



Ohio Public Employees Retirement System

June 1, 2020

The Honorable Elad L. Roisman
Commissioner
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-1090
Attention: Ms. Vanessa Countryman, Secretary

Re: Release No. 34-87457 (Nov. 5, 2019); File No. S7-22-19

Dear Commissioner Roisman:

We appreciated the opportunity to meet with your staff recently regarding the Commission's proposed Rule pertaining to proxy advisory firms ("PAF").¹ As we discussed in our meeting, we wanted to follow up on comments you made regarding the possibility that the Commission might implement an alternative to the pre-review requirements discussed in the proposed Rule.

The Ohio Public Employees Retirement System ("OPERS") will be directly impacted by the Commission's proposed Rule. We identified and discussed several concerns with the Commission's approach in our earlier comment letter, including thoughts on whether the proposed pre-review requirements would negatively impact the objectivity and independence, timeliness, and cost of the proxy voting advice we receive from our PAF.² Given all this, we appreciated that you chose to address the Commission's proposed Rule in your speech at the Council of Institutional Investors Spring Meeting earlier this year.³

We were encouraged that investors' concerns had impacted your thinking on the pre-review periods and dissemination of proxy voting advice to issuers. However, we were also very interested in your comments suggesting that you personally were contemplating specific alternatives to these contentious provisions.⁴

The alternative approaches you discussed in your speech – allowing contemporaneous review of proxy voting advice by both issuers and investors, and requiring a "speed bump" during which PAF clients would not be able to cast prepopulated votes – were intriguing, but, as we mentioned to your staff, we had hoped that they

¹ See "Amendments to Exemptions from the Proxy Rules for Proxy Voting Advice," Release No. 34-87457 (Nov. 5, 2019) ("Proposed Rule" or "Proposal").

² See Letter from Karen Carraher, Executive Director & Patti Brammer, Corporate Governance Officer, Ohio Public Employees Retirement System (February 3, 2020) ("Comment Letter")

³ See Commissioner Elad L. Roisman's Speech at the Council of Institutional Investors Conference (March 10, 2020), available at: <https://www.sec.gov/news/speech/speech-roisman-cii-2020-03-10>. ("CII Speech")

⁴ See *id.*, ("Based on feedback from many commenters who utilize the services of proxy voting advice businesses, I understand that there is concern that these days devoted to issuer pre-review could disrupt current voting practices. Specifically, some commenters have expressed worry that these changes could decrease the time available for their own review of the proxy voting advice. ... I take this feedback seriously, and I am certainly open to considering other ways to accomplish the policy goals of improving the total mix of information available to the marketplace and enhancing fairness and transparency in the voting process.")

would be followed by additional details so that investors could adequately determine how these new approaches would impact their proxy voting and outreach efforts.

In our previous comment letter, we strongly opposed the Commission's proposal to provide issuers with proxy voting advice before it was given to the clients who initiated and paid for it. As part of that discussion, we addressed contemporaneous review, but only as an alternative to the Commission's proposal.⁵ The only point that we would reiterate here is the fact that requiring PAFs to disseminate voting advice to all issuers will likely require process and structural changes on the part of PAFs, the cost of which will be passed on to investors unless the Commission clarifies that issuers may be charged a reasonable amount for access to the information they are seeking.

Regarding these issues, we encourage the Commission to investigate and consider, in lieu of rulemaking, encouraging the broader adoption of a program like Glass Lewis' Report Feedback Service ("RFS"). The RFS represents an existing and available source of data on the contemporaneous release of voting advice to issuers and investors and could serve as a potential model for establishing cost-effective lines of communication on issues pertaining to proxy voting advice.⁶ Additionally, the RFS already achieves many of the Commission's publicly stated goals in pursuing this rulemaking, namely, providing issuers with proxy voting advice at an earlier point in the voting process and an opportunity to share their thoughts and concerns directly with investors via the PAF's voting platform.

The second alternative you discussed – the possibility that the Commission might require a "speed bump" in the proxy voting process to prevent investors from casting prepopulated votes through their PAFs until they acknowledged issuer concerns with the proxy voting advice – could be more problematic.⁷ As we discussed with your staff, the notion of a "speed bump" raises more questions than it answers, and we believe the concept merits further explanation.

The importance of the issue at hand – the method by which investors exercise their ownership rights and seek to maximize the value of their investments – necessitates additional details and interaction so that investors can determine how and the extent to which alternative restrictions or requirements (if any) will impact their proxy voting processes. Because these alternatives were discussed as part of a public address offered in the middle of a rulemaking period, we have little way of knowing whether they reflect only the deliberative process of one Commissioner or a consensus view within the Commission itself. To the extent the Commission is contemplating moving forward with the "speed bump," we would appreciate more information on how such an approach would be implemented, administered, and paid for. Details matter in situations such as these, and we presently lack the details we need to discern whether a "speed bump" could be practicable or whether, like the proposed pre-review periods, it would present numerous and unworkable challenges for investors.

⁵ See Comment Letter, *Supra* Note 2, at 6 ("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.")

⁶ Glass Lewis charges issuers a reasonable amount (up to \$6,000 per meeting, depending on issuer size) to participate in the RFS.

