CENTER FOR CAPITAL MARKETS COMPETITIVENESS

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October 5, 2020

Office of Regulations and Interpretations
Employee Benefits Security Administration, Room N-5655
United States Department of Labor
200 Constitution Avenue NW
Washington, DC 20210

Re: Proxy Voting and Shareholder Rights Notice of Proposed Rulemaking (RIN 1210-AB91)

To Whom It May Concern:

The U.S. Chamber of Commerce ("the Chamber") welcomes this opportunity to comment on the Department of Labor's ("DOL") rule proposal regarding the proxy voting responsibilities of fiduciaries under the Employee Retirement Income Security Act ("ERISA;" "the "Proposal").

The Chamber supports the Proposal, which reaffirms that fiduciaries must act solely in the interests of ERISA plan participants and beneficiaries when voting proxies and may not subordinate the interests of participants to non-pecuniary factors. While the DOL's interpretation of this fiduciary obligation has been addressed through subregulatory guidance over the last three decades, the nature of the investments made by ERISA plans and the mechanisms for exercising the voting rights of these investments have changed quite substantially, as have the roles played by third parties such as proxy advisory firms. However, we want to ensure that any final rule does not add undue complexity, administrative burdens or litigation exposure to plan fiduciaries.

The Proposal is also timely given recent actions by the Securities and Exchange Commission (SEC or Commission) to modernize rules governing the U.S. proxy system. In July, the SEC adopted a rulemaking to establish greater transparency for the proxy advisory industry ("Proxy Advisor Rule")[1] and approved Commission-level guidance ("Commission Guidance")[2] clarifying the duties of investment advisers when hiring proxy advisory firms. The Commission also recently adopted rules to reform the shareholder proposal process under Securities Exchange Act Rule 14a-8 to protect shareholders from having to register their opposition to immaterial shareholder proposals year after year.[3] The Proposal rightfully acknowledges the SEC's work on these issues and the serious problems that exist within the proxy advisory industry.

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[1] Exemptions from the Proxy Rules for Proxy Voting Advice, Release No. 34-87457
[2] Supplement to Commission Guidance Regarding Proxy Voting Responsibilities of Investment Advisers, Release No. IA-5547
[3] Procedural Requirements and Resubmission Thresholds under Exchange Act Rule 14a-8, Release No. 34-87458

The Chamber previously wrote to the DOL in September of 2019 regarding the need to address the regulatory framework for proxy voting under ERISA plans. The Proposal should help ERISA fiduciaries navigate the ongoing evolution of the proxy system. The Proposal also establishes a regulatory framework in terms of the due diligence that is expected of fiduciaries when hiring third parties and deciding whether and how to vote on shareholder proposals and other corporate governance matters.

The Chamber's substantive thoughts on the underlying issue and Proposal are included below, and Appendix A to this letter includes some technical recommendations regarding the Proposal.

Background

The Department first issued guidance expressing its views on voting rights and shareholder activities relating to ERISA plan investments with the 1988 "Avon Letter." The Avon Letter stated that the fiduciary duties of loyalty and care encompassed the voting of proxies for companies whose stock was held by ERISA plans. It thus followed that using proxy voting to pursue objectives unrelated to the economic interests of plan participants would be a violation of ERISA.

The views expressed in the Avon Letter were further developed in a series of Interpretive Bulletins (IBs) in 1994, 2008, and 2016. ("IB 94-2," "IB 08-2" and "IB 16- 1") Consistent through all was the basic fiduciary framework that the fiduciary act of managing investments includes the voting of securities and other exercise of the rights related to the shares owned; that this obligation lies with the plan trustee, except to the extent this duty is delegated to a fiduciary investment manager under the terms of the plan or the trustee is subject to the direction of the named fiduciary; where this obligation is delegated, it remains solely with the investment manager who is responsible for prudently exercising these rights; and that an investment policy statement may govern these actions.

