

## **SUPPORTING STATEMENT FOR PROPOSED RULES 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.

### **A. JUSTIFICATION**

#### **1. CIRCUMSTANCES MAKING THE COLLECTION OF INFORMATION NECESSARY**

On November 5, 2019, the Securities and Exchange Commission (the “Commission”) proposed amendments to its rules governing proxy solicitations to help ensure that investors who use proxy voting advice receive more accurate, transparent, and complete information on which to make their voting decisions, in a manner that would not impose undue costs or delays that could adversely affect the timely provision of proxy voting advice.<sup>1</sup> The proposed amendments would condition the availability of certain existing exemptions from the information and filing requirements of the federal proxy rules for proxy voting advice businesses upon compliance with additional disclosure and procedural requirements. In addition, the proposed amendments would codify the Commission’s interpretation that proxy voting advice generally constitutes a solicitation within the meaning of the Securities Exchange Act of 1934. Finally, the proposed amendments would amend the federal proxy rules to clarify when the failure to disclose certain information in proxy voting advice may be considered to violate the prohibition on misleading information in proxy solicitations, depending upon the particular facts and circumstances at issue.

The Paperwork Reduction Act 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)”<sup>2</sup>

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<sup>1</sup> *See Amendments to Exemptions from the Proxy Rules for Proxy Voting Advice*, Release No. 34-87457 (November 5, 2019) [84 FR 66518 (Dec. 4, 2019)] (“Proposing Release”).

<sup>2</sup> 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 proxy voting advice businesses whose voting advice falls within the ambit of the federal rules and regulations that govern proxy solicitations.

Regulation 14A<sup>3</sup> 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.

If adopted, the proposed amendments to Regulation 14A are expected to increase disclosure burdens by (1) increasing the number of responses to the existing collection of information for Regulation 14A, as well as (2) increasing the estimated burden per response. A detailed description of the proposed amendments, including the need for the information and its proposed 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 Release is attached.

## **2. PURPOSE AND USE OF THE INFORMATION COLLECTION**

Proxy voting advice businesses play an integral role in the proxy voting process by providing an array of voting services that can help clients manage their proxy voting needs and make informed investment decisions. Given proxy voting advice businesses' potential to influence the voting decisions of investment advisers and other institutional investors, who often vote on behalf of others, the Commission is concerned about the risk of proxy voting advice businesses providing inaccurate or incomplete voting advice (including the failure to disclose material conflicts of interest) that could be relied upon to the detriment of investors. In light of these concerns, the proposed amendments are principally designed to enhance the accuracy, transparency of process, and material completeness of the information provided to clients of proxy voting advice businesses when they cast their votes, as well as amendments to enhance disclosures of conflicts of interest that may materially affect the proxy voting advice businesses' voting advice.

## **3. CONSIDERATION GIVEN TO INFORMATION TECHNOLOGY**

The collection of information requirements of the 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**

The proposed amendments do not duplicate, overlap, or conflict with other federal rules.

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<sup>3</sup> 17 CFR 240.14a-1 *et seq.*

## **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, the Commission expects that the nature of any burdens associated with the proposed amendments would be similar for large and small entities, and will likely vary widely among small entities based on a number of factors, including the nature and conduct of their businesses, which makes it difficult to quantify the corresponding effects on burden.

The Commission anticipates that increases in burden resulting from the proposed amendments would predominantly affect proxy advice voting businesses that would be required to comply with proposed Rule 14a-2(b)(9). However, the Commission believes there are currently only a very few, if any, proxy voting advice businesses that would be considered small entities. In addition, the Commission does not expect other small entities affected by the proposed rules, which include registrants and other soliciting persons, would incur significant costs as a result of the proposed amendments, although it is difficult to provide a quantifiable estimate of such costs.

In the Proposing Release, the Commission requested comment on, among other things, the number of proxy voting advice businesses subject to the proposed amendments that would be considered small entities, how to quantify the impact on small entities that may be affected by the proposal, and whether to exclude smaller proxy voting advice businesses from all or part of the amendments.

