SOCIETY OF CORPORATE SECRETARIES
& GOVERNANCE PROFESSIONALS

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February 4, 2011

Office of Regulations and Interpretations
Employee Benefits Security Administration
Attn: Definition of Fiduciary Proposed Rule
Room N-5655
U.S. Department of Labor
200 Constitution Avenue, NW
Washington, DC 20210

Re: Comments on Definition of Fiduciary Proposed Rule

Dear Sir or Madam:

The Society of Corporate Secretaries and Governance Professionals (the "Society") appreciates the opportunity to respond to the Department of Labor's (the "Department") proposed regulation ("Proposed Regulation") under the Employee Retirement Income Security Act of 1974, as amended ("ERISA") that will redefine the term fiduciary under section 3(21) of ERISA and section 4975(e) of the Internal Revenue Code of 1986, as amended (the "Code"). We submit the letter specifically with regard to proxy advisory firms.

Founded in 1946, the Society is a professional membership association of more than 3,150 attorneys, accountants and other governance professionals who serve more than 2,000 companies of most every size and industry. Society members are responsible for supporting the work of corporate boards of directors and their committees and the executive management of their companies regarding corporate governance and disclosure. Our members generally are responsible for their companies' compliance with the securities laws and regulations, corporate law, and stock exchange listing requirements.

The attached comment letter was filed in response to the Securities and Exchange Commission's (the "SEC" or "Commission") Concept Release on the U.S. Proxy System, SEC Rel. No. 34-62495 (July 14, 2010) (the "Concept Release"), relating to Proxy Advisory Firms seeking comment on the role of such firms, including concerns about conflicts of interest, the extent to which such firms engage in "one-size-fits-all" analyses, and the lack of accuracy and transparency in their voting recommendations. Also attached is Appendix A, *"Collected Proxy Advisory Firm Anecdotes from Members of the Society of Corporate Secretaries and Governance Professionals"* which are anecdotes solicited by, and provided to, the Society for the purpose of responding to the SEC Concept Release on the U.S. Proxy System.

The Society does not support the broadly expanded definition of fiduciary as set forth in the Proposed Regulation. The Society agrees with the position set forth in the letter submitted by Timothy Bartl, Senior Vice President and General Counsel, Center on Executive

Compensation, on February 3, 2011 ("Center On Executive Compensation Letter") which states that "The Center is concerned that the Proposed Regulation could significantly expand the circumstances under which numerous persons supporting the management of plan assets, but not exercising discretion over fiduciary decisions, would be deemed to be fiduciaries, and thus significantly increase plan costs and harm plan participants, fiduciaries, and sponsors."

However, based on our concern that many investment managers delegate or "outsource" their voting responsibility to proxy advisory firms without appropriate oversight, the Society believes that proxy advisory firms that effectively exercise discretion over proxy voting decisions should be considered fiduciaries.

In addition, the Society urges the Department to undertake a comprehensive review of the practices of proxy advisory firms that are set forth in our letter to the Commission below. We also support the request for review as described in Section III of the Center On Executive Compensation letter.

Respectfully submitted,

Kenneth A Bertsch

Kenneth Bertsch
President and CEO
Society of Corporate Secretaries & Governance Professionals

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December 23, 2010

Elizabeth M. Murphy, Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: Concept Release on the U.S. Proxy System, File No. S7-14-10
Proxy Advisory Firms (Section V)

Dear Ms. Murphy:

The Society of Corporate Secretaries and Governance Professionals (the "Society") appreciates the opportunity to respond to the Securities and Exchange Commission's (the "SEC" or "Commission") Concept Release on the U.S. Proxy System, SEC Rel. No. 34-62495 (July 14, 2010) (the "Concept Release"). The Society submits this letter in response to Section V.A. relating to Proxy Advisory Firms seeking comment on the role of such firms, including concerns about conflicts of interest, the extent to which such firms engage in "one-size-fits-all" analyses, and the lack of accuracy and transparency in their voting recommendations. In preparation for this and other comment letters, the Society surveyed its members to collect data regarding a number of issues ("Society Concept Release Survey" or "Survey"). The results of the Survey are attached to the Society's letter dated November 23, 2010 focusing on Part III of the Concept Release.[1]

Founded in 1946, the Society is a professional membership association of over 3,100 attorneys, accountants and other governance professionals who serve more than 2,000 companies of most every size and industry. Society members are responsible for supporting the work of corporate boards of directors and their committees and the executive management of their companies regarding corporate governance and disclosure. Our members generally are responsible for their companies' compliance with the securities laws and regulations, corporate law, and stock exchange listing requirements.

Introduction

As noted by the Commission, proxy advisory firms are one of the few participants in the proxy voting process that generally are not required to be registered or regulated by the SEC. Nevertheless, given the current structure of the proxy system, they not only have significant influence on proxy voting, but for many matters they have become the de-facto arbiters of "good

[1] Questions 1-11 of the Survey relate to proxy advisory firms and the data in those questions has been refered to in this letter.

governance."[2] They influence not only the vote, but corporate behavior in ways that do not necessarily benefit shareholders or increase shareholder value. Moreover, they exert such influence without having any economic interest in the shares of the companies they vote and without being subject to any fiduciary duties to the beneficial owners of the shares for whom they are voting. The examples set forth in the Appendix to this letter show the extent to which proxy advisory firms, particularly ISS, impact corporate actions.

The members of the Society support rules that would require proxy advisory firms to be registered with the SEC and that would subject the institutional investors who use them to further regulation by the SEC. Greater oversight of the entire proxy voting system would facilitate transparency, reduce conflicts of interest, and provide greater discipline in the way vote recommendations are determined, thereby ensuring that votes are cast in the financial best interests of the beneficial owners. Shareholdings in public companies are increasingly held by individuals through mutual funds and other intermediaries who have the right, and obligation, to vote the shares held. As a result, voting decisions are being made by these advisors rather than by the economic beneficiaries of the shares—and the outsourcing by investment advisors of voting decisions to proxy advisory firms makes voting even more remote from the economic interest.

The Society acknowledges that reading and analyzing proxies is time consuming, requiring many hours of effort and analysis. A portfolio manager or his or her in-house governance analysts would need to expend significant resources to review individually the proxy materials of each company his or her fund owns. Outsourcing these reviews to proxy advisory firms is therefore pragmatic and rational for institutional investors, many of which say they cannot analyze the hundreds of proxy statements for their portfolio companies, particularly given the ever-increasing length and complexity of such materials.[3] However, in our experience, proxy advisory firms generally do not truly analyze and apply their policies on a case by case basis either; instead, proxy advisory firms in most cases apply a kind of check-the-box or "one-size-fits-all" analysis. Indeed, proxy advisory firms have an interest in perpetuating the view that such check-the-box approach to proxy voting—a demand they can fill at low cost—is adequate. Nevertheless, given that the vote is an asset associated with the shares held by a fund, the Society is of the view that more is required of both the investment manager and the proxy advisory firm.

