



December 23, 2021

Vanessa Countryman
Secretary
Securities and Exchange Commission
100 F Street NE
Washington, DC 20549-0609

Re: Request for Comment on Proposed Amendments to Rules Governing Proxy Voting Advice (File Number S7-17-21)

Dear Secretary Countryman,

The Biotechnology Innovation Organization (BIO) appreciates the opportunity to provide comments on the Securities and Exchange Commission's (SEC or the Commission) proposed rule governing proxy voting advice ("Proposed Rule" or "Proposal")¹, which amended recently adopted final rules regarding the same ("2020 Final Rule").²

BIO is the world's largest life sciences trade association representing nearly 1,000 biotechnology companies, academic institutions, state biotechnology centers and related organizations across the United States and in more than 30 other nations. BIO members are involved in the research and development of innovative biotechnology products that will help to solve some of society's most pressing challenges, such as managing the environmental and health risks of climate change, sustainably growing nutritious food, improving animal health and welfare, enabling manufacturing processes that reduce waste and minimize water use, and advancing the health and well-being of our families.

Small biotechnology companies face several challenges which are exacerbated by proxy firms that are not accountable for their actions, are too big to challenge, often do not fully understand the nuances of the industry and may be incorrect in their assessments of small research and development organizations that have a broad investor base with high turnover.

Executive Summary

BIO believes that proxy firms play a crucial role in markets. They advocate for investors, advise on pertinent corporate issues, and keep companies honest about what is material for shareholder return and certain stakeholder concerns.

However, it is concerning that unrestrained concentration of influence lies in the hands of, essentially, two proxy firms. The amendments to the 2020 Final Rule do nothing to remedy this concentration and further provides an unfair advantage to proxy firms over other market participants.

¹ <https://www.sec.gov/rules/proposed/2021/34-93595.pdf>

² <https://www.sec.gov/rules/final/2020/34-89372.pdf>

It is troubling to see the amendments shield proxy firms from liability and fail to implement much-needed transparency requirements for this sector of the market when all other market participants, as a result of SEC rules, are exposed to litigation risk and subject to disclosure requirements.

Transparency is a cornerstone of our markets and benefits all participants. The purpose of securities laws and regulations is to ensure that all market participants face consequences for obscuring data, misrepresenting methodology and facts, submitting incomplete information, and issuing misleading statements. These same rules and principles should apply to proxy firms.

BIO believes that proxy advisors should be subject to the same level of scrutiny as all other market participants. Further, BIO believes that the proposed amendments to last year's final rule run counter to the mission of the SEC and its guiding principles which make our markets the largest, deepest, and most efficient markets in the world.

Not giving investors all pertinent, decision-useful information at the same time introduces information asymmetries that, under the current system, may go unreconciled until after critical votes are cast.

Research by the American Council for Capital Formation shows that proxy advisors continue to make recommendations based on factual or analytical errors with at least 42 instances of such errors and disputes occurring in the 2020 proxy season alone (up from 26 instances in 2018, which is about a 62 percent increase).³

Chair Gensler supports the need for comparable and decision-useful disclosures⁴ in the context of forthcoming proposed rules on climate risk. BIO contends such criteria for disclosures should extend to all information necessary to make an investment-related decision, including proxy voting advice. We can all agree that having partial information or incorrect data does not constitute adequate or decision-useful information. In fact, most commenters (as of December 6, 2021) have noted the need for more transparency in markets and not less as currently prescribed in the Proposed Rule.

Furthermore, the literature on the impact of information asymmetries on price formation, cost of capital, and adverse selection is vast⁵ and should be considered in the context of proxy advice as these negative externalities with real dollar costs are precisely what occurs when the information environment is skewed by timing issues, data quality issues, and obtuse practices.

BIO does not support these proposed amendments, and urges the Commission to implement the 2020 Final Rule as previously written and adopted.