Although exempting smaller proxy voting advice businesses from the additional conditions would reduce the cost of the proposed amendments for such businesses, it also would mean that their clients would not realize the same benefits in terms of potential improvements in the reliability and transparency of the voting advice they receive. Therefore, the Commission does not believe that exempting smaller proxy voting advice businesses from all or part of the proposed amendments would accomplish the objectives of this rulemaking, which is to help ensure that investors who rely on the advice of proxy voting advice businesses receive accurate, transparent, and materially complete information on which to make their voting decisions.

## **6. CONSEQUENCES OF NOT CONDUCTING COLLECTION**

The proposed 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 amendments.

## **8. CONSULTATIONS WITH PERSONS OUTSIDE THE AGENCY**

In the Proposing Release, the Commission solicited public comment on the new “collection of information” requirements and the associated paperwork burdens.<sup>4</sup> Comments on Commission releases are generally received from registrants, investors, and other market participants. In addition, the Commission and staff participate in ongoing dialogue with representatives of various market participants through public conferences, roundtables and meetings. All comments received on the proposal are available at <https://www.sec.gov/comments/s7-22-19/s72219.htm>. The Commission will consider all comments received prior to publishing the final rules, as required by 5 CFR 1320.11(f).

## **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 rulemaking 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 Impact Assessment (PIA) of the EDGAR system, in connection with this collection of information. The EDGAR PIA, published on January 29, 2016, is provided as a supplemental document and is also available at <https://www.sec.gov/privacy>.

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<sup>4</sup> See note 1 *supra*.

## 12. and 13. ESTIMATES OF HOUR AND COST BURDENS

The Commission anticipates that the proposed amendments would increase the number of responses to the existing collection of information for Regulation 14A,<sup>5</sup> as well as the estimated burden per response. The increase in burden per response was calculated by estimating the number of parties anticipated to expend time, effort, and/or financial resources to generate, maintain, retain, disclose or provide information in connection with the proposed amendments and then multiplying by the estimated amount of time, on average, such parties would devote in response to the proposed amendments. The following table summarizes the calculations and assumptions used to derive the Commission's estimates of the aggregate increase in burden corresponding to the proposed amendments.

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<sup>5</sup> The Commission has estimated an additional 174 annual responses to the collection of information, corresponding to an increase in the number of additional soliciting materials filed by registrants and other soliciting persons under Rule 14a-12 who choose to provide a statement in response to a proxy voting advice business's proxy voting advice under proposed Rule 14a-2(b)(9)(iii). Because a registrant's or other soliciting person's decision to utilize proposed Rule 14a-2(b)(9)(iii) will be entirely voluntary, it is difficult to predict how frequently such parties will choose to avail themselves of this provision and prepare a response to proxy voting advice. For purposes of this estimate, the Commission used as its baseline the number of times firms filed additional definitive proxy materials in response to proxy voting advice in calendar years 2016 (99), 2017 (77) and 2018 (84). See Section III.B.2 of the Proposing Release and Table 2 therein. Given the relative convenience of the hyperlink mechanism in proposed Rule 14a-2(b)(9)(iii) and the opportunity to reach shareholders before their votes are cast, the Commission assumed that a greater number of registrants and soliciting persons would utilize proposed Rule 14a-2(b)(9)(iii) than have historically filed additional soliciting materials. For purposes of its analysis, the Commission estimated that at least three times as many registrants and other soliciting persons will choose to prepare responses to proxy voting advice and request that their hyperlink be provided to the recipients of the advice pursuant to proposed Rule 14a-2(b)(9)(iii) than otherwise would choose to file additional soliciting materials. As a result, the Commission expects that three times as many required filings under Rule 14a-12 would be made. The average of the Rule 14a-12 filings made in years 2016, 2017, 2018 (87) was then multiplied by a factor of three (300%) for an estimate of 261 Rule 14a-12 filings, or an increase of 174 annual responses to the Regulation 14A collection of information.

