

**SUPPORTING STATEMENT FOR PROPOSED AMENDMENTS
UNDER THE SECURITIES EXCHANGE ACT OF 1934**

This is a submission pursuant to the Paperwork Reduction Act of 1995, 44 U.S.C. §3501, et seq., consisting of this supporting statement and the following attachment:

Proposing Release (Release No. 34-93595)

A. JUSTIFICATION

1. CIRCUMSTANCES MAKING THE COLLECTION OF INFORMATION NECESSARY

On November 17, 2021, the Securities and Exchange Commission (the “Commission”) proposed amendments to its rules governing proxy voting advice to address concerns and developments regarding those rules.

The proposed amendments would (1) rescind two conditions to the availability of each of two exemptions from the proxy rules’ informational and filing requirements on which proxy voting advice businesses (“PVABs”) rely and (2) rescind a note to the proxy rules’ liability provision that provides examples of material misstatements or omissions related to proxy voting advice. Specifically, the proposed amendments would rescind Rules 14a-2(b)(9)(ii), (iii), (iv), (v) and (vi) as well as paragraph (e) of the Note to Rule 14a-9.

The Paperwork Reduction Act (“PRA”) burdens associated with the following collections of information will be affected by the proposed amendments:

“Regulation 14A and Schedule 14A” (OMB Control No. 3235-0059)¹

Regulation 14A² and its related schedules set forth the disclosure and other requirements for proxy statements, as well as the exemptions therefrom, filed by registrants and other soliciting persons to help investors make informed voting decisions.

¹ To the extent that a person or entity incurs a paperwork burden imposed as a result of Regulation 14A, it is encompassed within the collection of information estimates for Regulation 14A. This includes registrants and other soliciting persons preparing, filing, processing and circulating their definitive proxy and information statements and additional soliciting materials, as well as the efforts of third parties such as PVABs whose voting advice falls within the ambit of the federal rules and regulations that govern proxy solicitations. OMB’s current inventory for Regulation 14A, therefore, is an assessment of the paperwork burden associated with such requirements and requests under the regulation, and the Commission’s estimates that follow are an assessment of changes to such inventory expected to result from the proposed amendments, if adopted.

² 17 CFR 240.14a-1 *et seq.*

The proposed amendments to Regulation 14A are expected to decrease disclosure burdens by (1) decrease the number of responses to the existing collection of information for Regulation 14A, as well as (2) decreasing the estimated burden per response. A detailed description of the proposed amendments, including the need for the information and its use, as well as a description of the likely respondents, can be found in Section II of the proposing release, and a discussion of the expected economic effects of the proposed amendments can be found in Section III of the proposing release.

A copy of the proposing release³ is attached.

2. PURPOSE AND USE OF THE INFORMATION COLLECTION

In July 2020, the Commission adopted final rules regarding proxy voting advice provided by PVABs (the “2020 Final Rules”). The 2020 Final Rules:

- amended Rule 14a-1(l) to codify the Commission’s interpretation that proxy voting advice generally constitutes a solicitation subject to the proxy rules;
- adopted Rule 14a-2(b)(9) to add new conditions to each of two provisions (set forth in Rules 14a-2(b)(1) and (3)) that PVABs rely on to be exempted from the proxy rules’ information and filing requirements. Those conditions include:
 - new conflicts of interest disclosure requirements on PVABs; and
 - a requirement that a PVAB adopt and publicly disclose written policies and procedures reasonably designed to ensure that both: (1) companies that are the subject of proxy voting advice have such advice made available to them at or prior to the time such advice is disseminated to the PVAB’s clients; and (2) the PVAB provides its clients with a mechanism by which the clients can reasonably be expected to become aware of any written statements regarding the PVAB’s proxy voting advice made by companies that are the subject of such advice, in a timely manner before the security holder meeting. We refer to these conditions as the “Rule 14a-2(b)(9)(ii) conditions”. The 2020 Final Rules also included safe harbors and exclusions from the Rule 14a-2(b)(9)(ii) conditions set forth in Rules 14a-2(b)(9)(iii), (iv), (v) and (vi); and
- added Note (e) to Rule 14a-9 to include specific examples of material misstatements or omissions related to proxy voting advice (such as the PVAB’s methodology, sources of information and conflicts of interest).