While each iteration of DOL IBs reiterated that ERISA does not permit fiduciaries to subordinate the economic interests of participants and beneficiaries to unrelated objectives in voting proxies or exercising other shareholder rights, the primary differences in these guidance documents was the role of cost/benefit analysis by the responsible fiduciary. The Proposal seeks to clarify that a responsible fiduciary should conduct proper diligence that includes deciding not both whether and how to vote on a particular proxy matters.

This clarity is necessary given that the Avon Letter and subsequent IBs have created a perception that ERISA fiduciaries are expected to vote on *every* proxy matter. As the Proposal states, "a misunderstanding that fiduciaries must research and vote all proxies continues to persist, causing some plans to expend their assets unnecessarily on matters not economically relevant to the plan." This problem has only grown since the 1980s as the number of proxy matters investors are asked to consider every year – some of which may involve issues that are immaterial to long-term return – has steadily increased.

For example, shareholder proposals submitted under Rule 14a-8 of the Securities Exchange Act increasingly deal with topics of a social or political nature and may be submitted by entities that have objectives other than maximizing economic return. According to the Manhattan Institute, 45% of all shareholder proposals submitted to Fortune 250 companies during the 2019 proxy season were put forward by "social investing" funds, public policy groups, or religious orders – some of which have goals that may not correlate with shareholder return. Further, three individuals were responsible for 39% of all shareholder proposals, demonstrating that the SEC's shareholder proposal rules have been co-opted by a small subset of activists to advance idiosyncratic agendas.[4]

Other research estimates the costs that proxy contests can impose upon shareholders and demonstrates the need for ERISA fiduciaries to weigh all aspects of a proxy campaign when deciding how to vote. For example, the average costs of a proxy campaign launched by activist investors has been estimated to be nearly $11 million and reduces any return on investment that may result from such a campaign.[5] Other research shows that during 2007-2019, investors reacted positively when companies were granted "no-action" relief from the SEC regarding shareholder proposals, indicating that the costs of dealing with shareholder proposals during proxy season can outweigh benefits to investors.[6]

The Proposal states that "a plan fiduciary must *not* vote any proxy unless the fiduciary prudently determines that the matter being voted upon would have an economic impact on the plan after…taking into account the costs involved." This provision echoes the position of the DOL taken in IB 08-2 and is intended to protect plan participants and beneficiaries from plan fiduciaries using plan assets to research and vote on proxy issues that are immaterial to long-term return. However, we believe that this can be enhanced as discussed in Appendix A.

While the DOL has long held the position that fiduciaries need not vote on every proxy matter, concerns have been raised that the costs associated with determining whether to vote can outweigh the costs of voting itself. To that end, the Proposal's "permitted practices" of voting policies should help avoid scenarios where fiduciaries feel obligated to vote on proxy matters that may not have any economic impact upon a plan. These practices – including adopting policies to vote proxies in line with a corporation's management (subject to any limitation on the plan sponsor's stock) could assist plan fiduciaries in establishing proxy voting policies.

Proxy Advisory Firms

Despite their well-documented deficiencies – including a lack of transparency, conflicts of interest, and a tendency to make errors or analytical flaws when developing voting recommendations – proxy advisory firms continue to hold an enormous amount of influence over public companies. The industry is an oligopoly dominated by two firms—Institutional Shareholder Services (ISS) and Glass Lewis —that make up over 90% of the market, making

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[4] Proxy Monitor 2019: Social Activists More Active Than Ever This Proxy Season (June 11, 2019). Available at https://www.manhattan-institute.org/proxy-monitor-2019-proxy-season-scorecard-activists

[5] Nickolay M. Gantchev: The Costs of Shareholder Activism: Evidence From a Sequential Decision Model. Available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1646471

[6] Matsusaka, Ozbas O, Yi. Can Shareholder Proposals Hurt Shareholders? Evidence from SEC No-Action Letter Decisions. Available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2881408

them the *de facto* standard setter for corporate governance in the United States. Studies have shown that the two firms can effectively “control” up to 38% of the shareholder vote at public companies, as past regulatory actions have permitted institutional investors to automatically follow ISS and Glass Lewis vote recommendations.[7]

