

[Securities Regulation Daily Wrap Up, PROXIES—CII voices concerns about SEC data on factual error frequency in proxy recommendations, \(Feb. 5, 2020\)](#)

Securities Regulation Daily Wrap Up

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The CII said it tried and failed to replicate data analysis published in the SEC's proxy adviser proposal showing a higher rate of factual errors by proxy advisers.

The sheer number of public comments submitted to the SEC on its twin proxy proposals necessitates a closer look at a few of the more targeted comments. For example, the Council of Institutional Investors (CII) submitted a supplemental comment letter [questioning](#) whether SEC data said to justify giving companies more leeway to object to proxy advisers' recommendations demonstrated the true scope of the problem. The CII focused on Table 2 in the proxy adviser proposal, which depicts research conducted by the SEC showing companies noting in their DEFA14A's on EDGAR when they found factual and other types of errors in proxy advisor recommendations.

Table 2 in the proposal shows three years of data on 260 total filings along with the number of references in those filings to factual errors, analytical errors, general policy disputes, amended or modified proposals, and issues falling into a catch-all category titled "Other." Most categories show a downward trend over the three years the SEC surveyed, except for general policy disputes, which remained about the same over the surveyed period. Factual errors, for example, totaled 54 within this time frame; the SEC's proposal suggested that factual errors for 2016, 2017, and 2018 numbered 24, 13, and 17, respectively (See [84 F.R. 66518](#), 66546 (December 4, 2019)).

The CII said it still had questions about the SEC's data even after the SEC's Division of Economic and Risk Analysis (DERA) published a [memorandum](#) explaining its methodology in the weeks before the public comment deadline elapsed. For example, CII noted that DERA conceded that its classification of an error as factual or as another type of error was inherently subjective. CII itself, however, approached certain categories differently than did the SEC; for example, CII generally did not count an item as "Other" if it also fell into another category, and the CII added a category to capture "Additional disclosure."

The CII focused on 2018 and obtained results that were broadly consistent with the SEC's results for that year, except that the CII found fewer instances of factual and analytical errors than did the SEC. The CII also concluded that most claimed errors concerned general policy disputes or the errors were related to companies' decisions to modify proposals or to provide additional or clarified information (See, "Table: Summary of Analysis on Table 2 Data for 2018" on page 9 of the CII's supplemental comment letter). The CII had submitted numerous other comments on the SEC's proxy proposals, including a lengthy comment on [January 30, 2020](#), that also noted potential issues with the SEC's data in Table 2 regarding factual errors (See the main text of the comment letter on page 2 and the further explanation contained in footnote 4).

Companies: Council of Institutional Investors

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