The Society also believes there is a collective action problem inherent in the current structure of the proxy voting system that can only be corrected through regulation. Generally, institutional investors have little incentive to give sufficient time and resources to intelligent voting, since the investor knows that with a small ownership interest in the company, the fund's

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[2] We note that there are differences between Institutional Shareholder Services ("ISS") and other proxy advisory firms such as Glass Lewis. We have tried to be specific in this letter, but the majority of the examples raised herein relate to ISS, primarily because of its dominant market share and our members' interaction with ISS. Importantly, we note that Glass Lewis generally does not engage with issuers at all and, for this reason, the interaction of the Society members with Glass Lewis as it relates to vote recommendations has been minimal.

[3] The Society understands that some of the very largest investment managers develop their own voting guidelines and use proxy firms to "supplement" their own evaluation of agenda items. This fact notwithstanding, the influence of the proxy advisory firms is substantial.

vote will have limited direct impact at a company.[4] Very few shareholder vote outcomes are determined by a small margin. This dynamic creates downward pressure on the quality and thoroughness of analysis related to proxy votes, particularly those that have in the past been regarded as "routine" (e.g., election of directors in non-contested situations). As proxy voting in non-contested meetings has become more important, this disconnect can result in damage to the long-term interests of the company. In addition, the influence of proxy advisory firms will likely continue to increase as the institutional vote becomes more significant with the decline in the retail vote due to the elimination of the broker vote under NYSE Rule 452.

Our concerns about the current proxy advisory firm business, along with our suggestions for potential improvements to the current regulatory model, are described below. Our comments are organized as follows. First, we describe the influence of proxy advisory firms. Second, we discuss the harm to the integrity of the vote as a result of proxy advisory firms' factual inaccuracies, as well as the application of "one-size-fits-all" policies applied without judgment about what is in the economic best interests of the shareholders of a particular company on a particular issue. Third, we set forth suggested improvements in the procedures of proxy advisory firms to: (i) increase transparency in the formulation of voting policies, (ii) mitigate the potential for factual mistakes, and (iii) give issuers more time to review voting recommendations and allow issuer comments on reports. Finally we set out proposed regulation that would require SEC oversight of proxy advisory firms and require registered investment advisors to oversee the work of such firms to ensure accuracy and transparency.

I. PROXY ADVISORY FIRMS INFLUENCE VOTING OUTCOMES AND CORPORATE BEHAVIOR

Proxy advisory firms exert a significant influence on matters presented for shareholder votes. Our Survey indicates that 50% of respondents believe that at least 20% of their shares are voted in line with proxy advisory firm recommendations. Asked differently, 82% of our respondents indicated that proxy advisory firms have a "material impact" (defined as influencing 10% or more) on the vote. And, as discussed further below, proxy advisory firms not only influence the way in which shareholders vote their shares, but also the matters (or the way in which such matters) are presented on proxy statements.

The influence of proxy advisory firms is reflected by the large number of clients that follow precisely the voting recommendations of these firms. Evidence of this fact is that votes come in immediately the day after a proxy advisory firm releases its vote recommendations, as evidenced by the increase in the votes cast. As an example, one of our Society members stated that one year when ISS was very late in releasing its report, the member's company's vote levels were similarly delayed but running 96% in favor of directors. When ISS did release the report, the company's quorum increased from 24% to 37% within a day (the short time frame suggesting little independent deliberation by the funds using ISS) and the vote in favor of directors dropped to 80% following the ISS recommendation. Appendix at 1. The Appendix

[4] This comment is, of course, not relevant for activist shareholders who gain positions in companies for the express purpose of effecting particular outcomes on a vote.

provides other examples demonstrating that a significant portion of companies' votes are voted in lockstep with the recommendations of the proxy advisory firms.

The influence of proxy advisory firms is particularly troubling in situations where their vote recommendations are based on factual errors relating to the issuer. As discussed in Section II.B. below, because issuers often are unsuccessful with some proxy advisory firms in having an error of fact corrected in a voting recommendation report, they may attempt to contact their investors to explain the error. However, this effort is often unsuccessful as well. As one Society member notes: "Many hedge funds that are in our top 25 shareholders by holdings refuse to engage with us when we call because they say that they follow ISS recommendations." Appendix at 1. And, another Society member stated that many mutual funds buy research from proxy advisory firms; certain firms are required to justify any vote that is NOT in accordance with the proxy advisory firm's recommendations. Appendix at 2. When proxy advisory firm clients blindly follow the firm's recommendations, even after mistakes are pointed out to them, the integrity of the voting system is called into question.

The influence of proxy advisory firms is reflected not only in voting totals. The threat of an "against" or "withhold" vote by a proxy advisory firm often causes companies to adopt practices in order to ensure a favorable recommendation. For this reason, the influence of proxy advisory firms is not only evidenced by the "against" voting patterns. Half of the Survey respondents noted that their companies have withdrawn or modified a proposal based on the expected voting recommendation of a proxy advisory firm, and of those, 63% stated that the primary reason for the change or withdrawal was because they believed the adverse recommendation could materially impact the vote results.

As just one example, a Society member described a situation where the company was seeking to get approval of an employee stock incentive plan. The language in the company's plan regarding change of control triggers did not contain the precise terminology required by ISS to get a favorable recommendation (although in substance it conformed to ISS's policy). In order to issue a favorable recommendation, ISS insisted that the company file a Form 8-K explaining the transaction in ISS's terminology. Although not required, the company issued the Form 8-K in order to receive the vote recommendation. Appendix at 4. More significantly, it is not uncommon for companies to promise a particular equity compensation "burn rate" cap, or promise to reduce proposed issuance authority in order to obtain ISS approval of the plan. The role of ISS in "regulating" equity compensation plans in this regard is unquestionable.

As a result of the role proxy advisory firms play in formulating and establishing governance standards and the extent to which institutional fund managers follow those standards, proxy advisory firms have become the "de facto" arbiters of corporate governance practices. The New York Stock Exchange ("NYSE") Commission on Corporate Governance issued a report on September 23, 2010 that explicitly recognized the influence that proxy advisory firms have on the market. The NYSE Commission on Corporate Governance recommended that the SEC should "require [proxy advisory] firms to disclose the policies and methodologies that the firms use to formulate specific voting recommendations, as well as material conflicts of interest, and to hold themselves to a high degree of care, accuracy and fairness in dealing with both shareholders and companies by adhering to strict codes of conduct." The Society joins in supporting this recommendation.

