



December 23, 2021

Vanessa A. Countryman  
Secretary  
US Securities and Exchange Commission  
100 F Street NE  
Washington, DC 20549

Via email: [rule-comments@sec.gov](mailto:rule-comments@sec.gov)

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

Dear Ms. Countryman:

The U.S. Chamber of Commerce's Center for Capital Markets Competitiveness (CCMC) appreciates the opportunity to comment on the SEC's re-proposal of rules (the "Re-Proposed Rules")<sup>1</sup> governing proxy voting advice businesses ("PVABs") and the proxy voting advice they commercially provide. The Re-Proposed Rules seek to repeal and unwind critical elements of final rules (the "2020 Final Rules")<sup>2</sup> the SEC adopted just over one year ago following a robust, multi-year administrative process. CCMC strongly opposes the Re-Proposed Rules because if adopted they would significantly undermine what would remain of the 2020 Final Rules.

CCMC has advocated in favor of greater transparency in the operations of PVABs.<sup>3</sup> Over the past two decades, the PVABs have increasingly assumed a central role in influencing corporate governance at America's public companies, all without meaningful SEC oversight. The PVAB industry's conflicts and problematic practices are well-documented, and they stand alone as the only participants in the proxy voting process not subject to substantive SEC regulation. Accordingly, we supported the adoption of the 2020 Final Rules as a measured, common-sense approach to regulation of the PVAB industry.

We are concerned that the Re-Proposed Rules now seek to undo these important reforms to the capital markets. Public companies would no longer have a meaningful chance under the SEC's rules to review PVAB reports to identify errors and misstatements. Moreover, proxy voting advice would remain uncoupled from the economic interests of all investors.

The Re-Proposed Rules run counter to an extensive administrative record built over more than two decades, and they are plainly animated by political objectives. They seek to advance

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<sup>1</sup> Release No. 34-93595, *Proxy Voting Advice*, 86 Fed. Reg. 67,383 (Nov. 26, 2021) (hereinafter "Re-Proposing Release").

<sup>2</sup> Release No. 34-89372, *Exemptions from the Proxy Rules for Voting Advice*, 85 Fed. Reg. 55,082 (Sept. 3, 2020) (hereinafter "Adopting Release").

<sup>3</sup> See, for example the U.S. Chamber's March 2013 report, [Best Practices and Core Principles for the Development, Dispensation and Receipt of Proxy Advice](#).

unreasonable and indefensible policy choices that, if adopted, would reduce investor protection and cause great harm to the US capital markets. As we demonstrate below, the Re-Proposed Rules lack a proper basis as required by settled principles of administrative law, are arbitrary and capricious, and must be withdrawn.

## **BACKGROUND**

Since their emergence in the 1990s, PVABs have played an increasingly outsized role in imposing their views concerning corporate governance on U.S. public companies and their investors. These firms purport to evaluate every issue for which corporate proxies are solicited, and their recommendations influence how proxy votes are cast at America's public companies. The administrative record chronicles the many shortcomings of the PVAB industry: rampant conflicts of interest; "one-size-fits-all" voting advice that ignores the effect of their recommendations on the economic well-being of investors; industry concentration into a de facto duopoly; policy-making conducted largely outside the public eye; and frequent errors in analysis and a lack of due diligence, in part due to the vast number of issues the PVABs purport to cover with a small staff that is highly dependent on automated processes. Nevertheless, and despite their disproportionate influence on corporate governance, PVABs are opaque businesses that historically have enjoyed little to no substantive regulation by the SEC due to a series of regulatory exemptions and SEC interpretive positions at the staff and Commission levels. The CCMC has long advocated for PVABs to be more transparent and accountable in the delivery of proxy advice to ensure that the total mix of information in the marketplace is accurate, unbiased, and free from conflicts.

The SEC, as the primary regulator of proxy voting and the PVABs, has spent decades under the leadership of both political parties considering the merits and risks associated with the proxy advisory industry. Since the SEC staff issued a pair of no-action letters to two of the PVABs in 2004, the SEC has continued to study the industry. For example, the SEC issued a "proxy plumbing" concept release in 2010 and sought public comment about "the role and legal status of proxy advisory firms within the U.S. proxy system"; held a roundtable in 2013 on the use of proxy firm advice by institutional investors and investment advisers; issued a Staff Legal Bulletin in 2014 to "provide guidance about the availability and requirements of two exemptions to the federal proxy rules that are often relied upon by proxy advisory firms"; and held a roundtable in 2018 seeking "input on questions that arise regarding the use of proxy advisory firms and their activities."<sup>4</sup> After further deliberation, the SEC staff also formally withdrew the 2004 no-action letters to the two PVABs in 2018.

In moving to propose what would become the 2020 Final Rules, the SEC focused on three critical aspects of the PVAB business model: (1) the adequacy of disclosure of any actual or potential conflicts of interest that could materially affect the objectivity of the proxy voting advice; (2) the accuracy and material completeness of the information underlying the advice; and (3) the ability of proxy voting advice businesses' clients to receive information and views from the issuer, potentially contrary to that presented in the advice, in a manner that is consistently

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<sup>4</sup> Release No. 34-86721, *Commission Interpretation and Guidance Regarding the Applicability of the Proxy Rules to Proxy Voting Advice*, 84 Fed. Reg. 47,416, 47,416 (Sept. 10, 2019).

timely and efficient.<sup>5</sup> As discussed in Part A below, the SEC conducted a methodical notice-and-comment process and engaged with key stakeholders, including investors, issuers of securities, trade associations, academics, members of Congress, other members of the public, and the PVABs themselves. This notice-and-comment process led to calibrated but consequential revisions to the rules as proposed and culminated in the issuance of the 2020 Final Rules, which were intended to help ensure 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.”<sup>6</sup>

The 2020 Final Rules included several targeted amendments to the federal proxy rules. First, 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. The Commission also adopted Rule 14a-2(b)(9) to add new conditions to two exemptions that PVABs generally rely on to avoid the proxy rules’ information and filing requirements. Those conditions include new conflicts of interest disclosures in Rule 14a-2(b)(9)(i) and a requirement in Rule 14a-2(b)(9)(ii) that a PVAB adopt and publicly disclose written policies and procedures reasonably designed to ensure that (1) registrants 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 proxy advisor’s clients and (2) the proxy advisor provides its clients with a mechanism by which they can reasonably be expected to become aware of any written statements regarding its proxy voting advice by registrants that are the subject of such advice in a timely manner before the security holder meeting. Recognizing the importance of a strong anti-fraud enforcement mechanism, the 2020 Final Rules also amended the note to Rule 14a-9, which prohibits false or misleading statements during the solicitation of proxies, to include specific examples of material misstatements or omissions related to proxy voting advice.