Subsequent to adoption of the 2020 Final Rules, investors and others have expressed concerns regarding the 2020 Final Rules, focusing in particular on the Rule 14a-2(b)(9)(ii) conditions, as well as Rules 14a-2(b)(9)(iii), (iv), (v) and (vi) and Note (e) to

³ *Proxy Voting Advice*, Release No. 34-93595 (Nov. 17, 2021) [86 FR 67383 (Nov. 26, 2021)].

Rule 14a-9. The proposed amendments are intended to address those concerns by rescinding the Rule 14a-2(b)(9)(ii) conditions and Note (e) to Rule 14a-9. Specifically, the purpose of the proposed amendments to Rule 14a-2(b)(9) is to address concerns about the potential adverse effects of the 2020 Final Rules on the independence, cost and timeliness of proxy voting advice, while still achieving many of the intended benefits of the 2020 Final Rules with respect to the quality of the advice provided to clients. In addition, the purpose of the proposed amendment to Rule 14a-9 is to avoid any misperception that the addition of Note (e) to Rule 14a-9 purported to determine or alter the law governing Rule 14a-9's application and scope, including its application to statements of opinion.

3. CONSIDERATION GIVEN TO INFORMATION TECHNOLOGY

The collection of information requirements of the proposed amendments are set forth in the affected rules. All of the affected filings are provided electronically to the Commission using the Commission's Electronic Data Gathering, Analysis and Retrieval ("EDGAR") system.

4. DUPLICATION OF INFORMATION

We believe that the proposed amendments would not duplicate, overlap, or conflict with other federal rules.

5. REDUCING THE BURDEN ON SMALL ENTITIES

If adopted, the proposed amendments would apply to small entities to the same extent as other entities, irrespective of size. Therefore, we expect that the nature of any benefits and costs associated with the proposed amendments would be similar for large and small entities. Because we expect that the proposed amendments, if adopted, would

decrease paperwork burdens, we expect that small entities' burdens would also be reduced as a result of the proposed amendments.

Nonetheless, we did consider alternatives that would accomplish our stated objectives, while minimizing any significant adverse impact on small entities. In connection with the proposed amendments, we considered the following alternatives:

- Establishing different compliance or reporting requirements that take into account the resources available to small entities;
- Exempting small entities from all or part of the requirements;
- Using performance rather than design standards; and
- Clarifying, consolidating, or simplifying compliance and reporting requirements under the rules for small entities.

The purpose of these proposed amendments is to address concerns about the potential adverse effects of the 2020 Final Rules on the independence, cost and timeliness of proxy voting advice, while still achieving many of the intended benefits of the 2020 Final Rules with respect to the quality of the advice provided to PVABs' clients. The proposed amendments would not impose any compliance or reporting requirements; rather, they would remove certain conditions for PVABs of all sizes, including small entities. Our objectives would not be served by establishing different compliance or reporting requirements for small entities, exempting small entities from all or part of the requirements, or clarifying, consolidating or simplifying compliance and reporting requirements for small entities. Similarly, because the proposed amendments do not set forth any standards, our objectives would not be served by establishing performance rather than design standards.

6. CONSEQUENCES OF NOT CONDUCTING COLLECTION

As noted above, we believe that the proposed amendments would reduce the number of responses and paperwork burdens for affected persons.

Nonetheless, the amendments relate to Regulation 14A. This regulation and its associated schedules govern proxy solicitations and set forth the disclosure requirements for proxy and information statements. Less frequent collection would deprive investors of access to information that is important to their voting decisions.

7. SPECIAL CIRCUMSTANCES

There are no special circumstances in connection with these proposed amendments.