II. PROXY ADVISORY FIRMS HARM THE INTEGRITY OF PROXY VOTING

The Society believes that proxy advisory firm voting influence undermines the integrity of the voting system for a number of reasons: (1) certain proxy advisory firms (primarily ISS) are subject to conflicts of interest; (2) all proxy advisory firms make factual mistakes (sometimes material or egregious) in their analysis, with the effect that their voting guidelines are erroneously applied to the company's proposal and the voting recommendation is inaccurate; and (3) all proxy advisory firms to our knowledge lack an economic interest in the shares they vote and therefore have no responsibility to ensure their recommendations achieve the best economic outcome for shareholders of a particular company.

A. <u>Conflicts of Interest</u>

Proxy advisory firms are subject to three types of conflicts of interest. The first occurs as a result of proxy advisory firms selling services to both institutional clients and issuers. The second conflict arises when proxy advisory firms make recommendations on proposals submitted by their own investor clients. The third conflict stems from proxy advisory firms' interest in recommending certain proposals and adopting policies that are likely to expand their influence and future market.

(1) Some proxy advisory firms provide services to both institutions and issuers

Most notably, ISS provides advisory services to issuers on corporate governance structures or compensation plans, and then makes voting recommendations based on the same structures and plans on which it has advised. Many Society members subscribe to ISS's service in an effort to ensure they design compensation plans that will get a favorable recommendation from ISS. Indeed, some Society members report that they believe they have *no choice* but to subscribe to ISS's service in order to gain sufficient visibility into the ISS model to understand what will gain a favorable ISS recommendation.

The Society is aware that ISS believes its consulting services are walled off from vote recommendation decisions. Nevertheless, it appears that the consulting side uses the same compensation plan models that the analysts use when making voting recommendations. Accordingly, the Society does not believe this conflict can be adequately mitigated by "Chinese Wall" procedures between the consulting and voting sides of the business.

(2) Proxy advisory firms make recommendations on proposals submitted by their own investor clients

Second, some proxy advisory firms make voting recommendations in favor of proposals that are being submitted by investors that are clients of the proxy advisory firm. The Society believes that the only way to mitigate this conflict is to require the proxy advisory firm to disclose in their voting recommendation that the subject proposal has been submitted by a client—and for the client to disclose to the company and the other shareholders as part of its proposal in the proxy statement that the client utilizes ISS and that ISS recommended in favor of the proposal. We believe not having this information is harmful both to the other clients of ISS and to the company's other shareholders because, without this information, they have no idea of the extent of, or types of, conflicts to which the proxy advisory firm is subject. Corporate issuers and their shareholders have a right to know that they are subjected to voting recommendations that have been proposed and paid for by the proxy advisory firms' clients.

(3) Proxy advisory firms have an interest in recommending proposals and adopting policies that sustain and expand demand for their services

Proxy advisory firms also make recommendations and adopt policies that will increase demand for the services they or their affiliate companies offer to the same institutional clients. In such instances, the proxy advisory firm has a specific interest in the outcome of the vote on the issue. For example, annual—rather than tri-annual—say-on-pay votes increase the frequency of proxy voting for institutional investors, thereby increasing dependence on the proxy advisory firms. As another example, MSCI, corporate parent of ISS, has an interest in generating demand for its environmental services; at the same time, ISS provides voting recommendations on shareholder proposals that advocate expanded environmental disclosures, such as the Global Reporting Initiative.

B. Proxy Advisory Firm Recommendations Frequently Contain Mistakes

One of the major factors undermining integrity in the proxy voting system is that the recommendations of proxy advisory firms are often based on mistakes of fact. The Society's Survey results indicate that 65% of the respondents experienced--at least once--a vote recommendation based on materially inaccurate or incomplete information, or where the proxy advisory firm reported as a fact information that was incorrect or incomplete. One quarter of those respondents experienced inaccurate or incomplete information on several occasions. For the respondents who found inaccurate information in a vote report, the proxy advisory firm did not correct the mistake 57% of the time. Furthermore, in 44% of the instances where issuers found mistakes and the proxy advisory firm reviewed its recommendations, the proxy advisory firm was unwilling to change the recommendation or factual assertion. In another 22% of the instances where issuers found mistakes, the proxy advisory firm was unwilling to reconsider the recommendation at all.

This lack of accuracy harms both issuers and investors. Several Society members have informed us that in several instances their institutional investors were unaware of a mistake in a proxy advisory firm report or recommendation and stated to the issuer in private that had they known otherwise, their own votes would have been different. Other Society members from small or mid cap companies do not receive proxy advisory firm reports at all, and cannot begin to assess the basis upon which votes may have been made by their institutional investors. Moreover, proxy advisory firm Glass Lewis does not make its vote recommendations available to issuers at all—so issuers have no idea when there are mistakes in a report unless their institutional shareholders inform them. At the very least, proxy advisory firm recommendations should be provided to all issuers in advance to enable the issuer to check the factual accuracy of the report. Votes that are not based on actual facts are not informed votes.

The Society believes that mistakes are made because the procedures utilized by proxy advisory firms are inadequate and not subject to review. We believe this is largely a cost and resource issue. Issuers note that the staff at proxy advisory firms seem overwhelmed during proxy season and do not appear to spend sufficient time reviewing the issues in the context of the specific company or in engaging in substantive dialogue with the issuer to discuss concerns they may have regarding a proposal. Moreover, much of the staff at proxy advisory firms appears to have limited experience.

To illustrate the many concerns Society members have about the processes utilized by proxy advisory firms, we have collected a number of examples from our members, which are reflected (anonymously) in the Appendix hereto. The concerns fall into the following general categories:

Insufficient Time to Review and Comment

In the situations in which a proxy advisory firm offers an issuer an opportunity to review its draft report, the review period is very short (sometimes less than 24 hours). For example, one Society member reported: "This year ISS gave us 17 hours to review and respond to their report on us, and 7 of those hours were between the hours of midnight on a Sunday and 7 am on a Monday." In several instances, ISS delivered the report the Friday immediately before Easter Sunday and required the issuer to respond that Monday. Appendix at 13-14.

No Possibility for Review at All

ISS does not permit most firms (small and mid cap companies) to review its reports. Glass Lewis will not provide reports to any issuer or otherwise engage with them except in limited, off-season situations. In addition, in certain instances, even large cap issuers are not permitted to view ISS's vote recommendations in advance (e.g., in "vote no" campaigns).

No Correction of Factual Errors by the Proxy Advisory Firm

Even when the issuer points out factual errors upon which the recommendation is based, proxy advisory firms do not always correct the errors – much less change the recommendation. Thus, one Society member reported that its report from ISS calculated its CEO's compensation as cash plus a "Guaranteed Bonus" when the CEO did not receive any guaranteed bonus. When the issue was raised to ISS, the analyst said that this metric was "hard-coded" and could not be changed. Appendix at 8.