The 2020 Final Rules took effect in late 2020. To ensure adequate time to prepare, the 2020 Final Rules set a compliance date for the PVABs of December 1, 2021. During that transition period, and in reliance on the rules taking effect as planned, issuers and other market participants began reordering their affairs for the new regulatory regime.

In spite of all this, shortly after the change in presidential administrations, the new political majority at the SEC announced it would reconsider the 2020 Final Rules. In fact, the Re-Proposed Rules now seek to rescind key elements of the 2020 Final Rules. The proposed amendments would remove the conditions set forth in Rule 14a-2(b)(9)(ii), which permit registrants that are the subject of voting advice to access that advice prior to or at the same time as the advice is disseminated and also requires PVABs to provide clients with access to any response the registrant provides on voting advice before those clients vote.<sup>7</sup> The Re-Proposed Rules would also remove Note (e) to Rule 14a-9, which provides examples of situations in which

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<sup>5</sup> Release No. 34–87457, *Amendments to Exemptions From the Proxy Rules for Proxy Voting Advice*, 84 Fed. Reg. 66,518–66,559 (Dec. 4, 2019) (hereinafter the “2019 Proposing Release”).

<sup>6</sup> Adopting Release at 55,082.

<sup>7</sup> According to the Re-Proposing Release, the two dominant PVABs have adopted policies and procedures that provide their clients and registrants with some of the opportunities and access to information that would have been required pursuant to the Rule 14a-2(b)(9)(ii) conditions. Re-Proposing Release at 67,386.

the failure to disclose certain information in proxy voting advice may be considered misleading within the meaning of the federal proxy rules.

## ANALYSIS

### **A. The 2020 Final Rules are Reasonably Designed to Address Well-Documented Issues with the Quality and Completeness of the PVABs' Advice**

#### **1. The SEC Carefully Analyzed the Proxy Advisory Industry in Proposing New Rules**

The Chamber's member companies frequently have had difficulty interfacing with PVABs to address and correct factual or methodological errors in the advice they disseminate. When proposing the 2020 Final Rules, the SEC noted that these concerns are compounded by several other features of the proxy advisory business, including the typically narrow window of time between when advice is given to investors and the voting deadline. First, public companies "lack an adequate opportunity to review proxy voting advice before it is disseminated."<sup>8</sup> Second, there are not "meaningful opportunities to engage with the proxy voting advice businesses and rectify potential factual errors or methodological weaknesses in the analysis underlying the proxy voting advice before votes are cast,"<sup>9</sup> particularly for smaller registrants. Finally, public companies assert that because proxy voting advice typically is delivered to the clients "very shortly before a significant percentage of votes are cast and the meeting held," companies are not able to dispute errors or contest methodological errors or assumptions "in a timely and effective way."<sup>10</sup>

The SEC expressed the concern that smaller registrants, in particular, are often not given the opportunity to review the advice before it is sent to clients, and that registrants are typically only given a "short period of time, sometimes with little advance notice," to provide feedback to proxy advisors.<sup>11</sup> Further, because many votes are cast "within a few days or less of the proxy voting advice business's release of its proxy voting advice" (and sometimes through automated voting processes), companies are not able to provide timely responses to factual or methodological errors in the voting advice.<sup>12</sup>

As proposed, the 2020 Final Rules attempted to create a mechanism to "foster enhanced engagement" between proxy advisors, registrants, and other soliciting persons, with the goal of improving the accuracy, transparency, and completeness of information available to investors.<sup>13</sup> Under proposed Rule 14a-2(b)(9)(ii), as a condition to the exemptions in Rules 14a-2(b)(1) and 14a-2(b)(3), proxy advisors would have been required to provide to the registrant (or other soliciting person), for its "review and feedback," a copy of the proxy voting advice the proxy advisor intended to deliver to its clients. As proposed, no earlier than the review and feedback

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<sup>8</sup> 2019 Proposing Release at 66,529.

<sup>9</sup> Id.

<sup>10</sup> Id.

<sup>11</sup> Id. at 66,529-66,530.

<sup>12</sup> Id. at 66,530.

<sup>13</sup> Id.

period, and no later than two business days prior to delivery of the proxy voting advice to its clients, PVABs would have been required to provide a final notice of proxy voting advice (including a copy of the advice provided to clients), as well as any revisions to such advice made after the review and feedback period.

The proposed version of the 2020 Final Rules also provided registrants and other soliciting persons with the option to require that PVABs include with their advice a hyperlink directing the voter to “a written statement prepared by the registrant that sets forth its views on the advice.”<sup>14</sup> While noting that existing rules already permit registrants to file supplementary proxy materials to respond to negative voting recommendations, the SEC nonetheless argued that voting often takes place shortly after clients receive the voting advice, so supplemental materials will not reach many voters before a decision has been made and executed.<sup>15</sup>

While the text of the Rule 14a-9 was not subject to amendment—and the rule continues to prohibit false or misleading statements or omissions in proxy solicitations—the SEC proposed to amend the note following the rule by adding an additional example of an omission that could be considered misleading:

Failure to disclose material information regarding proxy voting advice covered by §240.14a-1(l)(1)(iii)(A), such as the proxy voting advice business’s methodology, sources of information, conflicts of interest or use of standards that materially differ from relevant standards or requirements that the Commission sets or approves.<sup>16</sup>

The SEC’s inclusion of the example stemmed in part from concerns that PVABs were making negative vote recommendations “based on their evaluation that a registrant’s conduct or disclosure is inadequate,” but not clarifying that the negative recommendation was based on the proxy advisor’s standards, rather than on a failure of the company to meet the SEC’s conduct or disclosure requirements.<sup>17</sup>

## 2. The SEC Carefully Considered Public Comments on its Proposal

Commenters expressed a range of views with respect to the review and feedback rule proposals. Some commenters expressed support for the provisions, noting that the changes would “improve the completeness, accuracy, and reliability of the information underlying the voting advice” as well as “ameliorate the incidence of errors, mistakes, and deficiencies” in voting advice.<sup>18</sup> Commenters also expressed support for set amounts of time to review and comment on proxy advice, as some registrants argued that under current practices they did not have sufficient opportunity to meaningfully engage with proxy advisors before voters acted on proxy advice.