Yet neither of these firms is an actual shareowner, has any financial interest in the companies for which they provide vote recommendations, or has a fiduciary responsibility to shareholders. Nevertheless, proxy advisor recommendations have historically impacted the vote on substantial blocks of stock at public companies of every size as the firms provide voting advice to several thousand investor clients managing tens of trillions of dollars in shareholder wealth. The impact of proxy advisor recommendations is magnified by the automatic submission, or “robovoting,” services these firms offer, in which investment managers authorize the proxy advisor to vote their proxies in accordance with the firm’s recommendations without further opportunity to consider issuer feedback or supplemental information. The Commission recognized the problematic nature of automatic submission of votes by proxy advisors in the Guidance.

Over the last decade, problems with the proxy advisory industry have garnered the attention of regulators, Congress, institutional investors, public companies, academics, and others. Proxy advisory firms have been criticized on several issues, including:

- Rampant conflicts of interest that impact the objectivity of voting recommendations made to institutional investors;

- A one-size-fits-all approach to voting recommendations that ignores the unique characteristics and operations of individual companies and industries;

- A lack of willingness to constructively engage with issuers, particularly small and midsize issuers that are disproportionately impacted by proxy advisory firms;

- A lack of transparency throughout the research, methodology and development of voting recommendations;

- Frequent and significant errors in analysis and methodology, as well as a persistent unwillingness to address those errors; and

- Automatic voting procedures that compound mistakes and frustrate meaningful engagement with issuers, as mentioned above.

The Chamber and Nasdaq recently released the results of our sixth annual proxy season survey, which documents the experience of public companies during the 2020 proxy season. Amongst other findings, the survey demonstrated that the responsiveness and transparency of proxy advisory firms continues to decline, with public companies being denied 69% of the time they request to meet with a proxy advisory firm on issues subject to a shareholder vote. The survey

[7] ISS 24.7% Glass Lewis 12.9% Source: Ertimur, Yonca, Ferri, Fabrizio, and Oesch, David Shareholder Votes and Proxy Advisors: Estimates from Say on Pay (February 25, 2013)

also found that only 44% of companies believe proxy advisory firms carefully research and consider all relevant aspects of an issue on which it provides voting advice.

Troublingly, 54% of public companies surveyed reported being approached by a representative of ISS Corporate Solutions during the same year in which the company received a negative vote recommendation from ISS. This highlights one of the main areas of concerns regarding conflicts of interest, as ISS provides corporate governance consulting services to the same companies for which it issues vote recommendations. (The full Chamber/Nasdaq survey and report are attached as an addendum to this letter.)

Another recent report uncovered a number of errors and analytical flaws that proxy advisory firms made when developing vote recommendations during the 2020 proxy season.[8] The report examined supplemental proxy filings by public companies which explained in detail how vote recommendations included outright factual errors or failed to take into account certain data. Had issuers been able to weigh in with proxy advisory firms *prior* to the vote recommendation being issued, investors may have been provided with more accurate information when deciding how to vote on certain proxy matters.

The SEC's Proxy Advisor Rule and Commission Guidance were a major milestone in efforts to reform the proxy advisory system. The Proxy Advisor Rule would condition proxy advisory firms' exemption from certain requirements upon the firms properly disclosing their conflicts of interest and providing public companies with an opportunity to review and comment on draft vote recommendations in order to correct errors. The rule would ultimately ensure that institutional investors receive the most accurate and up to date information from proxy advisors.

The Commission Guidance clarifies the duties of SEC-registered investment advisers when voting proxies, taking into account that investment advisers will likely be provided with additional information in the voting process once the Proxy Advisor Rule takes effect. Importantly, the Commission Guidance addresses situations where investment advisers have "pre-populated" voting instructions with proxy advisor firms and, in addition to receiving voting advice, have hired proxy advisors to execute votes on the investment adviser's behalf. The Commission Guidance cautions investment advisers against automatically voting their shares in line with a proxy advisory firm recommendation without conducting sufficient due diligence and taking into account the total mix of information available, a practice known as "robo-voting."