Comparison to Irrelevant or Misleading Peer Groups

One important area of concern is that of the peer groups used by proxy advisory firms in connection with their recommendations on executive compensation. Proxy advisory firms tend to base their peer group analysis using only the same GICS code as the particular issuer, but do not take into consideration any other data to determine what companies may, in fact, be the issuer's true competitors. The resulting analysis is formulaic and is based on practices and data of a very broad group including hundreds of companies that may engage in very different businesses from the issuer. In one instance, a Society member reported that the GICS peer group used by ISS included companies with revenue well below any single business unit at the company, as well as companies with a primary business with which the member's company did not compete. Another Society member reported ISS using a peer group that bore no resemblance to the company's business. Appendix at 9.

One-Size-Fits-All Approach

Society members believe proxy advisory firms often do not take into account the specific circumstances of the issuer, but instead follow a one-size-fits-all approach to their vote recommendations. Society members have reported situations where the proxy advisory firm recommended against a governance practice that had been approved in a prior vote by the company's shareholders—thus disregarding the will of shareholders. (The example related to a shareholder-approved threshold for calling special meetings). In other instances, the proxy advisory firm conditioned its vote recommendation to the company having certain "good" governance practices in place—although the company's shareholders had affirmatively rejected in prior votes the adoption of those "good" governance practices.

The one-size-fits-all approach is also shown in the examples of the frequently used rationale that something is "hard coded" into the ISS system which cannot be changed. In addition, both ISS and Glass Lewis seem to use largely formulaic models in recommending approval for equity compensation plans, with little attempt to take into account the particular circumstances faced by a company at a given point of time. Nor do either ISS or Glass Lewis appear to take into consideration the specific market for talent that is affected. This is partly a question of peer groups being too broad or inaccurate, and partly a lack of a sophisticated labor market analysis.

C. <u>Proxy Advisory Firms Do Not Consider the Economic Impact of their Vote Recommendations</u>

Proxy advisory firms do not have an economic interest in the companies in which they are making voting recommendations. The delegation by investment advisors of their vote to proxy advisory firms has resulted in a divorce between the persons who make the investment decision and the persons who exercise the vote. The result of this gap is that, as the proxy voting system currently operates, voting recommendations may bear no relation to the economic performance of the company—and therefore, such voting recommendations may not, in fact, improve the performance of a company.

We believe that because proxy advisory firms do not need to take into consideration the economic consequences of their recommendations, they do not feel compelled to specifically tailor their recommendations to the particular facts and circumstances of each issuer—and this, in turn only encourages the "one-size-fits-all" approach currently seen in proxy advisory firm recommendations. For example, in some companies, having a lead director may make sense—but not in all. Moreover, ISS has followed a sweeping policy opposed to change of control excise tax gross-ups, without clear consideration of the specific problem a company may be seeking to address (companies sometimes provide gross-ups to remedy disparate treatment between executives who have moved up quickly in the several years before a transaction, as compared with executives whose pay changed little in the period; the latter executives receive favorable net treatment in the absence of an excise tax gross-up). In light of ISS's opposition, companies seek to narrowly tailor such gross-ups, but this has had little or no impact on ISS recommendations against compensation committee members related to this issue.

Thus, the fact that investment managers (with fiduciary duties) can rely on proxy advisory firms (with no fiduciary duties) not only to make voting recommendations—but also to effect the vote itself--is a disconnect in the current system that needs to be attended to and remedied. As further discussed below, we believe persons having the fiduciary responsibilities of share ownership need to exercise more responsibility in decision-making with respect to the voting process.

III. PROXY ADVISORY FIRMS SHOULD BE REQUIRED TO IMPROVE THEIR PROCEDURES

Given the significant function proxy advisory firms play in the proxy voting process and their considerable influence on the vote, as described above, proxy advisory firms should be required to change certain of their current procedures.

The Society respectfully requests that the SEC require proxy advisory firms to:

- Establish procedures to manage conflicts of interest, and specifically disclose in their reports any and all conflicts of interest with the subject of their recommendation (e.g., as discussed above, by noting their relationship with proponents of the proposal)

- Disclose the methodologies, guidelines, assumptions or rationales used in making their recommendations, including discussion as to whether the proxy advisory firm's methodology is a "generic methodology" applied to all issuers (i.e., is not specific to the facts and circumstance of a particular issuer)

- Disclose the processes used to gather their information, including how their reviewers are trained; the number of companies each analyst reviews within a given time frame; and whether or not the recommendations go through a "second review" process by a more senior manager

- Provide issuers with at least 5 business days to review draft reports prior to their release

- Disclose the processes the proxy advisory firm has established to discuss their recommendations with an issuer prior to their release; and whether the firm has an "appeals" process if the issuer disagrees with the recommendation

- Include in their report to their clients any response by the issuer regarding any factual matters or items the issuer has contested (we note this recommendation is also endorsed by the NYSE Commission on Corporate Governance), and include whether the issuer invoked an "appeal" of the recommendation (if the proxy advisory firm has such a process) and whether the proxy advisory firm revised its recommendation as a result

- Report to the SEC at the end of each proxy season the number of incidents where issuers took exception to the factual statements contained in the proxy advisors' reports or appealed the recommendation of the proxy advisory firm

- Disclose their executive compensation models and standards so that issuers do not need to purchase consulting services from a proxy advisory firm in order to determine if it will get a favorable recommendation on a stock plan

The purpose of these disclosures and procedures is intended to make the processes and methodologies utilized by the proxy advisory firm more transparent, accountable and reliable. The goal is to ensure that proxy advisory firm recommendations are undertaken with more care, accuracy and fairness.

IV. RECOMMENDATIONS TO ENSURE BETTER REGULATION OF PROXY ADVISORY FIRMS

Investment advisors and other fiduciaries, such as pension plans, have a fiduciary duty to vote the shares they hold on behalf of their beneficiaries. As noted above, because of the volume of proxies needed to be voted each season, most investment managers outsource their voting responsibilities to proxy advisory firms. However, these proxy advisory firms are generally not required to be registered with the SEC and, as they have no fiduciary duties to the shareholders on whose behalf they are making voting decisions, they have no responsibility to take into consideration how their recommendation will affect the economic value of the company's shares they are voting.

The Society believes that both investment advisors and proxy advisory firms must have an affirmative obligation to ensure that vote recommendations are based on accurate facts, are given by providers free from conflicts of interest, and are in the best interests of the shareholders at the particular company in question. While conflicts of interest may be mitigated by "Chinese Wall" procedures and adequate disclosure by both the investment advisor and the proxy advisory firm, the Society notes that issues such as lack of accuracy and accountability, which are largely resource issues, are rooted in the economics of how proxy advisory firms are compensated for their services. The Society supports proxy advisory firms having adequate staffing to enable them to undertake a thorough review of the specific facts and circumstances of individual companies-- rather than merely following formulas and generic guidelines. The Society believes, however, that without adequate and appropriate SEC regulation of proxy advisory services, there is no incentive for proxy advisory firms or the investment managers that hire them to provide the necessary resources to the system to ensure that vote recommendations are accurate and responsible.