⁷ See CII Speech, *Supra* Note 3 ("The Commission's proposal includes, as an addition or reasonable alternative to the proposed requirements, the concept of introducing a speed bump: a time period during which the proxy voting advice business would have to disable any automatic submission features, in order to be eligible for the relevant exemptions.")

If the Commission has indeed pivoted from its proposed pre-review periods to a “speed bump,” there are a number of issues we hope it is taking into consideration. While we have endeavored to identify and explain some of these below, we note once again that it would be much better for all participants in this process to be able to react to a formal, SEC-endorsed proposal that *fully* details the workings and administration of the “speed bump.”

Foremost among our concerns is the need to maintain the timeliness of the voting advice and research we receive from our PAF. As you acknowledged in your remarks to CII, there was a common concern among investors that the proposed pre-review periods would reduce the time to review proxy voting advice.⁸ We are concerned that a “speed bump” could also introduce additional delays into the voting process. In order to assess this issue, we would need to know whether the Commission intends to require any changes to prepopulated votes during the “speed bump” period. Prepopulated votes are set according to investors’ specific voting principles and guidelines and introduce great efficiencies into the voting process, especially for investors with limited corporate governance resources, like OPERS. If the Commission requires these votes to be changed (e.g., to a manual or abstain vote) in response to an issuer indicating it has concerns with the proxy voting advice, there will be disruptions throughout the voting process as PAFs wait an indeterminate amount of time to receive comments from issuers, compare those with prepopulated responses, and notify their clients of the changes. As we discussed in our previous comment letter, any additional delay can increase the likelihood of missed or miscast votes, or otherwise prevent investors from fully engaging on issues that are important to them or their members.

In the same way, the duration of the “speed bump” should be carefully considered so as to minimize any potential disruption to investors’ voting processes. As with the proposed pre-review periods, a lengthy “speed bump” will negatively impact our ability to cast timely and fully informed proxy votes. It is also currently unclear whether the “speed bump” will begin to run as soon as the issuer receives the proxy voting advice so there is just one brief period during which issuers may review the advice, respond, and restrict investors’ prepopulated votes. Also relevant is whether the “speed bump” will be measured in calendar or business days as a business day calculation can result in a much longer delay than initially suggested if weekends and holidays are taken into account.

We also continue to have significant concerns regarding the potential costs of the Commission’s proposed Rule. As such, we would be remiss if we did not ask once again for the Commission to consider the potentially significant costs to investors of further regulating PAFs. As in our discussion of contemporaneous review above, it is likely that a “speed bump” will require structural changes to PAF voting platforms, the costs of which will be passed on to investors. Therefore, we are again respectfully requesting that the Commission clarify that issuers can be charged a reasonable amount for access to proxy voting advice and the possible use of the PAF’s voting apparatus as a platform for the dissemination of their thoughts and concerns.

⁸ See CII Speech, *Supra* Note 3 (“Based on feedback from many commenters who utilize the services of proxy voting advice businesses, I understand that there is concern that these days devoted to issuer pre-review could disrupt current voting practices. Specifically, some commenters have expressed worry that these changes could decrease the time available for their own review of the proxy voting advice.”)

It is worth noting that many of our concerns, from independence and objectivity to timeliness and cost, would apply equally to any change that erodes the credibility of proxy voting advice, requires PAFs to act as conduits for issuer communications regarding that advice, introduces additional delays into the voting process, or increases investors' costs to vote their proxies.⁹

In summary, OPERS is respectfully requesting additional detail and clarity regarding any on-going development with respect to the proposed Rule so that we can determine the potential impact of any changes on our voting process, as well as whether we, as an investor and fiduciary, can be supportive. We believe it is in the best interest of investors, issuers, and the Commission itself to resubmit the proposed Rule for public comment so that all commenters can respond to an appropriately detailed and supported analysis of what the Commission determines to be the best way forward.

PAFs play an important role within the proxy voting process by allowing investors with limited resources to fully exercise their franchise and make their voices heard regarding maximizing long-term shareholder value. As we have discussed in previous comments to the Commission, we do not believe additional regulation of PAFs is necessary; however, to the extent the Commission feels it must act, we would respectfully request once again that you refrain from taking steps that will materially and negatively impact the independence and objectivity, timeliness, and/or cost of the proxy voting advice we receive from our PAF.

Thank you again for your consideration. Please let us know if you have questions regarding our comments.

Sincerely,



Patti Brammer
Corporate Governance Officer

⁹ In just one example, OPERS continues to have significant concerns regarding the Commission's insistence that proxy voting advice constitutes a "solicitation" under the federal proxy rules, particularly as it relates to Rule 14a-9 liability. As we noted in our previous comment letter, we wonder whether issuers will see the Commission's repeated remarks highlighting the relationship between proxy voting advice and Rule 14a-9 liability as encouragement to explore that legal option if they disagree with a PAF's methodologies or conclusions. If issuers threaten or resort to private rights of action under Rule 14a-9 in order to pressure PAFs to incorporate issuer feedback or accept revisions to their voting advice, the independence and objectivity of the proxy voting advice could be jeopardized and would at least be called into question.