order to provide secure retirement benefits for our members, OPERS invests approximately $100 billion in capital markets around the world, including holdings in more than 9,300 public companies. Returns on these investments fund approximately two-thirds of our annual benefit payments. These payments not only sustain our members throughout their retired lives, but also the cities, towns, and villages in which they live and spend.

With so many people relying on the benefits we provide, we view our duty to act in the best interests of our members as sacrosanct. That duty permeates every aspect of our business, including the prudent investments we make with our members' retirement contributions. As a result, our focus is on maximizing the value of our investment portfolio so that we can maintain a sustainable funding source for our benefit payments well into the future.

Continually meeting this goal means that we cannot afford to be a passive investor. We learned long ago that direct and respectful interactions with public companies can help us to establish dialogues with boards of directors and management, cast informed proxy votes, and provide us with opportunities to offer our thoughts and concerns regarding the maximization of shareholder value. In

our experience, positive shareholder engagement is an integral part of maximizing the value of our investments.

However, truly effective shareholder engagement requires an expenditure of resources that OPERS, as a public entity, cannot afford on its own. OPERS must cast informed votes on as many as 10,000 proxies in any given year in order to fully realize the potential of its investment portfolio, but it cannot allocate the level of resources needed to accomplish this internally. The work involved in individually voting thousands of proxies within a three- to four-month period is considerable. To complete this task on our own would require numerous seasonal staff with the skills and proficiencies to translate and vote proxy materials originating from dozens of countries and across various jurisdictions. The resources necessary to hire such a staff – even temporarily – would be well outside the means of a public entity like OPERS.

Like many other institutional investors, OPERS has chosen to address this problem by engaging the services of a proxy advisory firm. Since 2004, OPERS has benefitted greatly from the research reports, recommendations, and voting platform provided by its proxy advisor. In this time, our proxy advisor has become an important component of our shareholder outreach and engagement efforts. Their specialization and resources have allowed us to fulfill our governance obligations, as well as our fiduciary duty to our members, in a more informed, productive, and efficient manner.

As befits a responsible and conscientious investor, the OPERS Board of Trustees has deliberated on and approved a comprehensive set of proxy voting guidelines covering many of the issues that can arise in a proxy contest.[1] When our proxy advisor makes a voting recommendation, it does so according to these guidelines – there is no opportunity for the proxy advisor's discretion to enter into the voting process. As a result, OPERS maintains complete discretion and control over its proxy votes, though in most cases they are functionally being cast by our proxy advisor. Moreover, OPERS staff conduct monthly audits of our proxy advisor to ensure on-going compliance with our policies and guidelines.

It is unfortunate then, that lingering, and often unfounded, criticisms regarding proxy advisory firms' place in the proxy process have been repeated long enough and loudly enough to garner the attention of the SEC. Based on the analysis provided in the Commission's proposal, we know that issuers, either on their own or through their advocacy organizations, have expressed concerns that proxy advisors have too much influence over the voting decisions of their clients, and that they fail to fully disclose conflicts of interest and release reports filled with errors.[2]

In past letters to Congress and the SEC, OPERS has sought to provide a clearer picture of the role that our proxy advisor plays in assisting our engagement and outreach efforts. However, after reading the language of the SEC's proposal, we are left to guess whether our past comments, along with those

[1] OPERS Corporate Governance Policy & Proxy Voting Guidelines (October 2019), https://www.opers.org/pdf/governance/Corporate-Governance-Policy-and-Proxy-Voting-Guidelines.pdf.

[2] Securities and Exchange Commission Proposed Rule, File No. S7-22-19: "*Amendments to Exemptions from the Proxy Rules for Proxy Voting Advice*," at 26 (noting concerns about, "(i) the adequacy of disclosure of any actual or potential conflicts of interest … ; (ii) the accuracy and material completeness of the information underlying the [proxy voting] advice; and (iii) the inability of proxy voting advice businesses' clients to receive information and views from the registrant") and 29 (see note 78 citing a letter from the Chamber of Commerce, "the largest institutional investors, pensions, and hedge funds vote based on ISS and Glass Lewis recommendations"), (Dec. 4, 2019) ("SEC Proposed Rule").

of other institutional investors, had any moderating impact on the Commission's decision-making process.