8. CONSULTATIONS WITH PERSONS OUTSIDE THE AGENCY

The proposed amendments are intended to address concerns that investors, PVABs and other parties have expressed regarding the 2020 Final Rules. Those concerns, some of which were expressed publically and others of which were discussed in a private meeting with the Chair's office, are summarized, discussed and cited in Section II of the proposing release.⁴ The proposing release solicits public comment on the proposed amendments, including with respect to the paperwork burden estimates set forth in the proposing release.

In addition, the paperwork burden estimates set forth in the proposing release were based on the paperwork burden estimates set forth in the adopting release for the 2020 Final Rules.⁵ The estimates in that adopting release were made after the Commission received public comments on a 2019 proposing release,⁶ including comments that specifically addressed the paperwork burden estimates and analysis in that proposing release.⁷

9. PAYMENT OR GIFT TO RESPONDENTS

No payment or gift to respondents.

10. CONFIDENTIALITY

All documents submitted to the Commission are available to the public.

11. SENSITIVE QUESTIONS

No information of a sensitive nature will be required under the following collection of information in connection with these proposed amendments: Regulation 14A. The information collection collects basic personally identifiable information ("PII") that may include a name and job title. However, the agency has determined that this information collection does not constitute a system of record for purposes of the Privacy Act. Information is not retrieved by a personal identifier. In accordance with Section 208 of the E-Government Act of 2002, the agency has conducted a Privacy

⁴ See notes 23, 24 and 25 and accompanying text of the proposing release for a discussion of the concerns expressed regarding the Rule 14a-2(b)(9)(ii) conditions. See notes 74, 75 and 77 and accompanying text of the proposing release for a discussion of the concerns expressed regarding Note (e) to Rule 14a-9.

⁵ *Exemptions from the Proxy Rules for Proxy Voting Advice*, Release No. 34-89372 (Jul. 22, 2020) [85 FR 55082 (Sept. 3, 2020)] ("2020 Adopting Release").

⁶ *Amendments to Exemptions from the Proxy Rules for Proxy Voting Advice*, Release No. 34-87457 (Nov. 5, 2019) [84 FR 66518 (Dec. 4, 2019)] ("2019 Proposing Release").

⁷ See comment letters on 2019 Proposing Release from Investor Advocates for Social Justice (dated Feb. 3, 2020), Glass Lewis & Co., LLC (dated Feb. 3, 2020), ProxyVote Plus, LLC (dated Jan. 3, 2020), available at <https://www.sec.gov/comments/s7-22-19/s72219.htm>.

Impact Assessment (“PIA”) of the EDGAR system, in connection with this collection of information. The EDGAR PIA, published on, March 22, 2023, is provided as a supplemental document and is also available at <https://www.sec.gov/privacy>.

12. and 13. ESTIMATES OF HOUR AND COST BURDENS

The estimated burden hours and cost burden are made solely for the purposes of the PRA and represent the average burden for all affected respondents. The cost burden is not derived from a comprehensive or even a representative survey of the costs of Commission rules and forms.

Most, if not all, of the effect on paperwork burden as a result of the proposed amendments would come from the rescission of Rules 14a-2(b)(9)(ii), (iii) and (iv) and would be expected to reduce the burden from Rule 14a-2(b)(9). With respect to the proposed amendment to Rule 14a-9, we do not expect the economic impact of this amendment will be significant because it would not change existing law and, therefore, would not change respondents’ legal obligations.⁸ Moreover, any impact arising from this proposed amendment is not expected to materially change the average burden hour estimates associated with Regulation 14A. Thus, we have not made any adjustments to our burden estimates in respect of the proposed amendment to Rule 14a-9.