The Chamber supports the Proposal's provisions related to fiduciary oversight of third parties including proxy advisory firms, which a fiduciary is required to do so with any service provider, including proxy advisory firms. We agree that a fiduciary's due diligence should including "assessing whether [a] proxy advisory firm is able to competently analyze proxy issues, identify and address potential conflicts of interest, and adhere to the plan's proxy voting policy guidelines."

[8] American Council for Capital Formation: Are Proxy Advisors Still a Problem (July 2020). Available at http://accf.org/wp-content/uploads/2020/07/ACCF-ProxyProblemReport-final.pdf

We also support fiduciaries requiring third parties to document the rationale for proxy voting decisions when authority to execute proxy votes has been delegated to an investment manager or proxy advisory firm to the extent a fiduciary would be required to retain documents under ERISA. However, we believe a final rule should also reflect some of the views of the Commission Guidance and expressly prohibit fiduciaries from outsourcing their voting duties to proxy advisory firms. Specifically, we urge DOL to more forcefully address robovoting in its final rule by underscoring the importance of fiduciaries ensuring proxy advisory firms are not executing votes on their behalf in accordance with the firms' recommendations without providing fiduciaries sufficient opportunity to review their voting instructions in light of any supplemental disclosures from issuers. Without the addition of such a safeguard, the critically important threshold DOL clarifies with its rule for determining whether voting on a particular matter is in the interests of plan beneficiaries risks being undermined.

Conclusion

The Chamber commends the DOL for putting forward the Proposal. We look forward to working with the DOL as this initiative moves forward and stand ready to assist in any way that we can.

Sincerely,

Tom Quaadman

Appendix A

We appreciate the work that the DOL has done in this area, and we feel the following suggestions and clarifications would help plan fiduciaries with respect to voting proxies and other shareholder issues.

- Paragraph 29 C.F.R. § 2550.404a-1(e)(1)

This paragraph states that "The fiduciary duty to manage plan assets that are shares of stock includes the management of shareholder rights appurtenant to those shares, such as the right to vote proxies." The DOL should clarify in this paragraph that this duty also includes the decision not to vote proxies by including the following at the end of the sentence: "and the decision not to vote proxies."

- Clause 29 C.F.R. § 2550.404a-1(e)(2)(i)

Under this clause, the DOL states that with respect to whether and how to exercise shareholder rights, fiduciaries must "carry out their duties prudently and solely in the interests of the participants and beneficiaries and for the exclusive purpose of providing benefits to participants and beneficiaries and defraying the reasonable expenses of administering the plan pursuant to ERISA sections 403 and 404."[9] Given that Sections 403 and 404 are two separate section that each carry separate responsibilities, we suggest that each be designated as a separate clause in the final regulation because a fiduciary could breach or fulfill one but not the other.

- Clause 29 C.F.R. § 2550.404a-1(e)(2)(ii)

In this clause, the DOL states that in fulfilling the obligation to act solely in the interest of plan participants and beneficiaries and for defraying reasonable expenses of administering the plan, a fiduciary must consider the factors listed in subparagraphs (A) through (F). The DOL should clarify that these are not exclusive and that there may be times that a fiduciary may need to consider other factors.

- Subparagraph 29 C.F.R. § 2550.404a-1(e)(2)(ii)(B)

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[9] 85 Fed Reg. 55, 219, 55,242 (Sept. 4, 2020)

This subparagraph would require a plan fiduciary to "Consider the likely impact on the investment performance of the plan based on such factors as the size of the plan's holdings in the issuer relative to the total investment assets of the plan, the plan's percentage ownership of the issuer, and the costs involved;" First, the DOL should clarify that these are not the exclusive factors that a fiduciary could considering in deciding whether and how to vote or exercise other shareholder rights. Given that the current investment duty safe harbor includes a facts and circumstances test, we do not believe that the proposed paragraph (e) to the current regulations should be overly prescriptive in what fiduciaries may or may not consider.[10]

Secondly, this subparagraph provides that the fiduciary must determine the "costs involved." We suggest that the DOL provide examples of what those costs would be and how a fiduciary would determine what those costs are without expending plan assets where the fiduciary ultimately determines not to vote because the "costs involved" would be greater than any economic benefit.