As a participant in the Commission's recent Roundtable on the Proxy Process, we were heartened when our fellow panelists were asked whether they felt proxy advisors should be further regulated and their silence even caught the SEC staff member moderating the panel by surprise.[3] That is why it is so difficult to make sense of many of the changes put forward for our consideration in the Commission's proposal.

Though the SEC has apparently considered this issue for several years, we are left to wonder why institutional investors – the entities that most often rely on the services of proxy advisory firms – were not adequately surveyed or studied to determine whether and to what extent their engagement and outreach efforts would be disrupted as a result of the changes proposed by the SEC.[4] If we had experienced the lack of transparency and errors described in the proposal in our own interactions with our proxy advisor, the changes might not seem as jarring. As it stands however, we are left to wonder why our real-world experiences do not seem to merit the extensive solutions that have been proposed.

We do agree with Commissioner Roisman that it is not beneficial to allow this long-standing debate to persist.[5] Despite our many attempts to address questions and concerns regarding our relationship with our proxy advisor, it is now abundantly clear that our on-going defense of our interactions with proxy advisory firms and their place is the proxy voting process is getting us nowhere. We view this comment period as an opportunity to improve the situation, and we are taking the Commission at its word that it is interested in recalibrating the current proposal.[6]

In past comments, we have said that we do not believe there is a need for further federal regulation of proxy advisory firms, and we maintain that position.[7] But, rather than let that be our final word on the matter, we have consistently and respectfully requested that *if* the Commission believes it *must* act, that it refrain from making regulatory changes that will (1) erode the confidence we have in the independence and objectivity of the reports and recommendations we purchase from our proxy advisor, (2) increase the cost of said reports and recommendations, and (3) reduce the time we have to review any information we receive from our proxy advisor.[8] In our estimation, the Commission's proposal fails this basic test.

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[3] Transcript of Roundtable on the Proxy Process, at 250 (Nov. 15, 2018), https://www.sec.gov/files/proxy-round-table-transcript-111518.pdf.

[4] Statement of Chairman Jay Clayton on Proposals to Enhance the Accuracy, Transparency and Effectiveness of Our Proxy Voting System, (Nov. 5, 2019), https://www.sec.gov/news/public-statement/statement-clayton-2019-11-05-open-meeting.

[5] Statement of Commissioner Elad Roisman at the Open Meeting: Modernizing SEC Rules Governing Proxy Voting Advice (Nov. 5, 2019), https://www.sec.gov/news/public-statement/statement-roisman-2019-11-05-14a-2b.

[6] *Id*.

[7] OPERS Letter Regarding SEC Regulatory Flexibility Agenda, File No. S7-04-19, at 2 (July 24, 2019), https://www.opers.org/pdf/government/FederalResponses/2019/2019-06-24-OPERS-Comment-Letter-SEC-Regulatory-Flexibility-Agenda.pdf; OPERS Letter To SEC Division of Investment Management, at 3 (May 7, 2019), https://www.opers.org/pdf/government/FederalResponses/2019/2019-05-07-OPERS-Comment-Letter-SEC-Proxy-Advisory-Firms.pdf; OPERS Letter Regarding SEC Roundtable on the Proxy Process, File No. 4-725, at 3 (Dec. 13, 2018), https://www.opers.org/pdf/government/FederalResponses/2018/2018-12-13-OPERS-Comment-Letter-SEC-Round-Table-on-the-Proxy-Process.pdf.

[8] *Id*.

We believe that a more in-depth analysis should have been performed before releasing the current proposal. For example, the proposed changes could have and, indeed should have, been tested to determine their real-world impact with less risk that institutional investors' engagement and outreach efforts would be disrupted. If the Commission's proposal is finalized and adversely impacts our ability to hold issuers accountable for decisions that will reduce the long-term value of our investments, the consequences could be severe.