³ <https://accf.ftlbcfn.net/wp-content/uploads/2020/07/ACCF-ProxyProblemReport-final.pdf>

⁴ "I believe the SEC has a role to play in cases like this to facilitate consistent, comparable, and decision-useful disclosures from companies. This helps investors, and it helps companies." <https://www.sec.gov/news/public-statement/gensler-statement-financial-stability-oversight-council-102121>

⁵ Peng He et al, "Information asymmetry and the cost of equity capital," International Review of Economics & Finance, Volume 27, 2013, Pages 611-620; Li, Keming, "Does Information Asymmetry Impede Market Efficiency," Journal of Banking & Finance, Vol 118, 2020

Finally, the rationale for the Proposed Rule is flawed as the Commission's own language contradicts its main assertions. Per the language in the Proposed Rule,

"The goal of the proposed amendments is to avoid burdens on PVABs that may impede and impair the timeliness and independence of their proxy voting advice and subject them to undue litigation risks and compliance costs...⁶"

However, within the Proposed Rule, the Commission clarifies that proxy firms have already implemented certain procedures, and therefore should be indifferent to additional reporting requirements.⁷ Most importantly, the Commission has no data to verify the costs and therefore the economic impact of the Proposed Rule.⁸

BIO contends that one must know the economics and cost structures of an organization before making the claim that expected costs would be deleterious to a business model and may impede the proper functioning of a key market segment.

Concerns Regarding the SEC's Administrative Process on Proxy Advice

BIO is concerned with how the Commission has carried out this rulemaking process. The 2020 Final Rule is being amended based on "feedback...from market participants" as delineated within footnote 24 in the Proposed Rule. However, the discussions that took place within these meetings have not been made public and stand in stark contrast to the very public deliberative process and lengthy comment period undertaken to adopt the 2020 Final Rule.

As these "market participant" conversations pertained to the revision of an adopted rule and are directly related to the Proposed Rule, SEC staff should publicly disclose the memorandums associated with these meetings for all market participants and those stakeholders interested in the matter to better understand the details of the discussions that warranted the rare move of not implementing and then amending a final rule.

These memorandums are important for all stakeholders to review and understand given the Commission acknowledges it does not have sufficient data to evaluate the potential cost burden and negative effects on timeliness hypothesized by the 2020 Final Rule. (We say "hypothesized" because these postulated effects were never evidenced since the Final Rule was never implemented).

Finally, the thirty-day comment period causes significant concern that these amendments are being too hastily implemented. For reference, the December 2019 proposed rule *Amendments to Exemptions from the Proxy Rules for Proxy Voting Advice* had a 60-day comment period.⁹

The issue of mandating more transparency from proxy advisors has been the subject of discussion between the Commission and market participants for more than six years.

⁶ Supra note 1

⁷ "Moreover, because PVABs developed these measures themselves, we believe they are less likely to adversely affect the independence, cost and timeliness of proxy voting advice." Supra note 1

⁸ "We do not have access to general financial information for ISS, Glass Lewis and Egan-Jones." Supra note 1

⁹ <https://www.sec.gov/rules/proposed/2019/34-87457.pdf>

Reversing course as a result of private conversations causes the industry to question the entire process.

The Lack of Economic Basis

The SEC has not provided evidence to validate the core principles driving the Proposed Rule.

Not only does the Commission cite “costs” 17 times throughout the proposed amendments, both of the Commissioners who supported the Proposed Rule cited costs as a critical driver justifying their support.

“Specifically, concerns that the existing framework jeopardizes the independence of proxy voting advice and makes the conveyance of that proxy voting advice to investors costlier and subject to delay.

And it is demonstrated that monitoring management to approximate anything close to that level of insight is difficult and costly. Therefore, strengthening independence and ensuring that the costs of voting advice are not prohibitive are important objectives.¹⁰”

– **Commissioner Crenshaw** (four mentions of costs in full statement)

“It is therefore important that our rules do not interfere with the independence of proxy voting advice, introduce unnecessary cost and complexity into an already compressed proxy voting process, or otherwise burden the free and full exercise of shareholder voting rights.

And investors in particular have explained that certain features of the final rules still include the same infirmities they had identified in the proposal, namely increased risk of impaired independence and significant new costs and delays.¹¹” – **Commissioner Lee** (seven mentions of costs in full statement.)