In adopting Rules 14a-2(b)(9)(ii), (iii) and (iv) as part of the 2020 Final Rules, the Commission estimated an annual total increase of 34,140 hours⁹ in compliance burden to be incurred by PVABs that would be subject to those rules. Accordingly, we expect that

⁸ The proposed amendment to Rule 14a-9 may relieve PVABs of direct costs to the extent Note (e) to that rule prompted some PVABs to provide additional disclosure about the bases for their proxy voting advice. However, we expect any such costs would be minimal because the adoption of that Note did not represent a change to existing law, nor did it broaden the concept of materiality or create a new cause of action. *See* 2020 Adopting Release at n.685. Similarly, we expect that any avoidance of incremental burdens associated with our proposed amendment to Rule 14a-9 would be minimal because our proposed rescission of Note (e) to Rule 14a-9 is not intended to alter that rule’s application to proxy voting advice. *See* Section II.B.2. of the proposing release.

⁹ This represented the annual total burden increase expected to be incurred by PVABs (as an average of the yearly burden predicted over the three-year period following adoption of the 2020 Final Rules) and was intended to be inclusive of all burdens reasonably anticipated to be associated with compliance with the Rule 14a-2(b)(9)(ii) conditions. The Commission is aware of three PVABs in the U.S. (*i.e.*, Glass Lewis, ISS and Egan-Jones) whose activities fall within the scope of proxy voting advice constituting a solicitation under amended Rule 14a-1(l)(1)(iii)(A). We estimated that each of these would have a burden of 11,380 hours per year associated with Rules 14a-2(b)(9)(ii), (iii) and (iv). *See* 2020 Adopting Release at n.700. We recognized that there could be other PVABs, including both smaller firms and firms operating outside the U.S., which may also be subject to those rules. However, we expected such a number to be small. Accordingly, rather than increasing our estimate of the number of affected PVABs beyond the three discussed above, we increased our annual total burden estimate by 500 hours to account for those businesses. However, that 500 hour increase also accounted for the burden imposed by Rule 14a-2(b)(9)(i), which is not affected by the proposed amendments. Because we did not indicate, in the 2020 Adopting Release, what portion of that 500 hour increase would be attributable to the various conditions in Rule 14a-2(b)(9), we do not include that 500 hour increase in this PRA analysis in order to avoid overestimating the amount of burden that PVABs would be relieved of as a result of the proposed amendments.

our proposed rescission of Rules 14a-2(b)(9)(ii), (iii) and (iv) would decrease PVABs’ compliance burdens by the same amount. Further, in the adopting release for the 2020 Final Rules, the Commission estimated an average increase of 50 hours per registrant in connection with the Rule 14a-2(b)(9)(ii) conditions for a total annual increase of 284,500 hours to be incurred by registrants. Accordingly, we expect that our proposed rescission of the Rule 14a-2(b)(9)(ii) conditions would decrease registrants’ compliance burdens by the same amounts.¹⁰

Table 1 summarizes the calculations and assumptions used to derive our estimates of the aggregate decrease in burden for all affected parties corresponding to our proposed rescission of the Rule 14a-2(b)(9)(ii) conditions.

Table 1. Calculation of Aggregate Decrease in Burden Hours Resulting from the Proposed Rescission of the Rule 14a-2(b)(9)(ii) Conditions

	Affected Parties	
	Proxy Voting Advice Businesses (A)	Registrants (B)
Burden Hour Decrease	34,140	284,500
Aggregate Decrease in Burden Hours	[Column Total (A)] + [Column Total (B)] = [318,640]	

We also believe that the proposed amendments would decrease the number of annual responses¹¹ to the existing collection of information for Regulation 14A. In the

¹⁰ Although Rules 14a-2(b)(9)(ii), (iii) and (iv) do not impose any requirements on registrants, registrants of all sizes were expected to incur indirect costs as a result of those rules associated with coordinating with PVABs to receive the proxy voting advice, reviewing the proxy voting advice, and determining whether to prepare and file additional soliciting materials in response to the proxy voting advice, to the extent they determine to engage in this process. See 2020 Adopting Release at Section V.C.1.b. Because the proposed rescission of Rules 14a-2(b)(9)(ii), (iii) and (iv) would relieve PVABs of the obligation to make their proxy voting advice available to registrants, we expect that it would also relieve registrants of the indirect costs associated with coordinating with PVABs to receive the proxy voting advice, reviewing the proxy voting advice, and determining whether to prepare and file additional soliciting materials in response to the proxy voting advice, to the extent they determine to engage in this process.