Institutional investors already have relatively few options to collect the objective, independent, cost-effective, and timely information they need to cast informed proxy votes, prudently manage their investments, and, in the case of OPERS, fulfill their fiduciary duty to their members. If, as a result of the Commission's proposal, we can no longer reliably access this information through our proxy advisor, what alternatives are there? It would be problematic and certainly not ideal to say that we could just vote "no" on each proxy for which we do not have complete or timely information, as that would violate our duty to prudently manage our investments. In the same way, we cannot simply abstain from casting uninformed votes. We also cannot hire sufficient staff to vote all of our proxies internally. It is disappointing to think that we could be confronted with issues such as these at some point in the near future.

Despite all this, we have tried to identify the areas where we believe compromise is possible. A better balance between the needs of investors and the desires of issuers can and should be reached, and we encourage the SEC to work to achieve that balance as it revisits the various changes it has proposed.

OPERS Believes the Commission's Proposal Represents an Unwarranted Intrusion into the Relationship Between Proxy Advisory Firms and Their Clients and Will Adversely Impact the Objectivity and Independence of the Research and Recommendations Provided by Proxy Advisory Firms

Underlying OPERS' business relationship with its proxy advisor is the notion that we must be able to trust the information we are purchasing and using to inform our voting decisions. If there is a conflict of interest, error, omission, or otherwise in the information we receive from our proxy advisor, it is in our best interests to know so that we can factor that information into our decision-making processes. In this regard, we agree with the SEC that shareholders should have access to complete and accurate information from their proxy advisory firms. Where we differ however, is whether and to what degree we already receive the information we need to make informed voting decisions.

In proposing a right for issuers to preview proxy voting advice before that information is disseminated to investors, the Commission seemingly accepts that issuers' perceptions regarding proxy advisory firms (e.g., that they are conflicted, prone to errors, and lacking in transparency) are all true. However, these perspectives are not consistent with our experiences. Allowing for the fact that some issuers may decide it is not worth raising errors, inconsistencies, or otherwise after the fact, we would think it is in their best interests to bring those to our attention as part of their regular shareholder engagement and outreach efforts. Though this information would be useful to us in appraising the performance of our proxy advisor, we rarely receive these types of alerts in our interactions with issuers.

The fact that we have not experienced the level of conflicts, errors, or omissions described in the Commission's proposal is salient. The magnitude of the SEC's decision to provide issuers with a right to preview information that we, as investors, have sought and paid for demands an equally large and pressing problem. The evidence available to us does not support the existence of such a problem.

For example, OPERS has identified only three errors over the past two years (two in 2018, and one in 2019) as a result of our regular audits of the research reports and voting recommendations we receive from our proxy advisor. In each instance, we reported the error and it was addressed in a timely and professional manner. Understanding that we are only one investor, it is difficult to imagine our experience differing substantially from that of other institutional investors.

Further confounding the issue is the fact that the Commission's proposal blurs the line between actual errors (e.g., misstatements, inaccuracies), methodological weaknesses, and other perceived issues, lumping them together in a general category of "disagreements" with proxy voting advice.[9] The problem with this is that the Commission's proposal is largely silent on differentiating between legitimate 'disagreements' and mere differences of opinion regarding how the proxy advisor's analysis should be conducted. If issuers are conflating the two, the SEC should address that and consider whether, for example, proxy advisory firms' insistence on using their own methodologies, rather than those preferred by issuers, merits a change as substantial as allowing issuers to insert themselves in investors' private business relationships with third-party analysts.

The Commission's proposed right to preview proxy voting advice raises more questions than it answers, and casts doubt over the independence and objectivity of the information we receive from our proxy advisor.[10] In essence, these proposals are creating opportunities for *ex parte* communications between issuers and proxy advisory firms. Absent providing investors with every communication between an issuer and a proxy advisory firm that took place between the start of the proposed review period and the date the proxy voting advice was disseminated to clients, there is no way for us to know the extent to which the proxy advisor was encouraged to modify its advice or, in the worst-case scenario, whether it actually did.

This is all the more relevant now that the SEC has determined that proxy voting advice is a 'solicitation' for purposes of Rule 14a-9 liability. Because of this change, we are concerned that differences of opinion regarding preferred methodologies could result in accusations that a proxy advisory firm's own methodology is false or misleading. Moreover, we wonder if a private right of action for Rule 14a-9 liability might be used to threaten or pressure proxy advisory firms to incorporate issuer feedback or accept revisions to their voting advice.