However, the Commission admits that it does not possess any financial or cost information to support their economic cost analysis and, hence, lacks evidence to support the fundamental assumptions that underpin the Proposed Rule.

*“We also analyze the potential costs and benefits of reasonable alternatives to the proposed amendments. Where practicable, we have attempted to quantify the economic effects of the proposed amendments; however, **in most cases, we are unable to do so because either the necessary data is unavailable or certain effects are not quantifiable.***

¹⁰ <https://www.sec.gov/news/statement/crenshaw-proxy-advice-20211117>

¹¹ <https://www.sec.gov/news/statement/lee-proxy-advice-20211117>

We do not have access to general financial information for ISS, Glass Lewis and Egan-Jones such as annual revenues, earnings before interest, taxes, depreciation and amortization and net income. We also do not have access to client-specific financial information or more general or aggregate information regarding the economics of the PVABs.¹²

It is crucial to understand a company's economics and cost structures before asserting that a regulation or rule will have a detrimental effect on the company's business model and sustainability.

"We have nevertheless decided to reconsider the Rule 14a-2(b)(9)(ii) conditions because we share the concerns that PVABs' clients and others continue to express about the conditions' potential adverse effects on the independence, cost and timeliness of proxy voting advice.¹³"

BIO is concerned that the Commission has not conducted appropriate due diligence in promulgating this Proposed Rule and is relying solely on statements made in closed-door meetings.

Transparency Exemption for Proxy Firms

It is BIO's position that the proposed amendments to the 2020 Final Rule run counter to the Commission's mission to protect investors and ensure the integrity of securities markets.

Transparency is at the heart of market efficiency and price formation. Chair Gensler recently stated that the public benefit from transparency and competition "gets to the heart of the SEC's mission."¹⁴

However, in this instance, it seems that the SEC is placing more emphasis on perceived and unfounded expected costs than on transparency. As Commissioner Roisman stated in his dissenting opinion, quoting from the 2020 Final Rule,

"...the conflict-of-interest disclosures and the engagement policies were intended to ensure that those who use proxy voting advice receive more transparent, accurate, and complete information on which to make their voting decisions."¹⁵

The Commission oversees exchanges, the companies that list on changes, the bankers that underwrite those securities, the dealers and brokers that sell those securities, and the clearing agencies that process those transactions. The Commission issues guidance on the disclosures required by research analysts and the investors that trade in these securities. Investment advice is also regulated. There is no compelling reason that proxy advice and research should be exempt from these standards that all other market participants must obey.

¹² Supra note 1

¹³ Supra note 1

¹⁴ <https://www.sec.gov/news/statement/gensler-securities-lending-market-20211118>

¹⁵ https://www.sec.gov/news/statement/roisman-proxy-advice-20211117#_ftnref9

Also note that the Financial Industry Regulatory Authority (“FINRA”) is supervised by the Commission, unlike the self-regulatory organization cited in the Proposed Rule, the Best Practices Principles Group (“BPPG”) of the proxy advisory industry. The Commission would surely object to the suggestion that FINRA should no longer be required to be overseen by the SEC. Yet, that is in fact, the principle the Commission is advocating for in their Proposed Rule. Why does one self-regulatory organization require oversight and not another?

Commission Roisman said it best in his dissenting statement,

“We have not historically allowed a consortium of market participants to make up their own rules—or principles and standards, in this case—to follow, with no Commission oversight or engagement.”¹⁶

BIO believes that no market actors should be exempt from all regulatory authority and all market participants should be required to be transparent.

In a December 6 statement, Acting Chief Accountant Paul Munter highlighted the need for transparency in incorporating feedback to allow all stakeholders to better understand how feedback is being considered.

“To maintain quality over time... it is critical that the FASB and IASB solicit and transparently incorporate investor feedback into standard-setting decisions.”¹⁷

This statement can easily be applied to the context of proxy advice businesses. To maintain the quality of proxy recommendations over time it is critical that proxy firms solicit and transparently incorporate registrant feedback into their advice so that all stakeholders can better understand the issues at hand.

