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IN THE  
SECURITIES AND EXCHANGE COMMISSION  
  
Staff Roundtable on the Proxy Process

COMMENT OF  
  
WASHINGTON LEGAL FOUNDATION  
  
ON  
  
PROXY ADVISORY FIRMS

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November 20, 2018

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Brent J. Fields  
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(Submitted electronically)

Washington Legal Foundation (WLF) is a nonprofit, public-interest law firm and policy center that promotes free enterprise, limited government, and the rule of law. We are pleased to contribute to the Securities and Exchange Commission's *Staff Roundtable on the Proxy Process*.

One of the Roundtable's areas of focus is proxy advisory firms. WLF has an ongoing interest in the role advisory firms play in proxy voting. WLF is concerned that the potential conflicts of interest and secrecy that accompany these firms' involvement may negatively affect shareholders and public companies. For instance, WLF filed a public comment with the Commission during the 2014 roundtable on proxy advisory firms.<sup>1</sup> In August 2014, WLF published a "Working Paper" by then-Commissioner Daniel M. Gallagher, "Oversized Power & Influence: The Role of Proxy Advisers."<sup>2</sup>

In that Working Paper, while Commissioner Gallagher was encouraged by Staff Legal Bulletin No. 20, issued on June 20, 2014, he also was concerned that the bulletin was simply one more incremental step. He suggested further interventions SEC should consider, including the withdrawal of two 2004 staff no-action letters, one to Egan-Jones Proxy Services and another to Institutional Shareholder Services, Inc.

SEC took that advice on September 13, 2018, announcing that "[w]ith this pending Roundtable and other policy considerations in mind, the staff of the Division of Investment Management has recently re-examined the letters ... [and] has determined to withdraw [them], effective immediately."<sup>3</sup> WLF applauds the Commission's withdrawal of those no-action letters, as well as its understanding, reflected in the questions posed in its July 20, 2018 announcement of the November 15 Roundtable, that serious concerns persist over proxy advisory firms' conflicts of interest and lack of transparency.

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<sup>1</sup> Comments of Washington Legal Foundation to the Securities and Exchange Commission, "Issues Raised at the Proxy Advisory Firm Roundtable," Jan. 10, 2014, [https://s3.us-east-2.amazonaws.com/washlegal-uploads/upload/litigation/misc/SECProxyAdvisorComments\\_Jan2014.pdf](https://s3.us-east-2.amazonaws.com/washlegal-uploads/upload/litigation/misc/SECProxyAdvisorComments_Jan2014.pdf).

<sup>2</sup> Washington Legal Foundation WORKING PAPER No. 187 (Aug. 2014), <https://s3.us-east-2.amazonaws.com/washlegal-uploads/upload/legalstudies/workingpaper/GallagherWP8-14.pdf>.

<sup>3</sup> Public Statement, Investment Management, *Statements Regarding Staff Proxy Advisory Letters*, Sept. 13, 2018, <https://www.sec.gov/news/public-statement/statement-regarding-staff-proxy-advisory-letters>.

Both the background information Commissioner Gallagher provided and the further steps he advocated to address, as he called it, the “outsized role of proxy advisers,” remain timely and relevant to SEC’s ongoing discussion. So WLF provides a PDF of that Working Paper along with this letter. We encourage Commission staff who may not have benefitted from Commissioner Gallagher’s knowledge and wisdom in this publication to read it carefully and seriously consider its suggestions.

Respectfully submitted,



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