In light of these questions, we are concerned that the Commission's proposal creates opportunities for issuers to meddle in investors' proxy voting decisions and to promote their own desired outcomes, regardless of whether they will actually improve shareholder value. We can certainly comprehend why issuers would want a specific period of time to review proxy voting advice, but their wishes must be considered against our rights, as investors, to increase the value of our investments by seeking out and purchasing research and recommendations from a private third-party analyst, and to do so free from the interference of the companies in which we are invested. The Commission's proposed right to preview proxy voting advice and repeated stern warnings regarding the use of false or misleading methodologies – without defining the boundaries of what that might reasonably include – will cause investors to question the independence and objectivity of the information they purchase from their

[9] *See* SEC Proposed Rule, *supra* note 2, at 45 ("As noted above, a registrant … may have disagreements with the proxy voting advice, whether factual, methodological or otherwise, which if available to investors would help inform their voting decisions, even in instances when the registrant['s] … voting recommendation on the matter is the same as that of the proxy voting advice business.")

[10] *See* SEC Proposed Rule, *supra* note 2, at 107 (noting that the proposed right to preview proxy voting advice "could impact perceptions about the independence and objectivity of the advice.")

proxy advisory firms, thereby making it more difficult to hold companies responsible for decisions made at the expense of long-term shareholder value. As such, we believe the Commission should clarify how it will differentiate between legitimate 'disagreements' – including true methodological weaknesses – and mere differences of opinion regarding perceived errors or preferred methodologies when considering the accuracy of proxy voting advice under Rule 14a-9.

It is worth mentioning, if only in passing, that issuers already have several opportunities to bring their case directly to shareholders. The first is in the language of the proxy itself. If the issuer wishes to highlight areas of controversy or propose its own methodology for shareholder consideration, this would seemingly be the best place to incorporate that information in a manner that is easily understood by both retail and institutional investors. Such explanations would then be included as part of the research reports and voting advice we receive from our proxy advisor. Issuers may also choose to file supplemental proxy materials explaining the results of any interaction they may have sought or had with a proxy advisory firm, though the proposal seemingly dismisses this option as few issuers see the value in these supplemental filings.[11] As a third option, issuers may engage directly with shareholders on important matters related to proxy votes. We encourage these interactions. Beyond the research reports and voting recommendations we receive from our proxy advisor, OPERS also engages with portfolio companies in an effort to address questions and concerns outside of the proxy voting process. In fairness, some companies take advantage of this opportunity to engage with us directly, while others do not. We understand that it would be difficult to engage with each shareholder individually, but targeted interactions – perhaps in response to specific questions or concerns or in an open meeting – would be beneficial to all sides.

However, none of this is to say that the current system cannot be improved upon. Our opposition to the Commission's proposed right to preview proxy voting advice and questions regarding the enforcement of Rule 14a-9 are based, in part, on our perception that they will significantly and disproportionately benefit issuers at the expense of investors. As we have not experienced the conflicts, errors, or omissions described in the Commission's proposal, we do not anticipate significant improvements in the accuracy, completeness, or reliability of the work product we receive from our proxy advisor. Therefore, we are concerned that we will lose more than we gain.

As such, we are respectfully requesting that the Commission consider a more equitable solution. For example, the SEC could create a right to preview proxy voting information, but limit issuers' access to data-only versions of the proxy voting advice. These data-only reports include information collected from publicly available sources and would allow issuers to determine if the information used in the proxy advisory firm's methodologies is correct. Moreover, these reports are currently available upon request and free of charge from OPERS' proxy advisor. Alternatively, the Commission could require that full versions of the proxy voting advice (including recommendations) be provided to issuers at the same time as it is disseminated to clients. In either case, OPERS believes that issuers should be responsible for the additional costs (if any) that arise as a result of providing the information or administering these provisions.

[11] *See* SEC Proposed Rule, *supra* note 2, at 53 ("Although registrants are able, under the existing proxy rules, to file supplemental proxy materials to respond to negative proxy voting recommendations and to alert investors to any disagreements they have identified with a proxy voting advice business's voting advice, the efficacy of these responses may be limited, particularly given the high incidence of voting that takes place very shortly after a proxy voting advice business's voting advice is released to clients and before such supplemental proxy materials can be filed.")

