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December 23, 2021

Mr. J. Matthew DeLesDernier
Assistant Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549

Re: *Proxy Voting Advice (File Number S7-17-21)*

Dear Mr. DeLesDernier:

The Investment Company Institute (ICI)¹ supports the Securities and Exchange Commission (SEC) rescinding 2020 rule amendments that would require proxy voting advice businesses (PVABs) to make their advice available to companies and alert their clients when companies respond to that advice.²

As institutional investors, registered investment companies (“funds”) vote proxies for their portfolio securities,³ and many fund complexes retain PVABs for administrative and/or research-oriented proxy voting assistance. Funds and investment advisers carry out their proxy voting responsibilities in

¹ The [Investment Company Institute](http://www.ici.org) (ICI) is the leading association representing regulated funds globally, including mutual funds, exchange-traded funds (ETFs), closed-end funds, and unit investment trusts (UITs) in the United States, and similar funds offered to investors in jurisdictions worldwide. ICI seeks to encourage adherence to high ethical standards, promote public understanding, and otherwise advance the interests of funds, their shareholders, directors, and advisers. ICI’s members manage total assets of \$32.7 trillion in the United States, serving more than 100 million US shareholders, and \$9.9 trillion in assets in other jurisdictions. ICI carries out its international work through [ICI Global](http://www.ici.org), with offices in Washington, DC, London, Brussels, and Hong Kong.

² *Proxy Voting Advice*, SEC Release No. 34-93595 (Nov. 17, 2021) (the “proposal”), available at www.sec.gov/rules/proposed/2021/34-93595.pdf. The proposal would modify the proxy advice amendments that the SEC adopted in 2020. See *Exemptions from the Proxy Rules for Proxy Voting Advice*, SEC Release No. 34-89372 (July 22, 2020) (“2020 Proxy Advice Release”), available at www.sec.gov/rules/final/2020/34-89372.pdf.

³ A fund’s board of directors is responsible for voting the proxies relating to the fund’s portfolio securities. The board typically delegates this day-to-day responsibility to the fund’s investment adviser, which the adviser carries out in accordance with the fund’s board-approved proxy voting policies and procedures. For simplicity, we refer to “funds” or “fund complexes” as the entities voting proxies throughout this letter.

accordance with the highly-developed legal requirements to which they are subject.⁴ ICI members do not believe that the 2020 amendments would meaningfully improve the quality of proxy advice—rather, those amendments likely would negatively impact the timeliness and cost of that advice.⁵

We also support rescinding the 2020 proxy voting guidance to investment advisers.⁶ The 2020 guidance requires technical disclosure about voting platforms that is not material to understanding how advisers satisfy their proxy voting responsibilities. The SEC’s 2019 guidance is fully adequate and provides sufficient and appropriate proxy voting guidance to investment advisers.⁷

I. Background

Funds vote proxies for their portfolio securities, and many fund complexes retain PVABs for administrative and/or research-oriented proxy voting assistance.⁸ The SEC adopted the 2020 amendments “so that investors who use proxy voting advice receive more transparent, accurate, and complete information on which to make their voting decisions, without imposing undue costs or delays that could adversely affect the timely provision of proxy voting advice.”⁹

This proposal does *not* fully unwind the 2020 amendments.¹⁰ The proposal frames its changes as

tailored adjustments in response to concerns and developments related to particular aspects of the 2020 Final Rules. The goal of the proposed amendments is to avoid burdens on PVABs that may impede and impair the timeliness and independence of their proxy voting advice and

⁴ See, e.g., Letter from Paul Schott Stevens, President and CEO, ICI, to Ms. Vanessa Countryman, Acting Secretary, SEC, dated March 15, 2019 (“March 2019 ICI Letter”), at 2-8, available at www.sec.gov/comments/4-725/4725-5124158-183336.pdf

⁵ See proposal at n.3 and accompanying text (explaining the legal status of the 2020 amendments).

⁶ *Supplement to Commission Guidance Regarding Proxy Voting Responsibilities of Investment Advisers*, SEC Release No. IA-5547 (July 22, 2020) (“2020 guidance”), available at www.sec.gov/rules/policy/2020/ia-5547.pdf.

⁷ *Commission Guidance Regarding Proxy Voting Responsibilities of Investment Advisers*, SEC Release No. IA-5325 (Aug. 21, 2019) (“2019 guidance”), available at www.sec.gov/rules/interp/2019/ia-5325.pdf.

⁸ For more information on how fund complexes use PVABs, see March 2019 ICI Letter at 8-10 and 13-14; and *Report on Funds’ Use of Proxy Advisory Firms*, Investment Company Institute and Independent Directors Council (January 2015), available at www.ici.org/pdf/pub_15_proxy_advisory_firms.pdf.

⁹ 2020 Proxy Advice Release at 1.