Some commenters in support of the proposed version of the 2020 Final Rules also disagreed with other commenters’ suggestion that the rules as proposed would compromise

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<sup>14</sup> Id. at 66,533.

<sup>15</sup> Id.

<sup>16</sup> Id. at 66,558-66,559.

<sup>17</sup> Id. at 66,538.

<sup>18</sup> Adopting Release at 55,103.

proxy advisors' independence—with some “pointing to the fact that a number of registrants were already participating in advance review programs offered by proxy voting advice businesses.”<sup>19</sup> On the other hand, many commenters opposed this aspect of the proposed rules on various grounds.<sup>20</sup>

As to liability, commenters in favor of the additional example in the note to Rule 14a-9 argued that the amendment would make PVABs more accountable for their advice and incentivize them to “provide more robust information about their methods and sources so that their clients would be in a better position to assess the businesses' recommendations and make informed voting decisions.”<sup>21</sup> Commenters opposed to the amendment argued, among other things, that proxy advisors would face legal uncertainty and heightened litigation risk, and that the proposed version of the 2020 Final Rules raised constitutional issues as well.<sup>22</sup>

### 3. The SEC Modified the 2020 Final Rules in Response to Public Comments

In adopting the 2020 Final Rules, the SEC made considerable effort to analyze and respond to comments and to explain the SEC's decisions with respect to the text of the 2020 Final Rules. Of note for the Re-Proposed Rules, the SEC's most extensive modifications to the proposed version of the rules came on notice of proxy advice and responses by registrants. After carefully weighing the comments, the SEC made substantial revisions. It decided on a lighter regulatory touch that gives flexibility to the PVABs. In contrast to the version proposed in 2019, the 2020 Final Rules do not require PVABs to include an issuer statement, analysis, viewpoint, or hyperlink within the PVAB's own recommendations. Nor do the 2020 Final Rules require firms to provide issuers with the opportunity to review or comment upon proxy advice prior to its delivery to shareholders. PVABs are not required to make any changes to their reports or recommendations. Thus, under the 2020 Final Rules, a firm need not “negotiate or otherwise engage in a dialogue with the registrant, or revise its voting advice in response to any feedback” and “is free to interact with the registrant to whatever extent and in whatever manner it deems appropriate.”<sup>23</sup>

In response to public comments, the SEC also modified its approach to Rule 14a-9. As noted above, under the proposal the Note to Rule 14a-9 included a new paragraph (e) stating that the failure to disclose material information “such as the proxy voting advice business's methodology, sources of information, conflicts of interest or use of standards that materially differ from relevant standards or requirements that the Commission sets or approves” could, depending on the facts and circumstances, be misleading within the meaning of 14a-9. The 2020 Final Rules, however, eliminate the reference to “use of standards that materially differ from relevant standards or requirements that the Commission sets or approves.”<sup>24</sup>

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<sup>19</sup> *See id.*

<sup>20</sup> *See id.*

<sup>21</sup> *Id.* at 55,119.

<sup>22</sup> *Id.* at 55,120.

<sup>23</sup> *Id.* at 55,112.

<sup>24</sup> *Id.* at 55,119.

According to the SEC, the examples included in Note (e) are “illustrative only, and are not intended to be exhaustive or absolute, or supersede the materiality principle or the facts and circumstances analysis required in each particular case.”<sup>25</sup> However, the SEC recognized the concern of some commenters that the clause on the use of standards that may differ from SEC standards “may increase legal uncertainty and litigation risks to both proxy voting advice businesses and registrants, and that the lack of legal certainty could affect the quality of analyses provided by proxy voting advice businesses.”<sup>26</sup> Notwithstanding the removal of the clause, the SEC asserted in the 2020 Final Rules that “there could well be occasions where, for example, the omission or distortion of essential context from a proxy voting advice business’s explanation of its methodologies may be misleading under a materiality principle and the particular facts and circumstances, such that a shareholder’s ability to make an informed voting decision is subverted.”<sup>27</sup>

#### 4. Public Comments and Administrative Law Scholars Support the 2020 Final Rules

Following the publication of the 2020 Final Rules, the Chamber engaged professors Paul Rose and Christopher J. Walker of the Ohio State University Moritz College of Law.<sup>28</sup> In that connection, Professors Rose and Walker conducted a detailed analysis of the rulemaking process underlying the 2020 Final Rules. They focused in particular on how the SEC responded to concerns presented during the public comment period to narrow the scope of the 2020 Final Rules relative to how they were proposed, and the shift between the proposal and 2020 Final Rules in the SEC’s regulatory approach concerning the PVABs from a prescriptive one to a more flexible, principles-based framework. The professors noted that the 2020 Final Rules followed years of formal consideration by Congress, the SEC, and other regulators on the role of PVABs, as well as the potential for conflicts of interest and poor-quality advice.<sup>29</sup>

Professors Rose and Walker also analyzed the 2020 Final Rules’ economic analysis. They determined that the 2020 Final Rules reflect improved economic analysis and reasoned decision-making at the SEC relative to prior efforts on this subject. For example, the professors noted that the SEC engaged in a deliberative process to ensure it considered a variety of regulatory alternatives against a well-defined baseline, as well as considered the various intended and unintended costs, benefits, and other effects. The SEC expressly considered reliance interests implicated, was careful to note when and why it could not quantify certain benefits or costs, and exhaustively analyzed how the 2020 Final Rules would promote the values outlined in the Exchange Act’s requirements to consider efficiency, competition, and capital formation.<sup>30</sup>

Professors Rose and Walker concluded that it is unlikely a federal court would invalidate the 2020 Final Rules under the Administrative Procedure Act (“APA”) and related administrative

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<sup>25</sup> Id. at 55,121.

<sup>26</sup> Id.

<sup>27</sup> Id.

<sup>28</sup> Paul Rose and Christopher J. Walker, *Examining the SEC’s Proxy Advisor Rule* (Nov. 9, 2020), available at [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3728163](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3728163). The CCMC has also included a copy of this paper as an attachment to this letter so that the paper in its entirety is entered into the formal administrative record.

<sup>29</sup> Id. at 12.