OPERS

OPERS Believes the Commission's Proposal will Unnecessarily and Substantially Increase the Costs We Pay as a Client of a Proxy Advisory Firm

OPERS is concerned that the Commission's proposal, if finalized, would result in clients of proxy advisory firms paying substantially higher costs for little tangible benefit. As noted in the previous section, we have not encountered a large number of errors in the proxy voting advice we receive from our proxy advisor. In the same way, we believe the information we currently receive is sufficiently complete and reliable to enable us to make informed voting decisions on issues affecting the value of our investments. Additionally, we do not rely solely on this information in order to cast informed votes; rather, we use it to supplement our internal analyses and other reference material. As such, we stand to gain little from the Commission's proposal. At the same time, we will be paying a high price – compromised objectivity and independence, increased financial costs, and reduced time to review our proxy voting advice – for regulations that will primarily benefit issuers. As a result, we believe issuers should bear the financial burden of creating and administering the regulatory structure that will provide them with the data they have requested.

We are fortunate that our proxy advisor, Glass Lewis, already has programs in place to (1) provide participating issuers with a data-only version of its proxy voting advice before it is provided to clients, and (2) offer participating issuers an opportunity to provide feedback ('Report Feedback Statement' or RFS) regarding an already-published research report or recommendation. As noted in the previous section, access to the data-only versions of proxy voting advice is free, while issuers pay just $2,000 per meeting in order to participate in the RFS service. However, even with these systems in place, the Commission's comments and analysis suggest that proxy advisory firms may need to expend additional resources in order to comply with its proposed disclosure and review requirements.[12] Based on conversations with our proxy advisor, we fully anticipate that all or part of these costs will be passed on to the client base. As a result, our best hope is that our proxy advisor's current efforts to allow issuers to preview information and provide feedback will at least mitigate those costs.

However, we must also be mindful of the indirect costs of the Commission's proposal. For example, to the extent the changes proposed by the SEC increase the risk that we cannot fulfill our duties to our members, OPERS must prepare contingency plans or otherwise identify how it will continue to prudently manage its investments with reductions in support or resources. This might include alternative methods of voting its shares, including hiring additional staff on a temporary basis. Further, we expect to incur additional legal costs as a result of attempting to address these uncertainties in contract negotiations with our proxy advisor.

Unfortunately, the Commission's proposal is largely silent on whether issuers may be asked to pay for the proxy voting advice they wish to view. To the extent that investors are asked to subsidize the creation and administration of new disclosure and review systems that we believe will disproportionately benefit issuers, there will be a collateral impact on investors' outreach and engagement efforts. With reduced access to independent, objective, timely, and cost-effective voting advice, it will be more difficult to hold companies accountable for decisions made at the expense of long-term shareholder value. Investors' place in the proxy voting process will be diminished as they pay higher costs for less trustworthy information that may be more difficult to access. In contrast, issuers would gain access to information and opportunities to influence investors' voting decisions that

[12] *See* SEC Proposed Rule, *supra* note 2, at 107 ("Alternatively, the proxy voting advice businesses may need to expend greater resources to ensure delivery by the date on which they would have delivered the advice in the absence of the requirement to allow registrants … the opportunity to review and provide feedback on the proxy voting advice.")

they have long sought. Per the Commission's analysis, the only compensation that investors may reasonably expect to receive for these losses is uncertain improvements in the accuracy, completeness, and reliability of the information they receive from their proxy advisory firms.[13]

Issues such as these highlight the fact that the Commission's proposal lacks a meaningful cost-benefit analysis. We simply do not have sufficient data to determine the practical impacts of the various changes put forward by the SEC. We believe the Commission should know and account for the fact that if a component of its proposal (1) requires the creation of a new reporting structure or an expenditure of additional resources, (2) increases the risk that we will be unable to comply with our fiduciary duty to our members, (3) allows issuers to reduce or discontinue their current engagement or outreach efforts, or (4) provides information that we have already paid for to issuers at no additional charge, there will be a cost to investors, either directly or indirectly. We urge the Commission to consider these increased costs as it attempts to recalibrate its proposal. In addition, we respectfully request that the SEC conduct a more thorough cost-benefit analysis, multi-year review, demonstration project, or other investigation to gather data from which reasonable cost estimates can be extrapolated.