- Subparagraph 29 C.F.R. § 2550.404a-1(e)(2)(ii)(E)

This subparagraph would require the plan to maintain records on proxy voting activities and other exercise of shareholder rights, including records that demonstrate the basis for particular proxy votes and exercise of shareholder rights. We believe the plan fiduciaries would benefit from more specificity and/or examples of the types of documents/documentation that the DOL contemplates under the Proposal.

- Clause 29 C.F.R. § 2550.404a-1(e)(3)(iv)

This would require plan fiduciaries to review proxy voting polices that include permitted practices at least once every two years. We believe that it is important for fiduciaries to review proxy voting policies. However, we do not think that the DOL needs to be a specific time for this. Policy review is subject to facts and circumstances, and it should be left to the fiduciary to exercise the fiduciary's discretion on the need for such review.

- Paragraph 29 C.F.R. § 2550.404a-1(g)

This paragraph provides that "This section shall be effective on [Insert 30 days after the date of publication of the final rule.]"[11] It is unclear to what paragraph g applies, namely to the entire section 2550.404a-1 or only to paragraph e. In either case, a 30 day effective date does not provide sufficient time for a major regulations that would require plan fiduciaries to review and revise their current proxy voting policies, service provider contracts, service provider monitoring and overall processes and procedures as well as for service providers to engage and educate their clients and make appropriate customization to contracts and communications. At a minimum,

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[10] See 29 C.F.R. § 2550.404a-1 (b)(1) which provides a safe harbor for a fiduciary who "(i) [h]as given appropriate consideration to **those facts and circumstances** that, given the scope of such fiduciary's investment duties, the fiduciary knows or should know are relevant to the particular investment or investment course of action involved, including the role the investment or investment course of action plays in that portion of the plan's investment portfolio with respect to which the fiduciary has investment duties; and (ii) [h]as acted accordingly". (Emphasis added).

[11] 85 Fed Reg. 55, 219, 55,243 (Sept. 4, 2020)

plans would need at least six to 12 months to comply. As such, we suggest that there instead be a 12 month applicability date, as the date by which plans must comply.

If the Department is committed to the 30 day effective date, as proposed, we recommend that the Department simultaneously issue an enforcement policy statement that it will not take action during the first 12 months following publication of the final rule in the Federal Register to enforce the rule where there is a good faith effort to implement the changes required by the final rule.

PROXY SEASON SURVEY 2020

Center for Capital Markets Competitiveness

Nasdaq

2020
PROXY SEASON SURVEY

Presented by:

The U.S Chamber of Commerce's Center for Capital Markets Competitiveness (CCMC) and Nasdaq have again partnered to conduct our annual proxy season survey. This survey examines the interactions that public companies had with proxy advisory firms during the 2020 proxy season and is intended to inform policymakers and the general public about current practices within the proxy advisory industry.

Proxy advisors play an important role within the corporate governance ecosystem in the U.S. They analyze corporate governance matters at public companies and develop voting recommendations for institutional investors that are tasked with voting proxies in the best interests of Main Street investors. Given the thousands of proxy issues that institutional investors must consider in any given year, a well-functioning proxy advisory system helps ensure that votes are always cast in a manner that enhances the long-term performance of public companies.

However, the proxy advisory system has operated for years with a number of serious flaws. The industry is effectively controlled by two firms—Institutional Shareholder Services (ISS) and Glass Lewis—that make up over 90% of the market, giving them extraordinary influence over corporate governance standards. These two firms also have a history of being prone to making errors when drafting vote recommendations and operate with significant conflicts of interest. These deficiencies have led to bipartisan calls for reform in Congress and a thorough examination of industry practices by the Securities and Exchange Commission (SEC) over the last decade.