BIO maintains that the 2020 Final Rule, as previously written, allowed all stakeholders to better understand the issues at stake that inevitably define the direction of a company.

Proxy voting advice has real consequences for real people, and investors must be given a comprehensive set of facts when making decisions at the time they are making those decisions. Having information provided after votes helps no one and the real-world consequences of this timing asymmetry was a primary impetus to the 2019 Amendments and 2020 Final Rule.

The Proxy Duopoly

The current proxy voting advisor ecosystem is effectively a duopoly as described by the House Committee on Financial Service report leading to H.R. 4015, Corporate Governance Reform and Transparency Act of 2017:

“Studies have shown that the two largest proxy advisory firms—Institutional Shareholder Services (ISS) and Glass Lewis & Co.—collectively make up approximately 97% of the proxy

¹⁶ Supra note 15

¹⁷ <https://www.sec.gov/news/statement/munter-oca-2021-12-06>

advisory industry and can control a significant percentage of shareholder votes in corporate elections, sometimes as high as 40%. This outsized influence raises important public policy concerns.¹⁸

BIO agrees with the public policy concerns raised by the Committee. It is precisely this outsized influence that was the impetus for the bipartisan support of H.R. 4015 and was the driving force behind nearly a decade of negotiations that led to the 2020 Final Rule.

There is little doubt that when two players control 97% of a market, anti-trust, transparency, and the effects of their outsized influence should weigh on policymakers' decisions relative to those entities. It is BIO's view that adopting these proposed amendments would effectively constitute an anti-competitive stance.

The Commission repeatedly cites concerns that proxy firms will not be able to absorb higher costs of regulation or not be able to maintain independence. While BIO shares concerns about regulatory barriers for market participants, the current system allows for two proxy firms to dominate the market. These firms control the pricing of proxy advice and create a duopoly. Given the power of these two firms, the engagement processes the SEC quotes as already implemented, and the SEC's lack of basis for determining the proxy system's costs it seems unfounded that expected higher costs on proxy firms from regulations and transparency measures would hurt the system.

Proxy Firm Control Over Boards

Proxy advisory firms have an outsized influence over corporate Boards, and their impact on smaller biotech companies is very concerning.

For instance, proxy firms will vote against Board directors that sit on multiple boards. While BIO understands the need to have focused representation on Boards, the life sciences industry has a deficit of Board-ready talent that can provide real value to the management of therapeutics, synthetic biology, and bio-agriculture companies.

Each of these subsectors of the industry is highly specialized and, thus, individuals that have run companies, raised capital, navigated initial public offerings, and managed through the ups and downs of the volatile biotech market cycle are in short supply. This standardized rejection of directors with multiple board seats can harm biotech companies without any analysis of whether such a move is warranted in a particular situation.

Proxy firms have repeatedly demonstrated a lack of domain-specific knowledge in biotechnology in order to substantiate opinions or advice on critical matters governing the operations of these pre-revenue companies involved in high-risk scientific discovery.

Answers to SEC Questions

1. Should we amend Rule 14a-2(b)(9) as proposed to rescind the Rule 14a-2(b)(9)(ii) conditions?

No. The Commission should implement the 2020 Final Rule as adopted.

¹⁸ <https://www.congress.gov/congressional-report/115th-congress/house-report/451/1?overview=closed>

Would such a rescission help facilitate the provision of timely and independent proxy voting advice?

No. There is no demonstrated adverse effect on timeliness or independence as a consequence of the 2020 Final Rule since the Final Rule was never implemented. Further, as the Commission noted in the Proposed Rule, all the proxy firms already have systems in place, although not uniform and incomplete, to address some of these issues. It would be better for consistency, comparability, and decision-usefulness¹⁹ if the SEC codifies standards for all to follow. Further, given their market impact and dominant position, proxy firms should be overseen by the SEC.

Alternatively, rather than rescinding the Rule 14a-2(b)(9)(ii) conditions as proposed, should we commit to a retrospective review of the Rule 14a-2(b)(9)(ii) conditions after they have become effective? If so, what is the appropriate period of time after which we should conduct such review? What would be the potential drawbacks of conducting such a retrospective review?