A. All Proxy Advisory Firms Should be Required to Register as Investment Advisors

An initial recommendation to improving the quality of the proxy voting system would be to require proxy advisory firms to become registered investment advisors. In this way, the practices and procedures of such firms would be subject to SEC examination. These examinations, we believe, would provide additional discipline and accountability to the system. Once registered, proxy advisory firms would need to establish to an oversight authority that they are following their procedures and would need to provide factual support for the bases of their disclosures (enhanced, as suggested above).

However, the Society is not confident that registration of proxy advisory firms, in and of itself, will solve the issues noted above, particularly the "one-size-fits-all" approach now generally taken by proxy advisory firms with respect to their recommendations and votes. The Society notes, for example, that ISS is currently registered under the Investment Advisors Act of 1940, and it is not required to perform, as part of its services, an analysis of how each proposal for which it is giving a vote recommendation will or will not benefit the company's shareholders from an economic point of view. We therefore believe registration of proxy advisory firms is just the first step needed to correct the current system.

B. The SEC Should Require Investment Advisors Relying on Proxy Advisory Firms to Oversee Their Recommendations and Analysis

In addition to the registration of proxy advisory firms, the Society believes the Commission should require any investment advisor or other fiduciary that relies upon or uses a proxy advisory firm to exercise appropriate oversight of the proxy advisory firm and its recommendations. The entity that has fiduciary duties to its clients (who are the beneficial owners of the issuer's stock) should, at a minimum, ensure that the proxy advisory firm (who in fact is acting as the investment manager's agent) has processes and procedures in place that are responsible, auditable, accountable and transparent with respect to its voting recommendations.

We therefore propose that the proxy advisory firm that is used by an investment manager be reviewed periodically by the investment manager to assess the nature of the votes cast on its behalf, including ensuring that the votes cast were consistent with the policies of the institutional advisor/fiduciary (if different from the proxy advisory firm).

In addition, each investment manager or other fiduciary that utilizes the services of a proxy advisory firm should be required to disclose to its clients: (i) the name(s) of the proxy advisory firm it has engaged, and (ii) the extent to which the investment advisor/fiduciary has followed or not followed the recommendations of the proxy advisory firm.

Most importantly, we would propose that each investment manager or other fiduciary that utilizes the services of a proxy advisory firm be required to establish procedures to ensure that by following the voting recommendation of the proxy advisory firm with respect to a particular company, the investment manager has a reasonable basis upon which to believe it is acting in the best economic interests of the shareholders of such company. Only in this way will the disconnect that currently exists between those who manage the economics of share ownership and those who determine the vote associated with share ownership be addressed and corrected.

The purpose of the procedures and disclosures suggested above is not intended to limit the ability of investment managers and other fiduciaries in retaining the services of proxy advisory firms. Rather, the additional procedures being proposed are intended to provide discipline, accountability and oversight for the process by which proxy advisory firms develop and vote their recommendations, and the additional disclosures being proposed are intended to provide appropriate and necessary information to the relevant stakeholders (issuers and their shareholders, fund participants of investment managers, and clients of proxy advisory firms) of these processes and of any conflicts of interest that may exist between participants in the process.

The processes and disclosures proposed above may become more applicable in light of regulations proposed on October 21, 2010 by the Department of Labor ("DOL") which, if adopted, would substantially broaden the definition of the term "fiduciary" under the Employee Retirement Income Security Act of 1974 ("ERISA"). One result of the broadened definition may be the inclusion within such term of proxy advisory firms, which firms would then become subject to the rigorous standards of conduct with which plan fiduciaries are charged under ERISA. Even if proxy advisory firms are not themselves brought within the definition of "fiduciary" under the proposed regulations, it is clear from the Preamble of the proposed rules that the DOL views investment advice as advice relating to "other property of the plan" including "advice and recommendations as to the exercise of rights appurtenant to shares of stock (e.g., voting proxies)." Federal Register, Vol. 75, No. 204, Oct. 22, 2010 at 65266.

Consistent with the DOL's views as articulated in the proposed rules, the Society believes it is clear that investment managers need to be more responsible and take a more active role in supervising the voting recommendations of proxy advisory firms. Consistent with their fiduciary duties, investment managers need to be able to demonstrate that the vote cast in respect of a particular proposal for a particular company supports and helps maximize the economic value of the shares being voted.

Summary

The Society is very appreciative that the Commission has undertaken a review of the "plumbing" of the proxy voting system. Voting is an important right for shareholders that should be exercised in a responsible manner. The suggestions proposed above acknowledge that, while there are many participants in the voting process that provide needed services, additional procedures and disclosures are necessary to address some of the issues currently undermining the integrity of the voting process. The Society believes that appropriate oversight of proxy advisory firms, through additional regulation of both the firms and the investment managers that engage them, will lead to a significantly improved, more transparent, and more accountable system.

We appreciate the opportunity to have commented on this important proposal and would be happy to provide you with further information to the extent you would find it useful.

Respectfully submitted,

/s/ Neila B. Radin

Chair, Securities Law Committee
The Society of Corporate Secretaries & Governance Professionals

cc:
Mary L. Schapiro, Chairman
Luis A. Aguilar, Commissioner
Kathleen L. Casey, Commissioner
Troy A. Paredes, Commissioner
Elisse B. Walter, Commissioner
Meredith Cross, Director, Division of Corporation Finance
Felicia Kung, Chief, Office of Rulemaking, Division of Corporation Finance

Appendix A

Collected Proxy Advisory Firm Anecdotes from Members of the Society of Corporate Secretaries and Governance Professionals

These anecdotes were solicited by, and provided to, the Society for the purpose of responding to the SEC Concept Release on the U.S. Proxy System. They have been inserted into this appendix with only minor editing; we did not attempt to make them sound uniform or to have a particular style. Rather they are "as is."[5] We deleted certain words or numbers that could specifically identify the companies. Data on the amount of time companies are provided to review their draft Reports (if at all) is in Section I. Section II includes a few examples of the level of voting influence held by the proxy advisory firms. Section III contains substantive examples of errors of fact or analysis in companies' reports themselves. Section IV contains a few concerns about the GRId system used by ISS. Section V notes problems with Glass Lewis' processes, which are limited given that Glass Lewis does not provide vote recommendation reports to issuers and generally does not engage with issuers except in limited cases.

I. TIMING

- This year ISS gave us 17 hours to review and respond to their report on us this year, and 7 of those hours were between the hours of midnight on a Sunday and 7am on a Monday (in other words, we received their draft report at midnight on Sunday and had until 5pm the next day to respond.)

- In 2010, our company received ISS's proxy analysis at 9:24 am on a Friday, and was given until 10:00 am on Monday to provide comments.

- Each of the last two years, we have been given only 24 hours to review the report (many companies not given the opportunity to review at all).

- We got ours on Thursday night before Good Friday and were given until the end of the day on FRIDAY to respond (others were given until Monday).