¹⁰ The 2020 amendments: (i) codified the SEC’s interpretation that proxy voting advice generally constitutes a “solicitation” within the meaning of the Securities Exchange Act of 1934; (ii) conditioned the availability of certain existing exemptions from federal proxy rule requirements for PVABs upon compliance with additional disclosure and procedural requirements; and (iii) amended the proxy antifraud rule to clarify when the failure to disclose certain information in proxy voting advice may be considered misleading.

subject them to undue litigation risks and compliance costs, while simultaneously preserving investors' confidence in the integrity of such advice.¹¹

Most notably, the proposal rescinds the condition that PVABs adopt and publicly disclose written policies and procedures reasonably designed to ensure that:

- Companies that are the subject of proxy voting advice have such advice made available to them at or prior to the time when such advice is disseminated to the PVAB's clients; and
- Clients have a mechanism by which they can reasonably be expected to become aware of any written statements regarding the PVAB's proxy voting advice by companies, in a timely manner before the shareholder meeting.¹²

II. ICI Supports Rescission of the Company Review/Client Alert Framework

We support rescinding the company review/client alert framework and related rule provisions. While we support the intent of the 2020 amendments—to promote more accurate, transparent, and complete information on which to make voting decisions—the 2020 amendments are unnecessary to achieve this objective.

ICI has questioned the need for additional regulation of PVABs,¹³ but has been open to regulatory changes that do not:

- Impede funds' ability to receive administrative or research-oriented proxy voting assistance from PVABs;
- Adversely affect the timeliness of PVAB advice, which may be an important input for fund advisers to analyze and consider within an already-compressed proxy voting schedule; or
- Overly complicate communications flows or systems in ways that add costs that fund shareholders likely would bear.¹⁴

ICI was critical of the SEC's 2019 proxy advice proposal,¹⁵ particularly its set of provisions that would grant companies the right to review and comment on proxy advisory firms' draft advice *before* funds

¹¹ Proposal at 9.

¹² We refer to this Rule 14a-2(b)(9)(ii) condition in this letter as the "company review/client alert framework." The proposal also would amend the proxy antifraud rule (Rule 14a-9) by deleting Note (e). We do not comment on that aspect of the proposal.

¹³ See Letter from Karrie McMillan, General Counsel, ICI, to Elizabeth Murphy, Secretary, SEC, dated October 20, 2010, at 14-16, available at www.sec.gov/comments/s7-14-10/s71410-167.pdf.

¹⁴ See March 2019 ICI Letter at 13-14.

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receive it.¹⁶ We expressed concern that the proposed framework would have a substantial adverse impact on the timeliness and cost of PVABs' advice, and thus its overall value to funds and their shareholders.

Although the final 2020 amendments were improved from the original proposal in response to the comments of ICI and others, we support rescinding the company feedback/client alert framework. Funds value proxy advice that is timely, cost-effective, independent, accurate, transparent, and complete. We believe that any improvements from the 2020 amendments with respect to accuracy and transparency of proxy advice would be slight, as indicated by the SEC's own analysis,¹⁷ and likely would be more than offset by negative effects on timeliness and cost. Thus, the amendments' potential benefits do not outweigh their likely costs.

Practice has essentially caught up to the 2020 requirements. The proposal describes the ways in which the principal PVABs notify their clients when companies respond to their proxy voting advice.¹⁸ Our members report that the practices of the two principal PVABs help provide a fuller picture of proxy proposals—including company feedback on the PVABs' advice—and see considerable value in PVABs' client alert frameworks. Companies also generally communicate directly to their shareholders when they object to material aspects of relevant proxy voting advice. We also agree with the SEC's observation that rescission of this regulatory framework "would give PVABs, investors and registrants the flexibility to select mechanisms that best serve the needs of investors and other stakeholders and adapt to evolving market practices." Consequently, we believe the 2020 amendments are unnecessary and could impede continuing innovations and market developments.

We expect PVABs will maintain their client alert services, even if the SEC rescinds the 2020 amendments, due to the developments described in the proposal and this letter. ICI members fully agree with the SEC's assessment that "there are market-based incentives for PVABs to adopt and maintain policies and procedures that provide some of the same benefits as those of the Rule 14a-2(b)(9)(ii) conditions without raising the concerns investors have expressed about those conditions."¹⁹ Further, the SEC's 2019 guidance to investment advisers addresses consideration of "additional

¹⁵ *Amendments to Exemptions from the Proxy Rules for Proxy Voting Advice*, SEC Release No. 34-87457 (Nov. 5, 2019), available at www.sec.gov/rules/proposed/2019/34-87457.pdf.

¹⁶ See Letter from Paul Schott Stevens, President and CEO, ICI, to Ms. Vanessa Countryman, Secretary, SEC, dated February 3, 2020, available at www.sec.gov/comments/s7-22-19/s72219-6743669-207831.pdf.

¹⁷ The SEC's analysis in the 2019 proposal indicated that the number of factual errors reported by companies in their additional proxy materials in 2018 were less than three-tenths of a percent (17/5,862), suggesting little room for improved factual accuracy.

¹⁸ Proposal at 16-17 and 20-21.