Yes. We believe the Commission should allow the 2020 Final Rule to become effective to better understand if any of the hypothesized unintended consequences to timeliness, independence, and costs cited throughout the Proposed Rule come to fruition. A period of a minimum of five years (five proxy seasons) would be able to provide a minimum effective sample period for the rules to be implemented as proxies, investors, and registrants need to get accustomed to the new timelines and understand if the Commission's hypothesized effects manifest.

2. Are the existing mechanisms in the proxy system, including the role played by the BPPG and the Oversight Committee and the policies and procedures that PVABs have in place, sufficient to obviate the need for the Rule 14a-2(b)(9)(ii) conditions? Are there other relevant existing mechanisms in the proxy system that the Commission should consider?

No. The current mechanisms in place are not uniformly applied across the proxy service providers. A standard should be implemented to create a uniform, consistent, and comparable framework from which all market participants can make decisions. According to the Proposed Rule, each proxy has implemented a policy but each is imperfect. BIO contends that standards and oversight are required to ensure transparency and effectiveness.

As noted in the narrative above and supported by Commissioner Roisman's comments²⁰, it is highly irregular for a consortium of market participants to self-fund and self-create a self-regulatory body, which lacks true market representation, to make up their own rules and oversight standards without oversight from the Commission.

3. How might we address the risk that PVABs will change their policies and procedures to the detriment of investors if we rescind the Rule 14a-2(b)(9)(ii) conditions? How might we address the risk that, absent the Rule 14a-2(b)(9)(ii) conditions, new entrants to the PVAB market will not be properly incentivized to adopt policies and procedures that approximate those conditions?

¹⁹ This is the justification Chair Gensler gave for launching the ESG reporting initiative. It should also apply to proxies.

²⁰ Supra note 15

By implementing the 2020 Final Rules as adopted and overseeing the proxy advice industry more broadly. It is incomprehensible that proxies are able to change their policies at any given time to the detriment of their clients and markets with no oversight, no accountability, and no ability to use regulatory censure.

All other market participants must get SEC approval for changes that affect their clients and have the potential to sway markets. This same level of scrutiny should be applied to proxy firms as they can alter the path of companies and therefore their share price, which impacts both institutional and retail investors. It would be prudent to ensure that such influence has some kind of oversight from the SEC.

4. Are there ways that we can mitigate the potential adverse effects on proxy voting advice associated with the Rule 14a-2(b)(9)(ii) conditions other than by rescinding those conditions?

Yes. We can implement the 2020 Final Rule, as adopted, and collect evidence of *actual* adverse effects in order to justify rescissions and other modifications.

Since the 2020 Final Rule was not allowed to be implemented, it is difficult to judge and therefore recommend how to alleviate adverse effects as none have manifested. *Prima facie*, the Proposed Rule is intended to fix, preemptively, hypothetical adverse effects that were postulated by those entities who were subject to the 2019 Proposed Rule but were fixed in the amended 2020 Final Rule. Further, as the Commission noted in the Proposed Rule, the proxies have implemented various means for addressing some of the concerns outline in the 2020 Final Rule. If timeliness and independence issues have not happened thus far, why would one assume that once it is mandated that all of a sudden timeliness and independence will become concerns?

5. Have registrants or others relied on the Commission's adoption of the Rule 14a-2(b)(9)(ii) conditions? How, and to what extent, should any such reliance interests factor into the Commission's determination of whether to rescind those conditions?

Markets were not allowed to do very much with the 2020 Final Rule as the Commission prevented its implementation. Registrants will utilize whatever means to ensure that their shareholders have an accurate representation of the company's plans, priorities, and strategies.

6. Should we also reconsider the Supplement to Commission Guidance Regarding Proxy Voting Responsibilities of Investment Advisers that the Commission issued in connection with the 2020 Final Rules? Because that supplemental guidance was prompted, in part, by the Rule 14a-2(b)(9)(ii) conditions, will the guidance be useful if the Rule 14a-2(b)(9)(ii) conditions are rescinded? Should the guidance be rescinded concurrently with the Rule 14a-2(b)(9)(ii) conditions? Should it instead be revised, and, if so, how? Notwithstanding the proposed rescission of the Rule 14a-2(b)(9)(ii) conditions, are there aspects of the supplemental guidance that should be clarified?