<sup>30</sup> Id. at 39 (citing passages from the Adopting Release).

law doctrines.<sup>31</sup> They point out that the SEC convincingly demonstrated the need for regulation given the potential for conflicts of interest and poor-quality governance advice in the proxy advisory industry.<sup>32</sup> Furthermore, the professors opined that the likelihood of a successful legal challenge decreased substantially when the SEC thoughtfully made significant changes to its regulatory approach from its 2019 proposal to the 2020 Final Rules it later adopted.<sup>33</sup> As discussed below, the CCMC agrees that the SEC struck an appropriate balance in formulating the 2020 Final Rules.

## 5. The CCMC Supports the 2020 Final Rules

As a matter of public policy, the CCMC concurs that the SEC's 2020 Final Rules reflect a reasonable and tailored effort to improve the quality of proxy advice. The rules require that, to achieve an exemption from various filing and disclosure requirements, PVABs must make their advice available to the public companies that are the subject of such advice, at or prior to the time when such advice is disseminated to the proxy advisory firms' clients.<sup>34</sup> PVABs must also provide their clients "with a mechanism by which they can reasonably be expected to become aware of any written statements regarding its proxy voting advice by registrants who are the subject of such advice, in a timely manner."<sup>35</sup>

We also agree that the 2020 Final Rules promulgated by the SEC strike a reasonable balance and are eminently sensible. Under the rules, public companies will have a chance to review final reports in order to identify errors and methodological weaknesses that have long been a concern of issuers, while providing PVABs with discretion to determine how to make their clients aware of this information. Additionally, the 2020 Final Rules help align proxy voting decisions with the economic interests of all investors by providing enhanced disclosures and making more complete information available to shareholders. Furthermore, the inclusion of Note (e) to Rule 14a-9 ensures that there will be a clear standard of liability. In sum, the 2020 Final Rules bring much-needed reform to the proxy advisory industry and will help to improve transparency and accountability.

### **B. The SEC Has Failed to Provide a Meaningful Opportunity for Comment on the Re-Proposed Rules**

The SEC has pre-ordained the outcome of this rulemaking process and failed to provide a meaningful opportunity to comment, an approach in violation of the APA. Courts have repeatedly stressed the importance of the APA requirement that the public be able to comment on the rule while it is still in the "formative or proposed stage" to ensure that the proposing agency "maintains a flexible and open-minded attitude."<sup>36</sup> This requirement is based on the "concern . . . that an agency is not likely to be receptive to suggested changes once the agency

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<sup>31</sup> Id. at 5.

<sup>32</sup> Id.

<sup>33</sup> Id. As a matter of law, Professors Rose and Walker concluded it is difficult to argue that the SEC failed to engage in reasoned decision-making or otherwise acted outside its statutory mandate in promulgating the 2020 Final Rules.

<sup>34</sup> 17 C.F.R. § 240.14a-2(b)(9)(ii)(A).

<sup>35</sup> Id. § 240.14a-2(b)(9)(ii)(B).

<sup>36</sup> *Advocates for Highway & Auto Safety v. Federal Highway Admin.*, 28 F.3d 1288, 1291 (D.C. Cir. 1994).

puts its credibility on the line in the form of final rules.”<sup>37</sup> Accordingly, to ensure a meaningful opportunity to comment, the “agency must . . . remain sufficiently open-minded.”<sup>38</sup> For two reasons, it is clear the SEC is not now open to public comment.

First, the SEC has already decided to suspend enforcement of the 2020 Final Rules. Despite meaningful steps American businesses undertook in reliance on the effectiveness of the 2020 Final Rules, following the change in presidential administrations, the SEC unexpectedly changed course. Not long after the new SEC chair assumed office, the agency effected a series of coordinated and illegal actions on June 1, 2021, to suspend the 2020 Final Rules indefinitely. Such an action is unprecedented at the SEC.

Chair Gensler issued a public statement directing the SEC staff to consider whether to recommend that the Commission modify the 2020 Final Rules and related interpretive guidance.<sup>39</sup> On the same day, the SEC’s Division of Corporation Finance issued a statement declaring that “the Division of Corporation Finance has determined that it will not recommend enforcement action based on . . . the [2020 Final Rules] during the period in which the Commission is considering further regulatory action in this area.”<sup>40</sup> In a third step, also announced on June 1, the SEC moved to hold in abeyance litigation initiated by the dominant PVAB over the 2020 Final Rules, pending the rules’ reconsideration. In doing so, they clarified that Corporation Finance’s contemporaneous no-action statement provides all PVABs relief from the December 1, 2021 compliance date.<sup>41</sup>

The decision effectively suspending the 2020 Final Rules is illegal. The staff’s decision not to recommend enforcement against any PVAB is effectively a suspension of the Final Rules. It is well-settled that under the APA, agencies must “use the same procedures when they amend or repeal a rule as they used to issue the rule in the first instance.”<sup>42</sup> The SEC, like other administrative agencies, may revise previously-promulgated rules, but it must “follow the proper administrative requirements,” including “notice-and-comment rulemaking.”<sup>43</sup> Notice-and-comment “requirements apply with the same force when an agency seeks to delay or repeal a previously promulgated final rule,” because “altering the effective date of a duly promulgated standard could be, in substance, tantamount to an amendment or rescission of the standards.”<sup>44</sup>

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<sup>37</sup> *Id.* at 1292.

<sup>38</sup> *Rural Cellular Ass’n v. FCC*, 588 F.3d 1095, 1101 (D.C. Cir. 2009); *Portland Cement Alliance v. EPA*, 101 F.3d 772, 777 (D.C. Cir. 1996) (“a proposed regulation is still in flux”).

<sup>39</sup> Gary Gensler, SEC Chair, *Statement on the Application of the Proxy Rules to Proxy Voting Advice* (June 1, 2021).

<sup>40</sup> SEC Division of Corporation Finance, *Statement on Compliance with the Commission’s 2019 Interpretation and Guidance Regarding the Applicability of the Proxy Rules to Proxy Voting Advice and Amended Rules 14a-1(1), 14a-2(b), 14a-9* (June 1, 2021).

<sup>41</sup> Motion for Abeyance, *Institutional Shareholder Services Inc. v. SEC*, No. 19-cv-3275 (D.D.C. June 1, 2021). We note that the SEC’s decision to suspend the rules is not premised on the mechanism described in 5 U.S.C. § 705.