**Table 1. Calculation of Increase in Burden Hours Resulting from the Proposed Amendments**

	Affected Parties		
	Proxy Voting Advice Businesses (A)	Registrants (B)	Other Soliciting Persons (C)
Number of Respondents	5 <sup>a</sup>	1,897 <sup>b</sup>	32 <sup>c</sup>
Burden Increase: Hours Per Respondent	500 <sup>d</sup>	10 <sup>e</sup>	10 <sup>e</sup>
Column Total <sup>f</sup>	2,500	18,970	320
Aggregate Increase in Burden Hours	[Column A] + [Column B] + [Column C] = 21,790		

<sup>a</sup> Represents the estimated number of proxy voting advice businesses that would be subject to the proposed Amendments to Rule 14a-2(b). The Commission is aware only of five such businesses at this time.

<sup>b</sup> Using 5,690 registrants that filed proxy materials with the Commission during calendar year 2018 as the upper bound (*see* Section III.B.1.c. & note 222 of the Proposing Release), the Commission estimated that an average of one-third, or approximately 1,897, would be the subject of proxy voting advice each year, and therefore impacted by the proposed amendments to Rule 14a-2(b).

<sup>c</sup> *See* Section III.B.1.c. & note 224 of the Proposing Release. According to Commission estimates, 95 other soliciting persons filed proxy materials with the Commission during calendar year 2018. Because it is unlikely that all 95 solicitations were the subject of proxy voting advice, the Commission assumed for purposes of its analysis that only one-third, or approximately 32, should be considered in the calculation of aggregate burden.

<sup>d</sup> This estimate, which is an average of the burden expected to be incurred by each proxy voting advice business, is intended to be inclusive of all burdens reasonably anticipated to be associated with the business's compliance with the conditions of proposed Rule 14a-2(b)(9). This estimate assumes that the burden would be greatest in the first year after adoption, as the businesses incorporate the new requirements into their existing practices and procedures. The Commission estimates that the burden would be 1,000 hours in the first year and 250 hours in each of the following years for a three-year average of 500 burden hours for each proxy voting advice business.

<sup>e</sup> In addition to proxy voting advice businesses, the Commission anticipates that registrants and other soliciting persons would incur some additional paperwork burden as a result of the proposed amendments. For example, if they choose to provide a response to proxy voting advice, as contemplated by the proposed rules, these parties would likely incur some burden in preparing and communicating their responses. Nevertheless, the Commission does not anticipate that the corresponding burden would be significant in

most cases, particularly when averaged among all affected parties. Therefore, the Commission has estimated that registrants and other soliciting persons would each incur, on average, an increase of ten additional burden hours each year.

<sup>f</sup> Derived by multiplying the number of respondents in each column by the estimated aggregate burden increase for that category of respondent.

Table 2 below illustrates the incremental change to the total annual compliance burden in hours and in costs as a result of the proposed amendments. The table sets forth the percentage estimates the Commission typically uses for the burden allocation for each response.<sup>6</sup>

**Table 2. Calculation of Increase in Burden Hours Resulting from the Proposed Amendments**

Number of Estimated Responses (A) <sup>†</sup>	Total Increase in Burden Hours (B) <sup>††</sup>	Increase in Burden Hours Per Response (C) = (B)/(A)	Increase in Internal Hours (D) = (B) x 0.75	Increase in Professional Hours (E) = (B) x 0.25	Increase in Professional Costs (F) = (E) x \$400
5,760	21,790	4.0 <sup>†††</sup>	16,343	5,448	\$2,179,200

<sup>†</sup> This number reflects an estimated increase of 174 annual responses to the existing Regulation 14A collection of information. The current OMB PRA inventory estimates that 5,586 responses are filed annually. See note 269 in the Proposing Release.

<sup>††</sup> Calculated as the sum of annual burden increases estimated for proxy voting advice businesses (2,500 hours), registrants (18,970 hours), and other soliciting persons (320 hours). See *supra* Table 1.