No. The Supplement should remain. We believe investors should have a policy for proxy voting and should disclose to their LPs and GPs how they intend to use proxy voting advice as it pertains to their investment process. As ESG and responsible capitalism becomes incorporated into investment mandates, investment managers should be required to

disclose their voting policy. Furthermore, and in general, managers should disclose to their limited and general partners how much of their research and investment processes is outsourced to third party service providers, including proxy advisory services.

7. Should we amend Rule 14a-9 as proposed to remove Note (e)?

No. The Commission should implement the 2020 Final Rule as adopted.

Should we modify the Note instead of deleting it? If so, how should the Note be modified?

No. The Commission should implement the 2020 Final Rule as adopted.

Rather than rescinding or amending Note (e), should we instead commit to conducting a retrospective review of Note (e) after a given period of time? If so, what is the appropriate amount of time after which we should conduct such review? What would be the potential drawbacks of conducting such a retrospective review?

The Commission should implement the 2020 Final Rule as adopted and review after several years.

8. Has the addition of Note (e) to Rule 14a-9 improved the quality or integrity of proxy voting advice? Is there a risk that PVABs will change their policies and procedures to the detriment of investors if the Commission adopts the proposed amendments to Rule 14a-9? Are there any other adverse consequences associated with the removal of Note (e) to Rule 14a-9?

Note (e) was not allowed to take effect, and therefore markets have no way of knowing if the intended improvement in quality and integrity manifested. Many of BIO's members welcomed the 2020 Final Rule as an opportunity to engage more directly with proxy services to help explain the nuances of the issues faced by pre-revenue, R&D companies in the life sciences that must contend with several inherent uncertainties, including those from all that is not yet known of the human body and those from the FDA approval process. It is incomprehensible that proxies are able to change their policies at any given time to the detriment of their clients and markets with no oversight, no accountability, and no ability to use regulatory censure.

BIO agrees with the sentiment expressed by Commissioner Roisman in his dissent that:

"The rationale for this change is puzzling. Note (e) of Rule 14a-9 articulated that "the failure to disclose material information regarding proxy voting advice...could, depending upon particular facts and circumstances, be misleading within the meaning of the rule." According to the proposal, the addition of Note (e) appears "to have unintentionally created a misperception ... [purporting] to determine or alter the law governing Rule 14a-9's application and scope, including its application to statements of opinion." However, the proposal cites no sources which make this claim about the *actual* Final Rule. Instead, the proposal cites several comment letters *on the original 2019 proposed rules*. The concerns outlined by those comment letters were specifically addressed in the Final Rule. The proposal cites no source that Note (e), as understood *after* the explanation in the Final Rule's release, causes any "misperceptions" warranting deletion. And the proposal admits that there are no significant benefits to deleting the note other than avoiding this purported misperception. Given that the misperception was *already addressed and clarified* by the

Final Rule, and that there is no other benefit to be had by deleting the note, I do not see why Note (e) of Rule 14a-9 should be removed.²¹

9. Has the addition of Note (e) to Rule 14a-9 resulted in increased litigation for PVABs? Have PVABs experienced an increase in litigation costs or credible threats of litigation since the adoption of the 2020 Final Rules? Have there been any other adverse consequences associated with the addition of Note (e) to Rule 14a-9?

N/A

10. We have set forth our understanding of the scope of Rule 14a-9 liability in the context of proxy voting advice. Are there other ways we could address concerns about potential increased litigation risks to PVABs and impairment of the independence of proxy voting advice? For example, should we amend Rule 14a-9 to codify this understanding? Alternatively, should we exempt all or parts of proxy voting advice from Rule 14a-9 liability entirely? For example, should we amend Rule 14a-9 to expressly state that a PVAB would not be subject to liability under that rule for its voting recommendations and any subjective determinations it makes in formulating such recommendations, including its decision to use a specific analysis, methodology or information or its decision as to how to respond to any disagreement a registrant may have with its proxy voting advice?