<sup>42</sup> *Perez v. Mortg. Bankers Ass’n*, 575 U.S. 92, 101 (2015).

<sup>43</sup> *Clean Water Action v. EPA*, 936 F.3d 308, 313-314 (5th Cir. 2019).

<sup>44</sup> See *Nat. Res. Def. Council v. Nat’l Highway Traffic Safety Admin.*, 894 F.3d 95, 113 (2d Cir. 2018) (quoting *Nat. Res. Def. Council v. Abraham*, 355 F.3d 179, 194 (2d Cir. 2004)).

The SEC’s decision to reconsider the 2020 Final Rules does not “simultaneously convey authority to indefinitely delay the existing rule pending that reconsideration.”<sup>45</sup>

The law is clear that the SEC may not “suspend” an effective rule. Based on the administrative record and the considered, reasoned judgment of the Commission over many years of deliberation, the SEC may not simply change course. The process the current SEC has followed highlights that the agency has made its decision and is simply checking the box of providing an opportunity to comment. That the SEC has already decided to suspend enforcement of the rules unlawfully places a thumb on the scale in favor of its preferred option, repeal of its own rules. For an agency to provide meaningful opportunity to comment, it must keep an open mind and not change the facts on the ground.

Second, the SEC’s abbreviated comment period further underscores that it is not keeping an open mind. Contrary to the SEC’s customary practice of offering 60 days (or more) for public comment on a rule proposal, the Re-Proposed Rules here offer a mere 30-day comment period. When proposing the 2020 Final Rules, for example, the SEC also offered a 60-day comment period. Here, the public comment period closes on December 27, the Monday after the three-day Christmas holiday. The Commission—as is much of the rest of the United States—is closed for business on the preceding federal holiday of Friday, December 24. The end of the year is always a suboptimal time to seek public comment on any important policy issue as the American public hurries to wind-up pressing matters in the final weeks of December. This period also includes the Jewish celebration of Hannukah and the Christian observance of Advent and the Christmas octave. Understanding that this timing impedes the ability to obtain reasonable input to the proposed rule, the Chamber sent a letter to the SEC on November 30, 2021, requesting an extension of the comment period.<sup>46</sup> No response to the letter was received nor was the extension granted.

With the 2020 Final Rules purportedly (but illegally) placed in suspension, there would appear to be no logical reason from the SEC’s perspective for such an abbreviated comment period. We believe the timing here is no coincidence. Rather than promoting the kind of careful, informed decision-making that was the hallmark of the process that produced the 2020 Final Rules, the effect here is to deny commenters an opportunity for careful analysis of the Re-Proposed Rules.

The SEC is seeking to rapidly overturn the key elements of the 2020 Final Rules while subverting the regular process contemplated by the APA of full and expert consideration of the relevant issues.<sup>47</sup> A rulemaking process with a preordained outcome is contrary to the procedures established by the APA, and the basic norms of due process. Equity demands otherwise.

### **C. The Re-Proposed Rules Are Arbitrary and Capricious**

#### **1. The SEC Followed a Predetermined, Impermissible Course.**

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<sup>45</sup> Id. at 111-12.

<sup>46</sup> U.S. Chamber of Commerce’s Center for Capital Markets Competitiveness, [Letter to SEC on Proxy Voting Advice Amendments](#) (November 30, 2021).

<sup>47</sup> See 5 USC § 553.

The APA mandates that a reviewing court set aside rules that are “arbitrary, capricious, an abuse of discretion, or not otherwise in accordance with law.”<sup>48</sup> An agency rule is arbitrary and capricious if, among other things, “the agency has relied on factors which Congress has not intended it to consider, entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise.”<sup>49</sup> For the reasons below, the Re-Proposed Rules are arbitrary and capricious.

Lacking any rational basis for repealing key elements of a rule only sixteen months after its adoption, the Re-Proposed Rules instead cite a series of inadequate justifications for the sudden and rapid change. In particular, to support the rescission of Rule 14a-2(b)(9)(ii), the proposing release cites continuing opposition by PVABs and expresses agreement with their concern that the 2020 Final Rules may have “potential adverse effects on the independence, cost, and timeliness of proxy voting advice.”<sup>50</sup> The proposing release also cites the work of the Best Practice Principles Group,<sup>51</sup> a loosely organized group of PVABs operating in coordination with the European Securities and Markets Authority. Finally, the release describes various improvements in the processes and transparency employed by the PVABs since the adoption of the 2020 Final Rules.<sup>52</sup> To justify the deletion of Note (e) to Rule 14a-9, the proposing release discusses potential confusion in the application of the new rule and “heightened litigation risk” on the part of PVABs.<sup>53</sup>

As discussed in Part B above, the 2020 Final Rules comprehensively considered and addressed each of the concerns raised by commenters, including each of the pretextual reasons cited under the Re-Proposed Rules. The Re-Proposed Rules provide no meaningful explanation for why rolling back the 2020 Final Rules is now necessary, other than stating it has received “feedback” from market participants who are allegedly concerned with the rule. In fact, the Re-Proposed Rules cite as a source for this feedback comments it received on the 2019 proposing release in respect of the 2020 Final Rules which, as noted in Part B, were significantly modified to accommodate concerns that were raised. This approach clearly “runs counter to the evidence before the agency.”

The CCMC encourages private ordering and tailored solutions that the marketplace develops. We welcome the new voluntary efforts by some PVABs to improve their transparency and analytical rigor. The fact that several PVABs have voluntarily adopted procedures makes clear that they are achievable and consistent with the firms’ responsibilities, and that the supposed effects of the 2020 Final Rules on proxy advisory firms’ independence ring hollow. Indeed, for other SEC-regulated industries, including investment advisers and credit rating agencies, the SEC has established regulatory structures to regulate conflicts, establish process and address issues created by extreme industry concentration. All those issues, as demonstrated

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<sup>48</sup> Id. § 706.

<sup>49</sup> *Motor Vehicle Mfrs. Assn. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983).

<sup>50</sup> Re-Proposing Release at 67,388.

<sup>51</sup> Id. at 67,386-67,387.

<sup>52</sup> Id.

<sup>53</sup> Id. at 67,389-67,390.

by the lengthy deliberative process leading to the 2020 Final rules, were present with PVABs, which prompted action by the SEC through a balanced approach. We can find no other instance in the SEC's history in which the agency has relied on half-measures intended to bring an entity into compliance with new SEC rules as grounds to repeal the very same rules, before those rules even take legal effect.