In July 2020, the SEC finalized a rulemaking that will make the proxy advisory industry more transparent and enhance the quality of vote recommendations received by institutional investors.[1] The rule codifies the long-standing position of the SEC that proxy advice constitutes a "solicitation" under the federal proxy rules and establishes a mechanism for public companies to review draft vote recommendations in order to correct any errors or analytical flaws. The rule will also result in more robust disclosures regarding proxy advisory firm conflicts of interest. The SEC concurrently issued Commission-level guidance clarifying the duties of institutional investors that hire proxy advisory firms.[2] The guidance affirms that it would be a breach of fiduciary duty for an institutional investor to automatically rely on proxy advisor vote recommendations without performing its own due diligence and conducting sufficient oversight of a proxy advisory firm it has hired.

Additionally, the Department of Labor (DOL) recently proposed a rule regarding the proxy voting duties of fiduciaries under the Employee Retirement Income Security Act (ERISA).[3] The DOL's rule would, among other provisions, require that ERISA fiduciaries take steps to affirm that the proxy advisory firms they hire have the ability to provide objective and informed voting advice and that recommendations are not tainted by conflicts of interest. The proposal would also reiterate that fiduciaries are never allowed to subordinate the economic interests of ERISA plan participants to non-pecuniary factors when voting proxies.

These regulatory actions have been informed by several SEC roundtables, requests for public comment, numerous academic studies, congressional hearings, and other forums stretching back over the last decade that have explored problems with proxy advisory firms along with potential reforms.

1. Exemptions from the Proxy Rules for Proxy Voting Advice (July 22, 2020).
2. Supplement to Commission Guidance Regarding Proxy Voting Responsibilities of Investment Advisers (July 22, 2020). Do you mean Supplement?
3. Fiduciary Duties Regarding Proxy Voting and Shareholder Rights (August 31, 2020).

The CCMC and Nasdaq have long supported changes to the regulatory framework that applies to the proxy advisory industry. In May 2017, Nasdaq made proxy advisory reform a cornerstone of its blueprint to revitalize the capital markets.[4] We believe reforms are necessary to improve the public company model in the U.S. and help stem the drastic decline in public companies that has occurred over the last two decades. Fewer public companies translate to lower economic growth, less job creation, and fewer opportunities for Main Street investors to own the next generation of great American businesses.

This is the sixth year that the CCMC and Nasdaq have conducted the proxy season survey. A record 182 companies participated in this year's survey, which was conducted during the months of July and August. Participants included public companies of all sizes that cut across virtually every sector of the U.S. economy.

4. The Promise of Market Reform Reigniting America's Economic Engine (May 2017). Available at https://www.nasdaq.com/docs/Nasdaq_Blueprint_to_Revitalize_Capital_Markets_April_2018_tcm5044-43175.pdf

2020 PROXY SEASON SURVEY

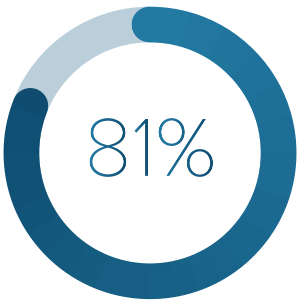
The survey found that companies overwhelmingly support the ability to "review-and-comment" on draft proxy advisory firm recommendations, and the vast majority of companies were aware and supportive of the SEC's rulemaking regarding proxy advisory firms. Over 80% of the companies believe that the review-and-comment mechanism contained in the SEC rulemaking would result in better informed voting decisions by SEC-registered investment advisers.

The survey also found that responsiveness and transparency on behalf of proxy advisory firms continues to decline. Over the last four years, proxy advisory firms have become increasingly likely to deny a request from a public company to meet or discuss a particular vote recommendation.

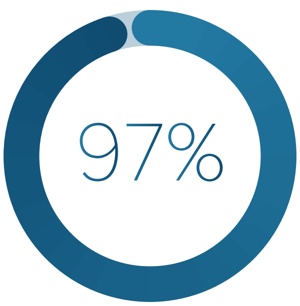
Troublingly, and consistent with the 2019 survey, over half of the companies report that they have been approached by the corporate consulting arm of ISS during the same year in which they received a negative vote recommendation from ISS' proxy advice business. The ISS business model—in which it provides corporate governance consulting to the very issuers for which it issues vote recommendations—is inherently conflicted and creates potential biased voting advice. The recently adopted SEC rule should help public companies and investors better understand how particular vote recommendations may be improperly influenced by ISS business considerations.