Every other market participant is liable for issuing misleading statements, using incomplete or inaccurate advice, or misreporting data. In all of these cases, market participants are exposed to litigation risk and regulatory risk.

For example, biotechnology companies explicitly disclose that there are regulatory risks in clinical trials as a consequence of FDA deliberations on an experimental therapeutic. Regulatory outcomes yield massive equity price swings in both directions depending on whether it is good news or bad news. Despite these disclosures, biotechnology companies are repeatedly embroiled in class action securities lawsuits for “failures of management” or “misrepresentations” when the outcomes are negative.

If an investment manager suffers significant losses, they can be sued for a variety of reasons and possibly find themselves investigated by the SEC, as was the case for Archegos Capital Management. If an exchange delisted or halted trading in a specific security for arbitrary reasons, the exchange would face litigation and investigation. If an analyst issued research with false data, misrepresented facts, or did not disclose conflicts, then that analyst would be possibly stripped of their license and/or investigated.

Every other market participant is liable for disclosing conflicts, ensuring adequacy of representations, and sourcing needed data in order make assertions. Otherwise, market participants have a duty to clearly disclose when an assertion is more of a conjecture due to lack of data. In the case of proxy firms, the needed data is available from registrants, yet proxy firms refuse to allow for their timely inclusion.

BIO sees no reason why proxy advice businesses should be absolved from these standards, which ensure transparency, efficiency, and an equal playing field among market participants.

²¹ Supra note 15

11. Have we correctly characterized the benefits and costs for PVABs from the proposed amendments? Are there any other benefits and costs that should be considered? Please provide supportive data to the extent available.

No. The Commission stated repeatedly that it did not have the necessary data to verify the expected costs claimed as being detrimental to the industry, nor was the Commission able to collect information about the economics of the proxy voting business. Both of these fact sets are required to establish a baseline from which to forecast the expected effects of the Proposed Rule. However, none were found. We believe that the Commission was correct in saying that these figures are obtuse for such a critical market segment.

The lack of evidence to support the unverified claims of detrimental costs associated with the Final Rule, and thus the expected cost savings of the Proposed Rule, indicates that the Commission had no basis for characterizing the benefits and costs of the Proposed Rule.

12. Have we correctly characterized the benefits and costs for institutional investors, their clients and registrants from the proposed amendments? Are there any other related benefits and costs that should be considered? Please provide supportive data to the extent available.

No. The Proposed Rule itself declares no real benefit for eliminating Note (e). The Commission has also failed to provide evidence that timeliness and independence have been negatively affected by the 2020 Final Rule.

BIO does not believe it is possible to determine if the benefits and costs have been accurately characterized as it is speculative to say that increased costs would be passed on to clients under a duopoly. Further, it is also speculative to suggest that after the proxy voting businesses have implemented procedures to allow for limited registrant interaction that the cost of implementing the 2020 Final Rule would be exorbitant and therefore detrimental to the entire business model and ecosystem. The costs have already been absorbed. Why would codifying the requirement all of a sudden be too costly?

13. We assume that the proposed amendments would strengthen the independence of PVABs. Are we correct in that characterization? Please provide supportive data to the extent available.

No. Proxy firms already enjoy and will continue to enjoy their independence.

14. Have we correctly characterized the effects on efficiency, competition and capital formation from the proposed amendments? Are there any effects that should be considered? Please provide supportive data to the extent available.

N/A



BIO thanks the Commission for the ability to opine on the Proposed Rule. BIO disagrees with the Commission's stance on this issue and welcomes the opportunity to engage in further discussions with the Commission regarding the nuances of how proxy voting businesses affect the biotechnology industry. BIO looks forward to working with the SEC on these important issues. If we can provide further information regarding these comments, please contact me at cpasseri@bio.org.

Carlo Passeri
Senior Director of Capital Markets and Financial Services Policy
Biotechnology Innovation Organization