¹¹ For purposes of the Regulation 14A collection of information, the number of annual responses corresponds to the estimated number of new filings that will be made each year under Regulation 14A, which includes filings such as DEF 14A; DEFA14A; DEFM14A; and DEFC14A. When calculating PRA burden for any particular collection of information, the total number of annual burden hours estimated is divided by the total number of annual responses estimated, which provides the average estimated annual burden per response. The current inventory of approved collections of information is maintained by the Office of Information and Regulatory Affairs (“OIRA”), a division of OMB. The total annual burden hours

adopting release for the 2020 Final Rules, we stated that we do not expect registrants to file any different number of proxy statements as a result of those rules. We did state, however, that we anticipated that the number of additional soliciting materials filed under 17 CFR 240.14a-6 may increase in proportion to the number of times that registrants choose to provide a statement in response to a PVAB’s proxy voting advice as contemplated by Rule 14a-2(b)(9)(ii)(B) or the safe harbor under Rule 14a-2(b)(9)(iv). For purposes of the PRA analysis in that release, we estimated that there would be an additional 783 annual responses to the collection of information as a result of the 2020 Final Rules.¹² Accordingly, we expect that our proposed amendments would decrease the number of annual responses to the collection of information for Regulation 14A by the same amount.

Table 2 below illustrates our estimated incremental change to the total annual compliance burden for the Regulation 14A collection of information in hours and in costs¹³ as a result of our proposed rescission of the Rule 14a-2(b)(9)(ii) conditions. The table sets forth the percentage estimates we typically use for the burden allocation for each response.

Table 2. Decrease in Burden Hours Resulting from the Proposed Rescission of the Rule 14a-2(b)(9)(ii) Conditions

Number of Estimated Responses (A)†	Total Decrease in Burden Hours (B)††	Decrease in Burden Hours Per Response (C) = (B)/(A)	Decrease in Internal Hours (D) = (B) x 0.75	Decrease in Professional Hours (E) = (B) x 0.25	Decrease in Professional Costs (F) = (E) x \$400
5,586	318,640	57	238,980	79,660	\$31,864,000

and number of responses associated with Regulation 14A, as updated from time to time, can be found at <https://www.reginfo.gov/public/do/PRAMain>.

¹² 2020 Adopting Release at n.707.

¹³ Our estimates in the adopting release for the 2020 Final Rules assumed that 75% of the burden would be borne by the company and 25% would be borne by outside counsel at \$400 per hour. We recognized that the costs of retaining outside professionals may vary depending on the nature of the professional services, but for purposes of the PRA analysis, we estimated that such costs would be an average of \$400 per hour. This estimate was based on consultations with several registrants, law firms and other persons who regularly assist registrants in preparing and filing reports with the Commission. See 2020 Adopting Release at n.708.

† This number reflects an estimated decrease of 783 annual responses to the existing Regulation 14A collection of information as a result of the proposed rescission of the Rule 14a-2(b)(9)(ii) conditions. The current OMB inventory for Regulation 14A reflects 6,369 annual responses.

†† Calculated as the sum of annual burden decreases estimated for PVABs (34,140 hours) and registrants (284,500 hours). *See supra* Table 1.

††† The estimated decreases in Columns (C), (D), and (E) are rounded to the nearest whole number.

Finally, Table 3 summarizes the estimated change to the total annual compliance burden of the Regulation 14A collection of information, in hours and in costs, as a result of our proposed rescission of the Rule 14a-2(b)(9)(ii) conditions.

