



December 20, 2021

VIA ELECTRONIC DELIVERY

Ms. Vanessa A. Countryman
Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

RE: Proposed Rule: Proxy Voting Advice (Release No. 34-93595; File No. S7-17-21)

Dear Ms. Countryman:

Virtu Financial, Inc. (“Virtu”)¹ respectfully submits this letter in response to the above-referenced proposed rule issued by the Securities and Exchange Commission (the “SEC” or “Commission”) on November 17, 2021 (the “Proposal”).²

Since at least the late 19th century when the corporation emerged as the preferred legal structure for large commercial enterprises, proxy voting has featured as a key component of corporate governance in the United States. The modern system of proxy voting has allowed corporations to flourish and grow to immense scales, facilitating capital formation while at the same time promoting shareholder rights. Although the regulatory framework governing shareholder voting has evolved over time, proxy voting has consistently played a critical role in preserving and advancing the corporate model in which a company’s board and management are overseen by their shareholders.

Throughout the history of the SEC, proxy voting has been, and appropriately remains, an important subject of regulatory oversight. The Commission has studied and amended the proxy rules many times to account for changes in corporate structure and laws, but always with an eye toward protecting shareholder rights. Revisiting regulations from time to time is “good government” and the Commission should be applauded for its efforts to ensure that its rules do not become stale and periodically are updated to account for evolving business practices, market structure, and regulatory priorities.

However, Virtu respectfully submits that, in the present instance, the Commission has veered away from “good government” by proposing amendments to a rule covering the exact same topic that was adopted

¹ Virtu is a leading financial firm that leverages cutting edge technology to deliver liquidity to the global markets and innovative, transparent trading solutions to its clients. Virtu operates as a market maker across numerous exchanges in the U.S. and is a member of all U.S. registered stock exchanges. Virtu’s market structure expertise, broad diversification, and execution technology enables it to provide competitive bids and offers in over 25,000 securities, at over 235 venues, in 36 countries worldwide. As such, Virtu broadly supports innovation and enhancements to transparency and fairness which enhance liquidity to the benefit of all marketplace participants.

² SEC Release No. 34-93595; File No. S7-17-21 (Nov. 17, 2021), available at <https://www.sec.gov/rules/proposed/2021/34-93595.pdf>.

barely a year earlier after a lengthy and robust notice and comment process, and that was never permitted to take effect (the “2020 Final Rule”).³

By way of background, the 2020 Final Rule was the byproduct of a years-long rulemaking process that spanned both the Obama and Trump administrations. During President Obama’s tenure, the SEC issued a concept release on proxy advisors in 2010,⁴ held a roundtable in 2013,⁵ and issued a Staff Legal Bulletin in 2014 with guidance on the rules governing proxy advisors.⁶ SEC Chairman Jay Clayton continued to comprehensively study the framework for proxy voting and proxy advisory firms, hosting yet another roundtable on the topic in 2018 that generated hundreds of comments from the public,⁷ and issuing additional Commission guidance on proxy voting responsibilities of investment advisers in August 2019.⁸

Based on the comprehensive analysis undertaken by the Commission over the prior decade, and informed by substantial input from investors, academics, the industry, and other interested parties, in November 2019 the Commission issued a proposed rule amendment⁹ that was aimed at providing more transparency and eliminating conflicts of interest – two of the core tenets that underlie our securities laws. In response to the proposed rule, the Commission received and carefully considered the views expressed in hundreds of comment letters over an eight month period. Based on this robust process, the Commission adopted a final rule in July 2020, establishing a compliance date of December 2021. Notably, the 2020 Final Rule was substantially changed from the original proposal, tailored to address the input of the public received during the comment period.

We respectfully submit that the Commission should have waited until the 2020 Final Rule became effective before beginning to consider whether further amendments were warranted. The 2020 Final Rule was the subject of a lengthy and comprehensive notice and comment rulemaking, adopted in good faith by the prior Commission in an effort to promote the best interests of shareholders and to enhance the framework for corporate governance. As far as we can tell, nothing has changed since the 2020 Final Rule was adopted, and we are concerned that the Proposal was motivated not by an interest in promoting

³ See Exemptions from the Proxy Rules for Proxy Voting Advice, Rel. No. 34-89372 (July 22, 2020), *available at* <https://www.sec.gov/rules/final/2020/34-89372.pdf>.