- We received our draft report on a Thursday afternoon. We were given until 5:00 pm on Friday (Good Friday) to respond. Most companies were given until Monday considering it was a holiday weekend

- We received our report on Good Friday 2008 with a time to respond of Tuesday by 3 PM

- We received our report on Thursday after 5 P.M. and were given until Monday at 3 P.M. to respond, and Friday was Good Friday.

[5] Our members use ISS, RiskMetrics, RMG and/or RiskMetrics Group without discrimination to denote the proxy advisory firm currently known as ISS, or Institutional Shareholder Services, part of RiskMetrics Group, now owned by MSCI. We did not change the references used.

- In one instance, we received a draft report late Friday afternoon and were required to respond by midday on the following Monday.

- We have had less than one business day to review in the past.

- In 2010, we got the draft ISS report by e-mail at 11:40 pm on a Tuesday night, with a due date for comments of 5 pm Wednesday. So that is 17 hours and 20 minutes, but since I was asleep when the report hit my Blackberry, it was effectively less than 12 hours.

- One year the General Counsel was on vacation on the West Coast, the lawyer responsible for the proxy statement was on vacation in Europe and the report arrived with a 24-hour deadline. Notwithstanding the clear difficulty of coordinating and reviewing a response during the 24-hour period with the 9 hour time difference, ISS would not provide an extension saying that their contracts with their clients require them to issue their reports 24 hours after releasing the draft.

- We typically get 24-36 hours to review ISS' report -- not even the full 48 hours.

II. INFLUENCE

- While it is very hard to show the ISS influence on the vote because many investors vote late (night before annual meeting), one year we were pretty sure we could pinpoint at least the initial impact of their vote recommendations. They were very late in releasing their recommendations. As a result, our quorum was very low (24%) as we got close to the meeting. Our directors were all running in the 96%+ favorable range. ISS then released their report with recommendations against certain directors. The quorum jumped to 37% within a day and the vote in favor of those directors [that ISS recommended against] dropped to 80%. The vote continued to drop afterward, but it is harder to show the connection.

- For the past two years approximately 40% of our vote came in soon after the ISS recommendation was released and of that 40%, over 1/2 of the voting was in line with the ISS recommendation on all fronts.

- Many hedge funds who are in our top 25 shareholders by holdings refuse to engage with us when we call because they say that they follow ISS recommendations.

- An institutional investor said that to the extent their vote recommendation would deviate from the ISS recommendation, they would have to provide a written explanation as to why.

- One of my clients had several compensation plans go to shareholder vote for amendments last year. They pre-cleared the plan changes with ISS' consulting arm and had a positive indication on all of them. However, when ISS' shareholder service arm reviewed them, they misread two of the plans and recommended withhold votes. The Company did not get an advance copy of ISS's advisory, and no one from ISS would return the Company's phone calls to them. Thus, they would not allow the Company to point out their error, nor did they correct it. Yes votes were running in the 90's prior to ISS's recommendation and then the two plans they recommended against fell to the 30s. The Company has good relationships with many of its institutional shareholders and was able to generate enough positive votes and reversals of no's to yes's to get approval of all the plans, but it was very close for one of the plans involved.

III. ERRORS OF FACT OR ANALYSIS

Rights Plan – ISS

A few years ago, we did a lot of leg work in advance to get a Rights Plan approved by our shareholders including extensive discussions and negotiations with the ISS policy director. With some changes, we got some indirect assurance that ISS would support our Rights Plan adoption proposal (that is, our conversation led us to trust that there were no more issues). A couple of months later the proxy analysis report came for our review and it recommends against our Rights Plan proposal. We called the analyst right away and she barely knew what a rights plan was, let alone was she capable of having an intelligent discussion. All she knew was that it didn't precisely meet whatever checklist she had in front of her. We found out that the policy director with whom we had been working was no longer at ISS. In desperation, I called a senior executive there. After a stressful do-over discussion and more negotiation against initial resistance, we got it turned around but it wasn't a pleasant experience. Based on all the homework I did with ISS and our institutional investors, I had given our Board assurance that the proposal would pass and it was on this basis that we put it in the proxy statement. You can imagine the panic I was in to see 6 months of legwork work unravel. The arithmetic at the time was that, without an ISS favorable vote recommendation, it was unlikely that the proposal would have passed.

Illustrates

(1) inability to intelligently discuss matters with proxy analyst; form over substance check-the-box approach

(2) 24 hours is unrealistic if there is a problem and you have to reach for someone higher in the ISS organization to appeal -- On our side, I basically had to drop everything for about five days to work on getting this turned around, And I was just lucky that, at that busy time, I could get the senior executive’s attention.

(3) inability to get reasonable assurance in advance about voting recommendation.

(4) paying for this pre-work with ISS seems unseemly to me; feels like buying a vote.

*   *   *   *

Poison Pill – ISS

On March 24, 2010, our Board of Directors voted to extend the expiration date of our Shareholder Rights Agreement (aka "poison pill") to November 1, 2010 without submitting the matter for shareholder vote at our May 2010 Annual Meeting. The Board has the absolute discretion to do so pursuant to the terms of the Rights Agreement, without having to obtain shareholder consent or vote. We consulted with RiskMetrics before taking this Board vote since extending a poison pill without a shareholder vote was specifically listed on RiskMetrics' 2010 "no vote" guidelines for institutional investors.

RiskMetrics threatened to issue a no vote recommendation for the Board's proposed slate of officers at our May 2010 Annual Meeting if the Board did not adopt a second resolution (which was adopted by the Board) that the Rights Agreement would not be extended beyond the date of the 2011 Annual Meeting of Shareholders without obtaining majority shareholder vote. The bottom line is that RiskMetrics forced our Board into a corner regarding the extension, even though they had no legal right to do so.

* * * *

Stock Plan Fails Burn Rate and Overhang Analyses -- ISS

We had a new stock plan approved at our last stockholder meeting over an ISS “no” recommendation. The “no” recommendation was a consequence of us failing the well-known “burn rate” and “overhang” analyses that are a bit of a black box, and ignore the unique facts and circumstances around our business. In our case, it included:

- Failing to take into account that we have a broad-based, “options-only” approach that most effectively ties pay to stock price performance and mitigates the gap between the compensation of executive officers and those at more junior levels of the organization – things, ironically, ISS supports;
- Employing a calculation that penalizes an organization for minimizing dilution in raising capital. If we were to issue stock to the public on a regular basis at a low price, the percentage of shares issues attributable to equity awards would have been low, and ISS would have said “yes” to our plan – by being creative in raising capital through corporate partnering and selling stock at prices above fair market value, we have minimized dilution (a good thing) – however, our dilution from options was too high as a result, causing ISS to make a “no” recommendation on our plan;
- Their industry groupings for making recommendations (as well as the thresholds they employ) are a mystery – what I find inappropriate is that our company, as a pre-commercial biotech company, relies more heavily on equity than our larger-cap peers (e.g., other bio-technology companies), yet we are lumped into the same category as them for ISS purposes.