¹⁹ Proposal at 22.

information” in connection with advisers’ proxy voting,²⁰ and the 2020 guidance also addresses this subject. PVABs’ client alerts help advisers satisfy this requirement. If, contrary to these market incentives and forces, the PVABs were to scale back their services in ways that significantly depart from the 2020 amendments, nothing precludes the SEC from reevaluating market practices and adopting rule amendments as necessary and appropriate.²¹

III. ICI’s Comments on the 2019 and 2020 Proxy Voting Guidance to Investment Advisers

The SEC provided no opportunity for public comment on its 2019 or 2020 guidance to investment advisers. This guidance would have benefitted from the notice-and-comment process, and we urge the Commission to subject any future guidance related to investment advisers’ proxy voting responsibilities to this process and seek public input. We therefore appreciate that the SEC is soliciting comment on the 2020 guidance. We comment below on both the 2019 and 2020 guidance.

Within the 2019 guidance, we strongly support the guidance provided in response to Question 1. Modeled on SEC staff guidance from 2014,²² the SEC states that “an investment adviser is not required to accept the authority to vote client securities, regardless of whether the client undertakes to vote the proxies itself. If an investment adviser does accept voting authority, it may agree with its client, subject to full and fair disclosure and informed consent, on the scope of voting arrangements, including the types of matters for which it will exercise proxy voting authority.” This is entirely consistent with:

- Rule 206(4)-6 under the Investment Advisers Act, which applies only to those advisers that “exercise voting authority with respect to client securities...”; and
- The SEC’s interpretation regarding the standard of conduct applicable to investment advisers, which states that “fiduciary duty follows the contours of the relationship between the adviser

²⁰ Specifically, it states, “Where the investment adviser utilizes the proxy advisory firm for voting recommendations, it could consider policies and procedures that provide for consideration of additional information that may become available regarding a particular proposal. This additional information may include an issuer’s or a shareholder proponent’s subsequently filed additional definitive proxy materials or other information conveyed by an issuer or shareholder proponent to the investment adviser that would reasonably be expected to affect the investment adviser’s voting determination.” 2019 guidance at 16.

²¹ See proposal at 23 (“To the extent that there are changes in the quality of PVABs’ policies and procedures or new entrants to the PVAB market that do not adopt policies and procedures consistent with best practices, we will reevaluate the state of the PVAB market and consider whether further action should be taken”).

²² *Proxy Voting: Proxy Voting Responsibilities of Investment Advisers and Availability of Exemptions from the Proxy Rules for Proxy Advisory Firms*, Staff Legal Bulletin No. 20 (IM/CF) (June 30, 2014), Question and Answer #2, available at www.sec.gov/investment/slb20-proxy-voting-responsibilities-investment-advisers.

and its client, and the adviser and its client may shape that relationship by agreement, provided that there is full and fair disclosure and informed consent.”²³

Advisers and clients must maintain the latitude to mutually agree upon the parties’ proxy voting responsibilities (if any), and the SEC should not dictate specific features or allocate responsibilities.

Turning to the 2020 guidance,²⁴ the proposal notes that it was prompted, in part, by the company review/client alert framework and asks whether this guidance ought to be rescinded concurrently with the rescission of this rule text. We support the rescission of the 2020 guidance. The 2019 guidance adequately addresses advisers’ consideration of “additional information.”²⁵ Moreover, we do not believe that technical disclosures about voting platforms²⁶ are “material facts relating to the investment advisory relationship”—such disclosure is necessary neither to properly “scope” the adviser/client relationship nor to satisfy an adviser’s duty of loyalty to clients. Accordingly, the 2020 guidance is unnecessary. More generally, we caution the SEC against requiring advisers to provide client disclosure that is not material to understanding how advisers carry out their proxy voting responsibilities.

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²³ *Commission Interpretation Regarding Standard of Conduct for Investment Advisers*, SEC Release No. IA-5248 (June 5, 2019), at 9, available at www.sec.gov/rules/interp/2019/ia-5248.pdf.

²⁴ Generally speaking, the 2020 guidance addresses investment advisers’ (i) use of PVABs’ electronic voting platforms and consideration of additional information that companies may provide about relevant proxy voting advice, and (ii) disclosures about these matters.

²⁵ *See supra*, note 20.

²⁶ Specifically, the guidance states that “an investment adviser that uses automated voting should consider disclosing: (1) the extent of that use and under what circumstances it uses automated voting; and (2) how its policies and procedures address the use of automated voting in cases where it becomes aware before the submission deadline ... that an issuer intends to file or has filed additional soliciting materials with the Commission regarding a matter to be voted upon.” 2020 guidance at 6-7.

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If you have any questions on our comment letter, please feel free to contact Susan Olson at (202) 326-5813 or Matthew Thornton at (202) 371-5406.

Sincerely,

/s/ Susan Olson

/s/ Matthew Thornton

Susan Olson
General Counsel

Matthew Thornton
Associate General Counsel

cc: The Honorable Gary Gensler
The Honorable Hester M. Peirce
The Honorable Elad L. Roisman
The Honorable Allison Herren Lee
The Honorable Caroline Crenshaw