Remarkably, the SEC itself rejects its own tenuous line of reasoning as to the PVABs' voluntary compliance efforts, conceding in the proposing release that "the mechanisms the PVABs have in place may not perfectly replicate the requirements of the Rule 14a-2(b)(9)(ii)."<sup>54</sup> Indeed, they are in many ways "more limited."<sup>55</sup> The proposing release for the Re-Proposed Rules continues, "we recognize that although the three major United States-based PVABs have some promising mechanisms in place, those mechanisms differ across the three PVABs."<sup>56</sup> The SEC completes the refutation of its own argument by declaring that "absent the Rule 14a-2(b)(9)(ii) conditions, there is no assurance that a new entrant to the PVAB market will adopt similar mechanisms or that existing PVABs will maintain them."<sup>57</sup> It is amazing that the SEC, in its own proposing release, concedes that its proposed regulatory solution will be wholly ineffective. Without a doubt, these supposed justifications for the Re-Proposed Rules are obviously no justifications whatsoever, and this line of reasoning "is so implausible that it could not be ascribed to a difference in view or the product of agency expertise."

The SEC's justifications for amending the note to Rule 14a-9 are equally flimsy. As a threshold matter, it defies logic to suggest that the SEC can clarify confusion about the meaning of the note by deleting that note altogether. To the contrary, deleting the note is likely to lead to more confusion, not less, when interpreting the rule. If the goal is to clarify the meaning of the provision, it is far more practical for the Commission to provide its interpretation in a public record—which it in fact purports to do in the Re-Proposed Rules' proposing release.<sup>58</sup>

Likewise, the SEC's concern about the PVABs bearing "increased litigation risks or the threat of litigation"<sup>59</sup> also lacks support. The SEC carefully considered the issue of litigation risk to the PVABs when adopting the 2020 Final Rules. Ultimately, while the SEC acknowledged "commenters' concerns around the potential for heightened litigation risk associated with the proposed changes to Rule 14a-9," the Commission reiterated "that Rule 14a-9 is grounded in materiality, and amending the rule to include updated examples of potentially misleading disclosure, depending on the facts and circumstances, in no way changes its application or scope."<sup>60</sup> Under the 2020 Final Rules, "the amendment to Rule 14a-9 does not broaden the concept of materiality or create a new cause of action."<sup>61</sup> Thus, the Commission concluded, "we do not expect the new amendment to Rule 14a-9 to generate significant new litigation risk,"<sup>62</sup>

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<sup>54</sup> Id. at 67,388.

<sup>55</sup> Id.

<sup>56</sup> Id.

<sup>57</sup> Id.

<sup>58</sup> Re-Proposing Release at 67,390.

<sup>59</sup> Id.

<sup>60</sup> Adopting Release at 55,121.

<sup>61</sup> Id.

<sup>62</sup> Id. at 55,140.

for the PVAB industry. In its proposing release for the Re-Proposed Rules, the SEC cites no new evidence that its prior conclusion was incorrect.<sup>63</sup>

Since the SEC adopted the 2020 Final Rules, further evidence has come to light showing why strong enforcement of the new rules is necessary. A report from the Manhattan Institute in April 2021 found that the practice of robo-voting, whereby institutional investors automatically follow the recommendations of PVABs, remains a problem.<sup>64</sup> According to the report, over 100 institutional investors managing over \$5 trillion in assets voted in lockstep with the two dominant PVABs. Another report from the American Council for Capital Formation (“ACCF”) highlighted at least 42 instances during the 2020 proxy season where issuers had to file supplemental proxy materials with the SEC to dispute or correct errors contained in a research report issued by one of the two dominant PVABs.<sup>65</sup> For the 2021 proxy season, ACCF identified at least 50 instances where proxy advisors have formulated recommendations based on data or analysis disputed by the companies themselves, demonstrating that errors and serious disagreements remain an issue.<sup>66</sup> Furthermore, in June 2021 yet another research paper found that PVABs give advice that is often distorted in a way that advances the agenda of “socially responsible” activist investors in a way that is not necessarily tied to what is in the best economic interests of all investors.<sup>67</sup> The proposing release for the Re-Proposed Rules neither cites nor discusses any of this contemporary research. As such, it has “entirely failed to consider an important aspect of the problem.”

Most troublingly, the Re-Proposed Rules give little, if any, attention to factors Congress intended for it to consider. As far back as 1964, the Supreme Court explained the purposes of Section 14(a) under the Exchange Act.<sup>68</sup> There, the Court established that the federal proxy rules are derived from Congress’s belief that “fair corporate suffrage is an important right that should attach to every equity security bought on a public exchange.”<sup>69</sup> The proxy rules are intended to prevent the situation in which “proxies are solicited without explanation to the stockholder of the real nature of the questions for which authority to cast his vote is sought.”<sup>70</sup> Of note, the Supreme Court further opined that the “injury which a stockholder suffers from corporate action pursuant to a deceptive proxy solicitation ordinarily flows from the damage done the corporation,

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<sup>63</sup> The SEC’s proposed acceptance of compliance with a loosely-defined set of voluntary industry standards calibrated for the European markets in lieu of SEC regulation is also at odds with Chair Gensler’s approach to various other emerging issues—from cryptocurrency, to share buybacks, to Rule 10b5-1 trading programs, to climate and sustainability disclosure, to special purpose acquisition companies, money market funds, securities-based swaps, and many others—where the agency has now taken the apparent position that self-regulation is insufficient and more SEC rules are needed. *See* Fall 2021 RegFlex Agenda, *infra* note 85.

<sup>64</sup> Manhattan Institute, *Proxy Advisors and Market Power: A Review of Institutional Investor Robovoting* (Apr. 22, 2021).

<sup>65</sup> American Council for Capital Formation, *Are Proxy Advisors Still a Problem? 2020 Proxy Season Analysis Shows Companies Believe Errors Continue* (July 2020).

<sup>66</sup> American Council for Capital Formation, *Proxy Advisors Are Still a Problem: 2021 Proxy Season Analysis Shows Companies Continue To Report Similar Rate of Errors Despite Heightened Scrutiny* (Dec. 2021).

<sup>67</sup> John G Matsuaka and Chong Shu, *Does Proxy Advice Allow Funds to Cast Informed Votes?* (June 15, 2021).