SURVEY RESULTS

Public Companies Overwhelmingly Support Aspects of the SEC's Rulemaking

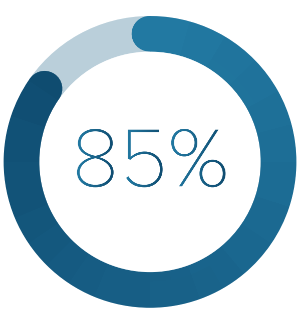


81% of the companies reported that they were aware of the SEC rulemaking related to proxy advisory firms, with 99% of those companies saying they support the rule.

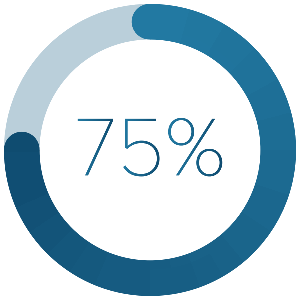


97% of the companies reported that they would avail themselves of the review-and-comment mechanism included in the SEC rule; interestingly, 85% said that such a mechanism would not create any unnecessary delays or confusion in the proxy voting process.

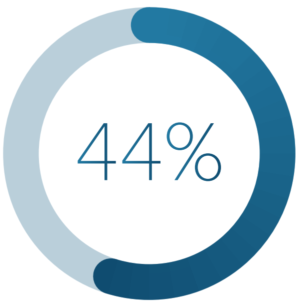
Public Company Engagement With Proxy Advisory Firms: Ability to Communicate With Proxy Advisory Firms Remains a Significant Challenge



85% of the companies surveyed had a proxy advisory firm make a recommendation regarding an issue included in their proxy statement, a level slightly lower than in 2019 (87%) and 2018 (92%).

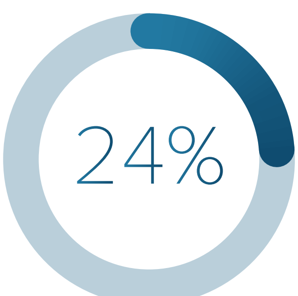


75% of the companies carefully monitor proxy advisory firm recommendations for accuracy or reliance on outdated information, a lower number than in 2019 (80%) and 2018 (83%).

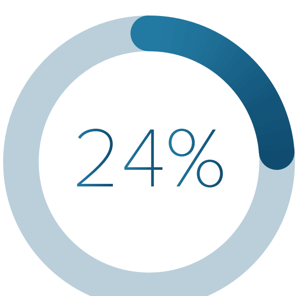


Only **44% of the companies responding believe that proxy advisory firms carefully research and consider all relevant aspects of a particular issue** on which it provides advice, higher than in both 2019 and 2018 (39% both years).

7% of the companies formally requested that proxy advisory firms provide them with a preview of vote recommendations, continuing a declining trend from 2019 (17%), 2018 (21%), and 2017 (30%).

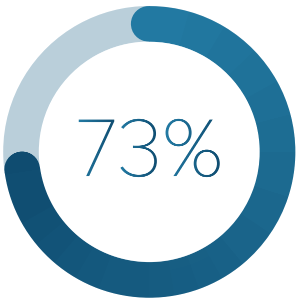


The number of companies asking proxy advisory firms for the opportunity to provide input before a vote recommendation is finalized continues to decline. In 2020, **24% of companies made such a request**, down from 30% in 2019 and 38% in 2018.

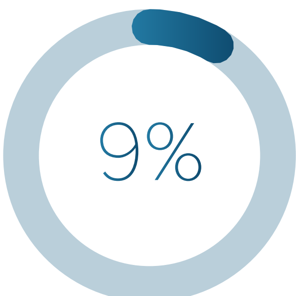


24% of the companies pursued opportunities to meet with proxy advisory firms on issues subject to shareholder votes, up from 21% in 2019 but down from 29% in 2018. For companies that asked for a meeting, that request was denied 69% of the time. This is the fourth year that the denial rate has increased, up from 60% in 2019, 57% in 2018, and 38% in 2017.