Finally, to the extent that the Commission decides to move forward with its current proposal, we believe there needs to be some reconsideration of who should pay for the various reforms it has suggested. Given that issuers have requested and advocated for many of the changes that have been proposed, we believe that they should be required to contribute to this undertaking, at least in an amount that is commensurate with the benefits they are receiving. It would be inequitable not to allow investors, through their proxy advisory firms, to limit their increased costs and recoup some of the expenditures from setting up and administering the new disclosure and reporting systems. As a result, we respectfully request that the SEC clarify that issuers can be charged a reasonable amount to access and maintain the data they wish to see.

OPERS Believes the Commission's Proposal Will Significantly Decrease the Amount of Time That Investors Have to Review the Research and Recommendations They Receive from Their Proxy Advisory Firms

OPERS is concerned that the Commission's proposal to set aside an extraordinary amount of time for issuers to preview and respond to proxy voting advice will significantly reduce the time investors have to consider the research and recommendations they receive from their proxy advisory firms. Unlike its proposed right to preview proxy voting advice, which threatens the objectivity and independence of the information we receive from our proxy advisor, the Commission's proposed review period threatens our ability to vote each and every one of our proxies in a timely manner.

In this regard, we believe the SEC would benefit from additional data explaining the intricate nature of how an institutional investor votes its proxies. On average, OPERS receives research and recommendations from its proxy advisor within approximately 24 calendar days of an annual

[13] *See* SEC Proposed Rule, *supra* note 2 at 44 ("In these circumstances, providing the clients of proxy voting advice businesses with convenient access to the views of the registrant and certain other soliciting persons at the same time they receive the proxy voting advice could improve the overall mix of information available when the clients make their voting decisions." "We believe that establishing a process that allows registrants and other soliciting persons a meaningful opportunity to review proxy voting advice in advance of its publication and provide their corrections or responses would reduce the likelihood of errors, provide more complete information for assessing proxy voting advice businesses' recommendations, and ultimately improve the reliability of the voting advice … .")

meeting.[14] OPERS must then read and evaluate the research and recommendations and determine whether and to what extent it will follow them, conduct any subsequent research, and most importantly, cast our vote. As noted in the Commission's proposal, we can also change our vote at any time prior to the annual meeting in response to additional information or feedback provided by an issuer or if there is a correction to the research or recommendations. Understandably, all of this takes time, especially in a limited resource environment.

Given that we already operate under a truncated timeframe, it will be difficult to sacrifice any part of that time without also sacrificing our ability to perform the necessary due diligence regarding our votes. This outcome will increase the risk of casting uninformed votes or missing them entirely, which is unacceptable. This concern is especially valid during the high-volume months of a proxy season in which OPERS must vote upwards of 3,000 proposals per day.[15]

It is against this backdrop that we must consider the Commission's proposal. We do appreciate the SEC's attempts to incentivize issuers to release their definitive proxy materials earlier, thereby giving themselves, proxy advisory firms, and investors more time to review the materials and draw conclusions. However, we wonder whether the Commission's incentives are sufficient, by themselves, to encourage issuers to release their definitive proxy materials earlier, and whether the Commission has contemplated adding enough time on the front end of the process to make up for the various delays and obligations that will surely occur leading up to the annual meeting.

According to our proxy advisor, there is an average of 39 calendar days between the release of the definitive proxy materials and the annual meeting. Using the 24-calendar day average time period that OPERS has to review and cast its votes, we can guess that it takes approximately 15 calendar days for our proxy advisor to fully digest the issuer's proxy materials, draft its report and use our guidelines to formulate a recommendation.[16]

In its proposal, the Commission acknowledged a study completed by Broadridge Financial Solutions, Inc. that suggested issuers customarily file their definitive proxy materials within 35-40 days of a annual meeting.[17] Based on this range and the information provided by our proxy advisor, there may be an incentive for issuers to release their definitive proxy materials earlier than they currently do (45 or more calendar days in advance of the annual meeting). We do note however, that the Commission's proposed incentive (i.e., a five-business day primary review and feedback period plus an additional two-business day final review period), may cause additional delays given that the proposed review and feedback period is measured in business, rather than calendar days.[18]

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[14] This figure is based upon OPERS' guidelines for U.S companies.