* * * *

Stock Plan – ISS

Company X was submitting a new stock plan to shareholders for approval and expected ISS support, based on discussions with its compensation consultant (a separate issue in this case!)

This company is in an industry with significant price volatility (semi-conductors). The metrics used by ISS to determine whether CEO compensation had increased despite perceived poor performance utilized equity valuations far higher than any logical value for the stock, and then compared it to the very low year end stock price. As a result, ISS determined that CEO compensation had increased without better performance (notwithstanding no cash compensation increase and equity that was worth far less than what it was measured by ISS to be worth). ISS recommended a No vote. The Company negotiated with ISS and was able to get ISS to reverse its recommendation, but it was (a) expensive to engage the proxy solicitor and other advisors, (b) stressful, as there was a very small window to negotiate due to the timing of the initial recommendation and the time needed to solicit votes.

*   *   *   *

Stock Plan Dilution Calculation – ISS

In 2004, our company asked shareholders to approve an increase under our stock plan. ISS recommended a no vote based on incorrect data that affected the ISS dilution calculation. All of this happened after the proxy statement was mailed. ISS had never contacted us to review the report before it was released. After a lot of aggravation, we found the junior analyst and determined that she had made a mistake. She did correct that calculation. However, we then learned that ISS would still recommend a No vote for a different reason: because they had grouped our company into a peer group that bore no resemblance to our business – their response was that we are free to engage them (pay a fee) and have more "say" in which peer group we are placed (my words, not theirs). In the end, we spent more money with a proxy solicitor and engaged management to contact investors directly to over-ride the recommendation. While we were successful in doing so, a company uses up a lot of "goodwill" when approaching investors to override an ISS recommendation and can't do so every year. Plus the cost to outside advisors and management team is very high, particularly for smaller companies.

*   *   *   *

Equity Plan – ISS

One year RM ran their model to analyze an equity plan. Notwithstanding that we thought their results were incorrect, having used other professionals to run the model, RM recommended against the plan. They later admitted they had incorrectly run the model and apologized.

*   *   *   *

Must Pay to Verify -- GMI

We cannot obtain Governance Metrics International's report on us without paying a fee ($2,500 annually), which we do not pay. Therefore, we cannot verify that what they are saying about us is factually correct and we cannot see what they are saying. We were only able to obtain a one-page summary of the report. Their rating of us is high, so no harm no foul, but if it is true that no issuer can get the report without paying, then we essentially have to pay to verify their facts.

*   *   *   *

Supplemental 8K "when it occurs is when it occurs" – ISS

We had an issue with ISS last year. We were asking our shareholders to approve a new stock incentive plan. When ISS reviewed it, we passed all of their tests (burn rate, SVT, etc.), except they determined that our "change of control" definition was too liberal and recommended against for that reason. Specifically, they determined that our definition of change of control was liberal because it was triggered by the shareholders' approval of a merger/business combination and not the "consummation" of that transaction. They pointed out that a transaction could be approved, but still not occur because of regulatory approvals or other events, and because of that, the language should only be triggered upon consummation. I agree with that and our Plan was consistent with that position.
Unfortunately for us, the ISS analyst failed to read our definition correctly. I think he actually failed to finish reading it. Our language is stated below in relevant part:
"the stockholders of the Company approve the sale to an independent third party of all or substantially all of the property or assets of the Company **and such sale occurs**." It also said elsewhere: "the stockholders of the Company approve a consolidation or merger of the Company with another corporation . . . **and such consolidation or merger occurs**."

After their "against" recommendation, I called them to point out their incorrect reading. However, they were unwilling to admit anything or change their recommendation. They had a supervisor talk with me and she actually said to me "we don't know what "occurs" means". I found that kind of humorous. They said if we put out an 8-K explaining that the transaction had to be consummated to trigger the change of control definition, they would reissue a favorable recommendation. We obviously put out the 8-K, but it was extra work and kind of silly. We basically put out an 8-K that said "when we said X, we really meant X". A former employee even emailed me and asked why we put out that strange 8-K.

Despite their inability to correctly read the document, their influence was significant. The vote was substantially against the plan prior to our 8-K. After our 8-K and their reissued report, the numbers flipped dramatically. So you can see they have a huge influence, but they should be held accountable for being accurate. We found the process very frustrating. They were absolutely incorrect in their report, but there was very little we could do. Institutions that follow them, follow them blindly and we just look like whiners if I call them with this story. They should be held accountable for being accurate.

* * * *

Recommendation Against Director -- ISS

ISS' draft report recommends an "against" vote for Mr. X's election. We believed that the disclosed reason for his attending less than 75% of the meetings in 2009 should have been accepted by ISS as a "valid excuse." Their policy provided that they would consider the degree to which absences were due to an unavoidable conflict, as well as any pattern of absenteeism and other extraordinary circumstances underlying the director's absence. As we explained in detail in our proxy statement, Mr. X's attendance in 2009 was impacted by significant events involving

Company A, including the nationalization of its operations by the government. These events led to unavoidable scheduling and travel conflicts in two months in 2009. Had Mr. X attended just one meeting in those two months, his attendance would have exceeded the 75% threshold. In addition, Mr. X did not have any attendance issues in the past few years. Clearly, the expropriation of Company A's assets and business by the government should qualify as "extraordinary circumstances" underlying Mr. X's failure to meet the 75% attendance threshold in 2009.
Finally, notwithstanding the ISS recommendation, the report was also misleading in that it stated only that we disclosed “events involving Company A,” but neglected to state that the events concerned the nationalization of Company A's operations (which we did).

Based on the foregoing, we asked ISS to change its “against” vote recommendation for Mr. X’s election to a “for” vote recommendation. And for the reasons explained above, even if ISS did not agree to change its recommendation, we asked that the final report state that the significant events involving Company A included the nationalization of the company's operations by the government. This would allow investors to determine for themselves whether there was an acceptable explanation for Mr. X's attendance in 2009.

ISS reconsidered their position based on our input -- and they ultimately SUPPORTED Mr. X because they found that the nationalization provided a "valid excuse". They also noted that it would have been helpful if we put his actual attendance [69%] in our proxy statement so they could see it wasn't way below 75% -- but they got there from the disclosure we had about how his attendance would have been over 75% if he made one additional meeting. The only caveat is that they continued to include a discussion in their report that says he blew the 75% threshold -- but they did explain why they supported his election in any event.