<sup>†††</sup> The estimated increases in Columns (C), (D), and (E) are rounded to the nearest whole number.

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<sup>6</sup> The Commission's estimates assume that 75% of the burden is borne by the company and 25% is borne by outside counsel at \$400 per hour. The Commission recognizes that the costs of retaining outside professionals may vary depending on the nature of the professional services, but for purposes of its paperwork burden analysis, it 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.

Finally, Table 3 that follows summarizes the requested revision to the paperwork burden under the proposed amendments.

**Table 3. Requested Paperwork Burden under the Proposed Amendments**

Reg. 14A and Schedule 14A	Current Burden			Program Change			Revised Burden		
	Current Annual Responses (A)	Current Burden Hours (B)	Current Cost Burden (C)	Number of Affected Responses (D) <sup>±</sup>	Increase in Internal Hours (E) <sup>±±</sup>	Increase in Professional Costs (F) <sup>±±±</sup>	Annual Responses (G) = (A) + (D)	Burden Hours (H) = (B) + (E)	Cost Burden (I) = (C) + (F)
	5,586	551,101	\$73,480,012	5,760	16,343	\$2,179,200	5,760	567,444	\$75,659,212

<sup>±</sup> From Column (A) in Table 2 *supra*.

<sup>±±</sup> From Column (D) in Table 2 *supra*.

<sup>±±±</sup> From Column (F) in Table 2 *supra*.

Given the number of variables that are highly specific to the unique circumstances of each proxy voting advice business, the matter for which they have been engaged to provide advice, and the course of that engagement, the ability to predict the magnitude of corresponding costs and burdens with precision is limited. Therefore, the Commission encouraged public commenters to consider its assessment of the paperwork reduction analysis in the Proposing Release and provide additional information and, where available, data that would be helpful in deriving estimates for purposes of the Commission’s analysis.

#### **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 \$102 million in fiscal year 2018, 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**

The proposed amendments in Release No. 34-87457 would establish new disclosure and procedural requirements for persons that provide proxy voting advice. The amendments are intended to help ensure that proxy voting advice used by investors and others who vote on investors’ behalf is complete, accurate, and transparent. If adopted, the proposed changes would amend Exchange Act Rule 14a-2(b), which provides certain exemptions from the proxy rules’ filing and information requirements.



In addition, the proposed changes would amend the definition of “solicitation” in Exchange Act Rule 14a-1(l) to clarify that the definition includes proxy voting advice, with certain exceptions. Finally, the proposed amendments provide additional illustrative examples to Exchange Act Rule 14a-9, the proxy rules’ antifraud provision.

The Commission anticipates that the proposed amendments will, in the aggregate, increase the burdens and costs of affected parties, primarily as a result of amendments to Rule 14a-2(b). Under the proposed amendments, proxy voting advice businesses relying on these exemptions would be subject to the following conditions:

- They must include specified conflicts of interest disclosure in their proxy voting advice;
- Registrants and certain other soliciting persons must be given a specified opportunity to review proxy voting advice and engage with the proxy voting advice business before the advice is issued (with the length of the review period dependent on the number of days between the date the definitive proxy statement is filed and the date of the related shareholder meeting); and
- Registrants and certain other soliciting persons may request that proxy voting advice businesses include in their voting advice a hyperlink or analogous electronic medium directing the recipient of the advice to a written statement that sets forth the registrant’s or soliciting person’s views on the proxy voting advice.

For purposes of its Paper Reduction Act analysis, the Commission estimates that the proposed amendments to Regulation 14A would result in a net increase of 16,343 burden hours.

## **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.

**18. EXCEPTIONS TO CERTIFICATION FOR PAPERWORK REDUCTION ACT SUBMISSIONS**

There are no exceptions to certification for the Paperwork Reduction Act submissions.

**B. STATISTICAL METHODS**

The information collection does not employ statistical methods.