Table 3. Paperwork Burden as a Result of the Proposed Rescission of the Rule 14a-2(b)(9)(ii) Conditions

Reg. 14A	Current Burden			Program Change			Revised Burden		
	Current Annual Responses (A)	Current Burden Hours (B)	Current Cost Burden (C)	Decrease in Responses (D) [±]	Decrease in Internal Hours (E) ^{††}	Decrease in Professional Costs (F) ^{†††}	Annual Responses	Burden Hours (H) = (B) - (E)	Cost Burden (I) = (C) - (F)
	6,369	850,836	\$113,410,112	783	238,980	\$31,864,000	5,586	611,856	\$81,546,112

[±] *See* Column (A) in Table 2 noting an estimated decrease of 783 annual responses to the Regulation 14A collection of information as a result of the proposed rescission of the Rule 14a-2(b)(9)(ii) conditions.

^{††} *See* Column (D) in Table 2.

^{†††} From Column (F) in Table 2.

As to the effect of the proposed amendments on competition in the PVAB industry, if the proposed amendments reduce costs for PVABs as we estimate, this could increase competition for proxy voting advice. In particular, if costs associated with Rules 14a-2(b)(9)(ii), (iii) and (iv) are passed on to clients, the reduction of these costs because of the proposed amendments could encourage some investors to retain the services of PVABs, which could reduce the use of internal resources for voting. Also, if the proposed amendments improve the independence of PVABs and thus increase the quality of proxy voting advice, this could cause PVABs to compete more on this dimension. Lastly, reduction in compliance costs and litigation-risk costs associated with the proposed amendments, if large enough, may encourage entry into the market for proxy

voting advice, increasing the competition among PVABs.¹⁴ However, given the fact that prior to the adoption of the 2020 Final Rules there were only three major PVABs in the United States, we do not expect that the proposed amendments would significantly increase the likelihood of new entry into this market.

14. COSTS TO FEDERAL GOVERNMENT

The annual cost of reviewing and processing disclosure documents, including registration statements, post-effective amendments, proxy statements, annual reports and other filings of operating companies amounted to approximately \$129,168,390 in fiscal year 2022, based on the Commission's computation of the value of staff time devoted to this activity and related overhead.

15. REASON FOR CHANGE IN BURDEN

As explained in further detail in Items 1, 2, 12 and 13 above, the proposed amendments would rescind the Rule 14a-2(b)(9)(ii) conditions, as well as the related safe harbors and exclusions set forth in Rules 14a-2(b)(9)(iii), (iv), (v) and (vi), to address concerns about the potential adverse effects of those rules on the independence, cost and timeliness of proxy voting advice. The Commission estimated that those rules, which were adopted as part of the 2020 Final Rules, would increase the estimated burdens associated with Regulation 14A. As such, we estimate that our proposed rescission of those rules would decrease the burdens associated with Regulation 14A. For purposes of the PRA, we estimate that the proposed amendments to Regulation 14A would result in a decrease of 783 annual responses, a decrease of 238,980 burden hours and a decrease in the cost burden of \$31,864,000 for the services of outside professionals.

16. INFORMATION COLLECTION PLANNED FOR STATISTICAL PURPOSES

The information collection does not employ statistical methods.

17. APPROVAL TO OMIT OMB EXPIRATION DATE

We request authorization to omit the expiration date on the electronic version of the information collection. Including the expiration date on the electronic version of the form will result in increased costs because the need to make changes to the form may not follow the application's scheduled version release dates. The OMB control number will be displayed.

¹⁴ See comment letter on the 2019 Proposed Rules from Sarah Wilson, CEO, Minerva Analytics (Feb. 22, 2020). In its comment letter, Minerva, a PVAB in the U.S. market prior to 2010, stated that the threat of litigation for "errors" is a factor influencing its views on whether to reenter the U.S. market. *Id.*

18. EXCEPTIONS TO CERTIFICATION FOR PAPERWORK REDUCTION ACT SUBMISSIONS

There are no exceptions for the Paperwork Reduction Act submissions.

B. STATISTICAL METHODS

The information collection does not employ statistical methods.