<sup>68</sup> *See generally* *J.I. Case Co. v. Borak*, 377 U.S. 426 (1964).

<sup>69</sup> *Id.* at 431 (citing H.R. Rep. No. 1383, 73d Cong, 2d Sess. at 13).

<sup>70</sup> *Id.* (citing S. Rep. No. 792, 73d Cong, 2d Sess. at 12).

rather than from the damage inflicted directly upon the stockholder.”<sup>71</sup> The Court continued that this “damage suffered results not from the deceit practiced on [the stockholder] alone, but rather from the deceit practiced on the stockholders as a group.”<sup>72</sup> Nevertheless, the Re-Proposed Rules neither discuss nor give any weight to these critical factors. The SEC omits to address how the Re-Proposed Rules will further advance the congressionally declared goals of the proxy rules because the Re-Proposed Rules cannot and will not do so.<sup>73</sup>

The SEC has failed to provide a plausible explanation for its decision that is consistent with the evidence before it. Given that no other reasonable explanation has been provided, it is evident that the outcome of this rulemaking is predetermined and without the collection of evidence or deliberation needed to move forward with overturning the 2020 Final Rules. The SEC’s actions thus violate the legal requirement that the SEC consider only those factors which Congress intended it to rely on. For these reasons, the Re-Proposed Rules are plainly arbitrary and capricious.

## 2. The Re-Proposed Rules Are Not Supported by an Adequate Record.

The Supreme Court has made clear that in order to modify an existing rule, an agency must examine alternative methods of achieving the objectives of the governing statute, address those alternatives, and provide adequate reasons for changing the rule.<sup>74</sup> Agencies must provide the public with a “reasoned explanation” and a record that supports the change in policy, especially when an agency’s “new policy rests upon factual findings that contradict those which underlay its prior policy. . . .”<sup>75</sup> A “reasoned explanation is needed for disregarding facts and circumstances that underlay or were engendered by the prior policy.”<sup>76</sup> This standard for passing a reasonableness review requires that “the agency must show that there are good reasons for the new policy,” and that the agency believes the new rule to be superior to the old rule.<sup>77</sup>

The Re-Proposed Rules fail to satisfy this standard. As detailed in Part B.1, the SEC has provided illusory and non-substantive reasons for its sudden revisions to the 2020 Final Rules. On the one hand, the 2020 Final Rules reflect a decades-long effort by the SEC and were narrowly tailored to minimize compliance costs and maintain a role for PVABs in the marketplace. The Re-Proposed Rules, on the other hand, casually cite concerns raised by a small

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<sup>71</sup> Id. at 432.

<sup>72</sup> Id.

<sup>73</sup> The Supreme Court has also held that arbitrary-and-capricious review under the APA requires the agency to consider reasonable regulatory alternatives and to demonstrate that it has adequately considered the reliance interests at stake in changing the regulatory baseline. *Department of Homeland Security v. Regents of Univ. of Cal.*, 140 S. Ct. 1891, 1911–13 (2020). In contrast to the Adopting Release, which carefully considered reliance interests implicated, the Re-Proposing Release includes no discussion of this crucial topic beyond a passing request for comment.

<sup>74</sup> See id. at 30, 42, 48.

<sup>75</sup> *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009).

<sup>76</sup> Id. at 516.

<sup>77</sup> Id. at 515.

number of commenters, all of which were thoroughly addressed in the adopting release for the 2020 Final Rules.<sup>78</sup>

The proposing release for the Re-Proposed Rules raises no new issues, facts, or research and simply rehashes old ones. In fact, it appears from the administrative record that the SEC has engaged in no new research or analysis at all. In her dissenting statement from the re-proposal, Commissioner Peirce acknowledged as much. She observed, “Nothing has changed since we adopted the rule, and we have not learned anything new.”<sup>79</sup> Moreover, Commissioner Peirce highlighted, “The release takes a stab at justifying the rewrite, but we might as well simply acknowledge that the political winds have shifted.”<sup>80</sup> Furthermore, it should be noted that in reaction to the SEC’s announcement of the non-enforcement of the 2020 Final Rules, one of the PVABs, Institutional Shareholder Services, has reduced communications and transparency *below* what it had provided before the 2020. Final Rules were promulgated.

The SEC’s lack of a reasoned analysis is further evidenced by the fact that the SEC decided to reverse the 2020 Final Rules before they even took effect. It is therefore impossible for the SEC to objectively judge the impact the reforms would have had in practice. As Commissioner Roisman aptly observed, not only does the rulemaking process here “lack many of the due process and procedural protections that usually guide Commission rulemakings” but the SEC fails to “answer the question why now, before these rules have taken effect.”<sup>81</sup>

The same kinds of deficiencies plague the SEC’s economic analysis of the Re-Proposed Rules.<sup>82</sup> While the economic analysis makes passing reference to impacts on issuers and investors, it is focused almost entirely on the costs borne and benefits received by the PVABs. It is not surprising, then, that the economic analysis concludes that benefits increase and costs decrease for PVABs when the SEC removes a layer of important regulation. Absent is the critical analysis of how issuers and investors are impacted, beyond merely superficial observations or why the benefits that will accrue to the PVABs should be prioritized over those of investors or SEC registrants. Evidently, the SEC chose not to develop a record or analyze existing data<sup>83</sup> that would demonstrate the many benefits from the 2020 Final Rules, but instead incorporated into the economic analysis only information that would support the Re-Proposed Rules.

The SEC’s approach harkens back to its infamous “proxy access” rulemaking, which the D.C. Circuit rightly vacated. In reaching its decision to vacate Rule 14a-11, the court catalogued

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<sup>78</sup> Relatedly, the Re-Proposing Release cites, without elaboration, a single meeting—held in secret—attended by Chair Gensler and the SEC staff with a coalition of activist asset managers that routinely caucus together to advance a common political agenda. See Re-Proposing Release at 67,385 n.24.

<sup>79</sup> Commissioner Hester M. Peirce, *Dissenting Statement on Proxy Voting Advice Proposal* (Nov. 17, 2021).

<sup>80</sup> *Id.*

<sup>81</sup> Commissioner Elad Roisman, *Too Important to Regulate? Rolling Back Investor Protections on Proxy Voting Advice* (Nov. 17, 2021).

<sup>82</sup> See generally Re-Proposing Release at 67,391-67,396.