[15] It is important to remember that each proxy ballot can include numerous proposals (e.g., separate votes for each board member), and so the actual number of proxies being voted on any given day may be much lower.

[16] This number is highly dependent on when issuers choose to release their definitive proxy materials.

[17] *See* SEC Proposed Rule, *supra* note 2, at 46, footnote 114, citing Broadridge Financial Solutions, Inc. ("Registrants customarily file their definitive proxy materials 35-40 days before a shareholder meeting."); and Ernst & Young LLP ("… registrants generally mail proxy statements 30 to 50 days before the annual meeting.")

[18] It should be noted that, in the worst-case scenario, the Commission's proposal to calculate the review and feedback period in business days could result in issuers having as many as 12 days (total) to review proxy voting advice and provide feedback, if weekends and holidays are factored into the calculation. We have arrived at this figure by assuming a seven-business day review and feedback period (five business days for primary review plus two business days for final review) begins on a Friday and includes at least one holiday.

OPERS

More concerning though, is the fact that many issuers who currently release their definitive proxy materials at or below the low end of the range (i.e., between 25 and 45 calendar days prior to the shareholder meeting) will still receive three business days (plus an additional two-business day final review period) to review proxy voting advice before it is disseminated to clients.[19]

This means that many issuers will be rewarded with at least five business days in which they can examine proxy voting advice and engage with the relevant proxy advisory firm even if they maintain their current proxy material release dates. Stated another way, if issuers adhere to their customary delivery dates and *change nothing* – which may, in fact, be in their best interest – investors will still have fewer days to review the information they receive from their proxy advisory firms and cast their votes. This is not equitable.

We urge the SEC to consider what will happen if investors cannot adequately address each of the thousands of proxies they receive during any given proxy season. If, as we have repeatedly stated, we must vote each proxy in order to satisfy our fiduciary duty, but we lack the time to accurately determine whether or not the issue at hand will improve shareholder value, how do we choose between the two? We respectfully request that the SEC not put OPERS and other public institutional investors in this difficult position.

Additionally, we have concerns regarding the length of the proposed review and feedback period. As mentioned above, OPERS believes that a five- to seven-business day review period could drastically reduce the time investors have to review the information they receive from their proxy advisory firms. In our opinion, the review and feedback period should not exceed two calendar days, especially in light of the fact that many issuers will qualify for the review and feedback period regardless of whether they take steps to release their definitive proxy materials at an earlier date or not.

If the SEC intends to move forward with a longer review and feedback period, then we respectfully request that it adjusts its timeframe for determining whether an issuer will qualify for that time. In particular, we believe that only those issuers that release their definitive proxy materials at least 50 business days in advance of an annual meeting should have the ability to preview data-only versions of proxy voting materials. This would address the potentially significant reductions in the time investors have to review information from their proxy advisory firms by clarifying that both the determination of whether an issuer will receive a review period and the review period itself will be calculated using business days. Alternatively, the Commission could specify that both periods will be calculated using calendar days.

We also respectfully request that the Commission remove the additional two-business day review period granted to issuers following the delivery of the final notice of voting advice. By the Commission's own explanation, this additional period is intended to allow issuers "the opportunity to determine the extent to which the proxy voting advice has changed" as a result of feedback received from the issuer during the three- to five-business day primary review period.[20] We believe this is gratuitous and inconsistent with the Commission's insistence that proxy advisory firms are under no

[19] *See* SEC Proposed Rule, *supra* note 2, at 46.