⁴ See Concept Release on the U.S. Proxy System, Rel. No. 34-62495 (Jul. 14, 2010), *available at* <https://www.sec.gov/rules/concept/2010/34-62495.pdf>, comments *available at* <https://www.sec.gov/comments/s7-14-10/s71410.shtml>.

⁵ See Roundtable on Proxy Advisory Services (Dec. 5, 2013), with comments *available at* <https://www.sec.gov/spotlight/proxy-advisory-services.shtml>.

⁶ See Staff Legal Bulletin No. 20, Proxy Voting: Proxy Voting Responsibilities of Investment Advisers and Availability of Exemptions from the Proxy Rules for Proxy Advisory Firms (June 30, 2014), *available at* <https://www.sec.gov/investment/slb20-proxy-voting-responsibilities-investment-advisers>.

⁷ See Roundtable on the Proxy Process (Nov. 15, 2018), comments *available at* <https://www.sec.gov/proxy-roundtable-2018>.

⁸ See Commission Guidance Regarding Proxy Voting Responsibilities of Investment Advisers, Release Nos. IA-5325; IC-33605 (Aug. 21, 2019), *available at* <https://www.sec.gov/rules/interp/2019/ia-5325.pdf>.

⁹ See Proposed Amendments to Exemptions from the Proxy Rules for Proxy Voting Advice, Rel. No. 34-87457 (Nov. 5, 2019), <https://www.sec.gov/rules/proposed/2019/34-87457.pdf>.

shareholder rights and good corporate governance, but rather – as Commissioner Peirce astutely observed – because “the political winds have shifted.”¹⁰

Equally troubling to us is the thinly supported rationale for amending the 2020 Final Rule. As Commissioner Roisman noted in his dissenting statement, the only new sources of information cited in the Proposal as a basis for the amendments are (i) “a news article that quoted market participants both favoring and disfavoring the Final Rules,” (ii) “a statement from one advocacy group on the day that the Final Rules were adopted speculating on their contents,” and (iii) “a closed-door meeting that a group of 16 asset managers and five advocacy groups held with the Chair this past June” where the participants “expressed concerns about the costs associated with the [Final Rules].”¹¹ In our view, none of these items is sufficiently compelling to prompt a proposed reversal of a rule that was adopted as a part of years-long notice and comment period in which hundreds of commenters submitted data and views about the appropriate regulatory framework for proxy voting.

We respectfully submit that the Commission has failed to establish a reasonable basis for amending a recently adopted rule that has not even gone into effect. We strongly agree with Commissioner Peirce’s recommendation that the Commission should abandon the Proposal, allow the 2020 Final Rule to become effective, and commit to engage in a retrospective review in three to five years to evaluate the 2020 Final Rule’s effectiveness.¹²

Respectfully submitted,

A handwritten signature in dark ink that reads "Douglas A. Cifu".

Douglas A. Cifu
Chief Executive Officer

cc: The Honorable Gary Gensler, Chair
The Honorable Hester M. Peirce, Commissioner
The Honorable Elad L. Roisman, Commissioner
The Honorable Allison H. Lee, Commissioner
The Honorable Caroline A. Crenshaw, Commissioner

¹⁰ Commissioner Hester M. Peirce, *Dissenting Statement on Proxy Voting Advice Proposal* (Nov. 17, 2021), available at <https://www.sec.gov/news/statement/peirce-proxy-advice-20211117>.

¹¹ Commissioner Elad L. Roisman, *Too Important to Regulate? Rolling Back Investor Protections on Proxy Voting Advice* (Nov. 17, 2021), available at https://www.sec.gov/news/statement/roisman-proxy-advice-20211117#_ftn15.

¹² *Supra* n.10.