<sup>83</sup> The Chamber sent a letter to the SEC on July 19, 2021 requesting that APA processes be used to solicit input and evidence to review the 2020 Final Rules. See U.S. Chamber of Commerce’s Center for Capital Markets Competitiveness, Letter to SEC on [Review and Non-Enforcement of Proxy Advisor Rule](#). No answer to the letter has been received nor was a notice and comment period commenced at that time, as the SEC has similarly done through its Request for Information process for potential action on climate disclosures.

that the SEC “inconsistently and opportunistically framed the costs and benefits of the rule; failed adequately to quantify the certain costs or to explain why those costs could not be quantified; neglected to support its predictive judgments; contradicted itself; and failed to respond to substantial problems raised by commenters.”<sup>84</sup> Each of these shortcomings is present with the Re-Proposed Rules.

These deficiencies are further evidence that the SEC is not pursuing a proper, evidence-based rulemaking, but instead is conducting an unlawful, prejudged, exercise. The SEC’s failure to develop a supporting record for the proposed amendments, and the failure to address the existing record in anything approaching a credible manner includes the multiple shortcomings we outline in this comment letter. We have highlighted numerous errors, including the flawed administrative process, reliance on inadequate justifications, the lack of meaningful economic analysis, and the failure to consider any new evidence. Individually and in the aggregate, all these errors again demonstrate that the SEC has not developed a reasoned explanation for the change in policy or a defensible, adequate record supporting the Re-Proposed Rules.

#### **D. The SEC Risks Great Harm to Its Reputation as the World’s Premier Capital Markets Regulator**

The SEC’s recently published agenda<sup>85</sup> under the Regulatory Flexibility Act makes clear that the 2020 Final Rules are not the only set of rules adopted during the prior administration that the SEC seeks to reopen. The RegFlex agenda in fact lists a wide litany of rules adopted between 2017 and 2020 that again appear slated for further revision. The only thing these rules have in common is their adoption during the prior administration. The Re-Proposed Rules are clearly the first step in a systematic repeal of the past four years’ of SEC rulemaking.

We are unaware of any point in the SEC’s history where a new SEC chair immediately after taking office set about a methodical course of action to repeal a series of otherwise unrelated rulemakings completed by his or her predecessor. Given the broad variety of disparate topics these issues cover—executive compensation, human capital management, royalty payment disclosure, shareholder proposals and private placements, just to name a few—it is obvious that the only commonality is their adoption under the previous majority.

The SEC has often distinguished itself among the world’s capital market regulators and has used its strong reputation to guide positive developments in securities and capital markets regulations not just in the United States, but around the world. Importantly, the SEC throughout its proud history has not engaged in the kind of “surprise switcheroo” rulemaking so heavily disfavored by the courts.<sup>86</sup> The Re-Proposed Rules represent an unfortunate break in this 87-year tradition at the SEC.

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<sup>84</sup> *Business Roundtable v. SEC*, 647 F.3d 1144, 1148-49 (D.C. Cir. 2011). See also *American Equity Inv. Life Ins. Co. v. SEC*, 613 F.3d 166 (D.C. Cir. 2010); *Chamber of Commerce v. SEC*, 412 F.3d 133 (D.C. Cir. 2005).

<sup>85</sup> SEC, Agency Rule List under Regulatory Flexibility Act (Fall 2021), available at [https://www.reginfo.gov/public/do/eAgendaMain?operation=OPERATION\\_GET\\_AGENCY\\_RULE\\_LIST&currentPub=true&agencyCode=&showStage=active&agencyCd=3235&csrf\\_token=F93DDA75B0D952E153B7019FC53F68D720E4F59FC01A0970832F3257162E20C7F1A9A0711058A0E670BDD754797D30C59BC4](https://www.reginfo.gov/public/do/eAgendaMain?operation=OPERATION_GET_AGENCY_RULE_LIST&currentPub=true&agencyCode=&showStage=active&agencyCd=3235&csrf_token=F93DDA75B0D952E153B7019FC53F68D720E4F59FC01A0970832F3257162E20C7F1A9A0711058A0E670BDD754797D30C59BC4). (hereinafter “Fall 2021 RegFlex Agenda”).

<sup>86</sup> See *Azar v. Allina Health Servs.*, 139 S. Ct. 804, 1810 (recognizing the “surprise switcheroo” doctrine).

While there is no shortage of other executive agencies whose regulatory philosophy changes after each presidential election, the SEC has largely stood above this fray. Multi-member independent commissions like the SEC exist to bring together competing points of view and ensure gradual, thoughtful evolution of the law separate and apart from prevailing political winds. Adherence to institutional norms and an orderly public policy process are crucial to the success of independent agencies like the SEC. Conversely, placing ideological imperatives ahead of what benefits investors and the capital markets erodes the SEC's independence and could have severe consequences over time.

The damage to American capital markets cannot be overstated if the SEC does not abide by a sound regulatory process that results in reasoned decision-making based on the available evidence. If politics, not the rule of law, govern at the SEC, and the rules of the game flip-flop every four years, capital will flow away from public markets in the United States in search of a more stable, more predictable regulatory regime. Ultimately, the very investors whom the SEC claims to protect will be harmed most by rules that swing back and forth as Administrations change. The 2020 Final Rules were an outgrowth of deliberation by the SEC across several administrations under different partisan majorities. Before it is too late, we urge the SEC to turn back from this destructive path.

### **CONCLUSION**

The Re-Proposed Rules are the product of a sudden, politically motivated decision that the SEC made through an opaque process lacking the input normally associated with traditional SEC rulemaking. It is clear the Re-Proposed Rules have been conceived as part of an audacious stratagem. As we have demonstrated, the Re-Proposed Rules derive from an unlawful process, lack any reasonable basis in the law or the administrative record, lack a credible economic analysis, and have even been refuted by the SEC in its very own proposing release. The Re-Proposed Rules are arbitrary and capricious. Accordingly, we respectfully request the SEC withdraw the Re-Proposed Rules and allow the 2020 Final Rules to take effect without further modification or delay.

Sincerely,

A handwritten signature in black ink, appearing to read 'TK', with a long horizontal flourish extending to the right.

Tom Quadman  
Executive Vice President  
Center for Capital Markets Competitiveness  
U.S. Chamber of Commerce

Attachment: Paul Rose and Christopher J. Walker, *Examining the SEC's Proxy Advisor Rule* (Nov. 9, 2020).