[20] *See* SEC Proposed Rule, *supra* note 2, at 48 ("This [two-business day review period] would provide registrants … the opportunity to determine the extent to which the proxy voting advice has changed, including whether the proxy voting advice business made any revisions as a result of feedback from the registrant.")

obligation to accept revisions to their research and recommendations.[21] If there is no requirement to change proxy voting advice in response to issuer concerns, there is no need for a subsequent review period for issuers to determine whether such changes were actually made. This simply adds to the time pressure that the proposed primary review period will create and should be removed in fairness to investors.

Other Considerations

Issuer Statement

OPERS is concerned that the Commission's proposal to require the inclusion of a hyperlinked issuer statement within the proxy voting advice and platform may actually serve to reduce issuers' engagement with shareholders. Ideally, issuers would converse and interact directly with shareholders in an effort to provide context and share how their proposals will increase shareholder value. However, the Commission's proposal could make these types of discussions less likely by reducing issuer engagement to a single static statement.

To be clear, we do not believe the Commission intended this result; however, we do believe it is worth noting that to the extent issuers are given opportunities to lower their costs by reducing or even discontinuing their current engagement and outreach efforts, it will harm investors by depriving them of live, dynamic conversations about issues that may currently be considered outside the proxy voting process. Investors cannot interact with a generic issuer statement hyperlinked to their voting advice and platform, and as is the case currently, there is nothing requiring issuers to respond to investors' questions or concerns other than their own desire to be responsive to their shareholders. As a result, we respectfully request that the SEC clarify its intentions regarding its proposal to require issuer feedback to be hyperlinked to the proxy voting advice and platform and encourage issuers to continue engaging directly with shareholders.

Enhanced Disclosure of Conflicts of Interest

OPERS is concerned that the Commission's proposal to require the creation of an enhanced disclosure system for proxy advisory firms' conflicts of interest could artificially and significantly inflate the number of conflicts reported. Our proxy advisor, Glass Lewis, currently views each contact with an issuer after proxy materials have been published as a conflict of interest. As such, the communications that take place between an issuer and our proxy advisor during the proposed review and feedback period would be viewed as conflicts of interest and reported in the research and recommendations we receive.

The resulting increase in the number of reported conflicts could make it appear that our proxy advisor was underreporting conflicts prior to the promulgation of the Commission's rule, when in reality it would speak more clearly about our proxy advisor's current practice of over- rather than underreporting potential conflicts of interest. To the extent this harms our proxy advisor's reputation or otherwise adds credibility to accusations that they are substantially conflicted, we will pay a cost, either in defending our relationship with our proxy advisor or continuing to address calls for further regulation

[21] *See* SEC Proposed Rule, *supra* note 2, at 51 ("It is important to note that while our proposal would require … that proxy voting advice businesses provide an opportunity registrants and other parties engaged in non-exempt solicitations to review proxy voting advice and suggest revisions before the distribution of the advice, it does not require proxy voting advice businesses to accept any such suggestions.")

of proxy advisory firms. As such, we respectfully request that the SEC clarify that contacts between issuers and proxy advisory firms within the review and feedback period will not be considered conflicts of interest for purposes of the proposed enhanced disclosure system.

Conclusion

We respectfully request that the Commission reconsider its decision to focus its efforts and limited resources on regulating proxy advisory firms. These entities provide a valuable service to investors that wish to fully participate in the governance process and more effectively engage as shareholders. The administrative costs of attempting to recreate or duplicate the services we receive from our proxy advisor would be prohibitive for a public institution like OPERS.

We urge the Commission to see proxy advisory firms for what they are – resources used by investors to efficiently and effectively exercise their ownership rights, including the right to raise objections regarding decisions that will negatively impact the value of their investments.

OPERS must be able to rely on the independence, objectivity, cost-effectiveness, and timeliness of the information it receives from its proxy advisor. Anything less than that will negatively impact our ability to appropriately exercise our rights as shareholders and fulfill our responsibility to the many public employees, retirees, and others who depend on us for their retirement security. For these reasons, OPERS respectfully requests that the SEC revisit and revise the various parts of its proposal that would increase our costs, compress our timelines for reviewing research reports, or diminish the objectivity and independence of the research we receive from our proxy advisor.

If you have questions or comments regarding OPERS' submission, please do not hesitate to contact us.

Sincerely,

Karen Carraher
Executive Director

Patti Brammer
Corporate Governance Officer