Public Company Engagement With Investors and the SEC

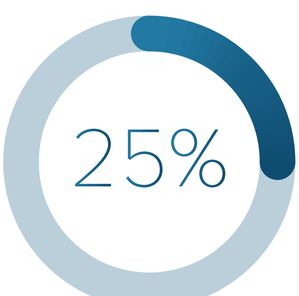


While a majority **(73%) of the companies reported that they have in place a year-round regular communications program with institutional investors,** that number is down from 2019 (82%) and 2018 (78%). Companies that have such a program in place believe it is particularly beneficial for proxy-related matters.



If a company reported that it was not granted adequate opportunities for input on a proposed proxy advisor vote recommendation, **it notified proxy advisory firms and portfolio managers 9% of the time**, a sharp decline from 23% in 2019.

If a company encountered a vote recommendation it believes was based on inaccurate or stale data, **it alerted the proxy advisory firm, institutional investors, and/or the SEC staff 25% of the time**, down from 41% in 2019 and 46% in 2018.

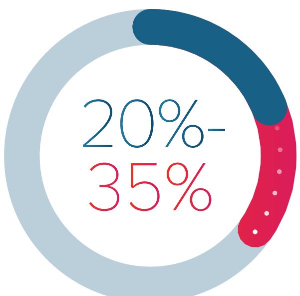


25% of the companies advised proxy advisory firms and their clients if a recommendation did not advance the best economic interests of shareholders, down from 29% in 2019.

Conflicts of Interest

A troubling **54% of the companies reported that they were approached by a representative of ISS Corporate Solutions during the same year in which they received a negative vote recommendation from ISS**. This is similar to last year when 58% of the companies reported they were contacted by ISS Corporate Solutions.

Shares Voted Automatically In Line With Proxy Advisory Firms



For the last three years, this survey has sought to learn whether a significant portion of an issuer's shares are "robo-voted" in line with an ISS or Glass Lewis recommendation within 48 hours of that recommendation being issued. As in 2018 and 2019, several companies reported that anywhere from 20%–35% of their shares are voted automatically with proxy advisory firms once vote recommendations are issued.

PROXY ADVICE BEST PRACTICES

The three constituency groups affected by the recently issued SEC guidance—proxy advisory firms, portfolio managers, and public companies—must focus their attention on five overarching principles:

Fiduciary duty

Fiduciary duties permeate and govern all aspects of the development, dispensation, and receipt of proxy advice. Some investors use proxy advisory reports as one data point among many in an independent process to determine how or when they should vote their shares. Unfortunately, other investors may still outsource their voting to proxy advisory firms without any due diligence.

Shareholder value

Enhancing and promoting shareholder value must be the core consideration in rendering proxy voting advice and in making proxy voting decisions.

Freedom from conflicts

The proper role of proxy advisory firms vis-à-vis proxy voting is to provide accurate and current information to assist those with voting power to further the economic best interests of those who entrust their assets to portfolio managers and are the beneficial shareholders of public companies. If proxy advisory firms exceed that role—for example, by effectively exercising or being granted a measure of discretion over how shares are voted on specific proposals, or by failing to make proper disclosure regarding specific conflicts of interest afflicting a proxy advisory firm in connection with voting recommendations it is making—the proxy advisory firms so employed, and those engaging them, incur serious legal and regulatory consequences. The recently adopted SEC rule will increase information regarding conflicts of interest, while the July 2020 Commission guidance suggests that institutional investors should conduct proper oversight of proxy advisory firms that they hire.

Portfolio manager discretion

Clarity is provided regarding the scope of portfolio managers' obligations to exercise a vote on proxy issues, and the obligations emphasize the broad discretion portfolio managers have—subject to appropriate procedures and safeguards—to refrain from voting on every, or even any, proposal put before shareholders for a vote.

Compliance

In light of the newly adopted SEC rule and Commission guidance, proxy advisory firms and portfolio managers need to again reassess their current practices and procedures and adopt appropriate changes, while public companies should be aware of these actions and how they will impact proxy voting.

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