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Vanessa A. Countryman
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090
By email to rule-comments@sec.gov

RE: File No. S7-22-19

Dear Ms. Countryman:

I am writing regarding the above proposed rule.[1] My comments focus on the economic analysis described in the Commission's Release ("the Economic Analysis").

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As explained below, the Economic Analysis cannot provide a basis for SEC rulemaking in this area. The Economic Analysis fails in its analysis of both the benefits and the costs of the proposed rule and overlooks significant effects and

[1] I act in my individual capacity. My institutional affiliation is noted for identification purposes only.

issues. Below I do not attempt to identify and discuss all the shortcomings of the economic analysis described in the Release, but only to note several significant problems that by themselves indicate the necessity of redoing the economic analysis before proceeding to decision-making. However, I will be happy to assist the Commission or the Staff with identifying all the shortcomings that need to be addressed and carrying out the necessary economic analysis of the subject.

1. The Economic Analysis takes the view that the proposed rule would have an unambiguously positive effect on the accuracy and value to clients of proxy advisor reports. However, in this respect, the Economic Analysis fails to take into account that the overall effect of the proposed amendments would be to make it costlier to proxy advisors to express views and conclusions that would displease an issuer than to express views and conclusions that would please an issuer. (For example, a displeased issuer would be more likely to submit elaborate objections that the proxy advisor would have to review within a short time frame than a pleased issuer.) This effect would incentivize proxy advisors to draft reports that would be more favorable to issuers than otherwise (or than they have been doing thus far).

2. The Economic Analysis takes the view that requiring proxy advisors to have a very detailed discussion of potential conflicts with the issuer reviewed by the advisor would be unambiguously beneficial. In reaching this conclusion, the Economic Analysis fails to engage with the following:

(i) complying with the requirement for such disclosure would also involve substantial costs, which would be passed on to clients;

(ii) the requirement would provide an issuer that is dissatisfied with the proxy advisor's report with more opportunities to challenge text in proxy advisor reports as incomplete or misleading, which would provide further incentives for proxy advisors to tilt their conclusions in favor of issuers; and

(iii) the Commission does not require, and has not considered requiring, that investment managers provide to their beneficial investors detailed disclosures about their relationship with each portfolio company in which they cast votes, even though the reasoning of the Economic Analysis with respect to conflict disclosures by proxy advisors would also apply to such disclosures by investment managers.

3. The Economic Analysis concludes that the proposed amendments would benefit institutional investors by improving the accuracy and transparency of proxy advisor reports. If this were the case, it would be expected that, because institutional investors are informed and sophisticated players, they would have already pressed proxy advisors to follow practices of the kind that the proposed amendments would require – or at least would have expressed widespread support for such regulations in the SEC roundtable and other forums and opportunities. The lack of such widespread support is inconsistent with, or at least in tension with, the view that the proposed amendments would benefit the clients of institutional investors, and the Economic Analysis does not engage with this evidence.

4. In discussing the effects of the proposed amendments on efficiency, competition, and capital formation, the Economic Analysis fails to consider or give adequate weight to the following issues:

(i) Because the proposed amendments would provide proxy advisors with incentives to tilt their reports in a direction more favorable to issuers, they would have an effect that would operate to (a) make proxy advisor reports less accurate, useful and valuable to institutional investors, (b) make the votes of some institutional investors less informed, (c) reduce the effectiveness of shareholder oversight and voting in constraining undesirable behavior and choices by corporate insiders and, in turn, thereby hurt efficiency and capital formation.

(ii) By increasing the costs borne by proxy advisors and at least partly passed on to their clients, the proposed amendments would have an effect that could operate to (a) drive one or more of the current proxy advisors out of business, (b) make it more difficult to enter the proxy advisor market, and (c) lead some institutional investors to have to forgo the benefits of using a proxy advisor – all effects that would be detrimental to the effectiveness of shareholder voting and oversight, as well as adverse to the interests of efficiency, competition, and capital formation.

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For the above reasons, I urge the Commission to have the economic analysis described in its Release redone, and I will be happy to assist the Commission or the Staff in developing the necessary economic analysis. I can be reached at (617) 495-3138 or via electronic mail at bebchuk@law.harvard.edu.

Sincerely,

Lucian Bebchuk

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