* * * *

Recommendation Against Director -- ISS

Your draft report recommends an “against” vote for Mr. Y’s election. The draft report fails to expressly state the reason(s) for this recommendation, just indicating that Mr. Y is an “affiliated outside director sitting on a key committee." In addition, a footnote in the draft report states that Mr. Y's son is an executive of the company and that the company provided matching contributions in the amount of $000 to Mr. Y's chosen institution.
First, it is important to note that Mr. Y's son is not a current or former Section 16 officer. Moreover, for the last few years, we have included proxy disclosure about Mr. Y's son's employment, and ISS has recommended "for" Mr. Y's election.

With regard to the company's matching grants programs, as explained in our proxy, all of our employees in the U.S. are offered the opportunity to participate in these programs under which the company provides cash or equipment to colleges, hospital, and cultural or environmental institutions. In addition, the company allows its directors to participate in these programs on the same basis as the company's employees. The suggestion that Mr. Y's participation in the company's broad-based matching grants programs -- with the company making $000 in related contributions -- somehow impacts Mr. Y's independence is reckless and irresponsible, in particular because ISS' guidelines do not mention any concern about charitable programs. Moreover, in your draft report, you expressly state that contributions in the amount of $15,000 under the company's matching grants programs "does not qualify as material under ISS's definition of independence." This statement begs the question of how contributions in an amount less than $000 could raise a material issue that justifies the extraordinary move of recommending against the election of a director whom ISS has previously supported. And this arbitrary change in ISS' recommendation is particularly indefensible in light of the fact that the company has adopted majority election for directors.

Further, the ISS report is deceptive because in evaluating the matching grants contributions for several other directors, ISS expressly notes that the "board attested to the independence of this director under NYSE rules." However, in the related footnote about Mr. Y, ISS fails to note that the board attested to his independence under the NYSE rules. Failing to include this statement is materially misleading as it suggests to investors that our board did not make the same independence finding for Mr. Y that it made for the other directors.

Based on the foregoing, we asked ISS to change its "against" vote recommendation for Mr. Y's election to a "for" vote recommendation. And for the reasons explained above, even if ISS does not change its recommendation, the final report should expressly state that our board attested to Mr. Y's independence under the NYSE rules.

The simple explanation is that we believe they misread the proxy and thought that the son was an executive officer. We have a clear statement on page 11 of our proxy that says the son does NOT hold an executive officer position. But they got confused by the subsequent disclosure that said he's an executive.

* * * *

Director Independence – ISS

ISS deems Directors not independent who fully meet NYSE standards

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Director Consulting Relationship – ISS

In 2010, ISS had initially recommended a withhold vote against a director because they believed he had a consulting relationship when he did not. We provided additional facts before the report was issued and they changed their recommendation.

* * * *

"Affiliated" Director – ISS

A family member of a director serves as the head of a small business unit, is not an executive officer, is not a member of our management committee and is several layers down in the corporate chain. For several years ISS determined that the existence of the family member did not impede the director's independent status. The family member's title changed, but not his responsibilities, nor his status within the organization. The Board has consistently determined that the director is independent in accordance with stock exchange rules and the company's corporate governance policies. We explained this to ISS and their draft report indicated that the director was still deemed to be independent under the ISS standards. However, the final report indicated that ISS now deemed the director, who serves on one of our independent board committees, as "affiliated" given the existence of the family member. When asked, ISS indicated that they had "just changed their mind". The "for" vote for the director decreased by over 30% since many of our institutional shareholders just follow the ISS recommendation.

* * * *

More "Affiliated" Directors – ISS

In reference to three particular client companies, "ISS asserted its superior wisdom over the SEC rules, by classifying directors as affiliates, notwithstanding that these directors were determined to be independent by their boards of directors and legal counsel, based upon and consistent with SEC rules re director independence. In all three cases, ISS made "withhold" recommendations, because they considered these directors to be affiliated directors serving on key committees. Further, all three of these companies have majority voting standards in place, and experienced extremely close votes.

With respect to one such company the lead director's son has a senior management position in one subsidiary of the reporting company, which the reporting company acquired 6 years after the son had already been employed at the sub. The son has no position or policy authority of any kind at the corporate parent level, and his father/director was recused from the Board's decision to acquire the company at the time of the purchase. This was not good enough for them a full 8 years after the fact!

"My issue is that ISS promulgates proxy policies that have a material impact upon the proxy process, yet can be much more restrictive than policies that are SEC vetted under Federal rule making authority, and further subjected to public comment periods before implementation. ISS proxy policy formulation/implementation cannot be subject to such rigor, yet these policies can have material adverse consequences for the companies to which they are applied"

* * * *

Recommendation on Stockholder Proposal on Executive Compensation Annual Incentive Payout -- ISS

The ISS draft report recommends a "For" vote on this stockholder proposal. According to ISS policy, it considers such proposals on a case-by-case basis, taking into account stock ownership requirements among other factors. However, the ISS draft report incorrectly states that our stock ownership requirement for our CEO is only 3X "base salary" which is less than the ISS requirement of 7X to 10X. In fact, our requirement is 3X individual target cash compensation (i.e., base salary plus target incentive payment). For Mr. X, this translates into a stock ownership requirement of 11X his base salary. Because we have a strong stock ownership requirement, we requested that ISS correct its misstatement in the final report and change its "For" vote to "Against" on this proposal.

ISS agreed to fix the information about our CEO stock ownership guidelines -- but because we do not have an equity retention requirement, they did not change their support for this proposal.

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Amended Employment Agreements – ISS

We amended some of the employment agreements of senior officers to deal with technical requirements of Section 409A of the tax code. ISS was of the view that we amended the agreements after the annual meeting and did not disclose this. These agreements had tax gross up provisions, but the original agreements were old. ISS takes the view that when you amend an agreement with tax gross up features, you should delete these provisions and, if you do not, they will come out against you on say for pay proposals. However, ISS' policy permits a company to make amendments to old agreements to address Section 409A of the tax code. Since ISS did not read our proxy statement carefully, they made an incorrect assumption. We sent them our '34 Act public documents that showed that our amendments were technical and related to Section 409A. (and made prior to the annual meeting) and spent much time explaining this to them. They then changed their recommendation on the say for pay proposal in the final draft to recommend approval, but we were holding our breath in the meantime.

However, given that they only give companies like ours about 24 hours to work through their draft report and discuss comments with them, it puts a lot of pressure on the company (and requires considerable resources) to quickly review and highlight the major discrepancies (not really enough time to correct every wrong statement) before the final report is issued. We estimate that the issuance of a report with an “against” recommendation containing an error of this magnitude could have decreased the “for” vote by at least 25-30% since many of our institutional shareholders just follow the ISS recommendation.

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Tax Gross Up – ISS

ISS recommended an “AGAINST” vote for all compensation committee members at our Company because the CEO’s employment agreement contained a tax gross up for an expense that was about 0.1% of his total compensation. This provision had been in his employment agreement for years and was fully disclosed in the summary compensation table and CD&A.

In order to change the “AGAINST” recommendation, ISS required the CEO, in 24 hours, to agree to forgo reimbursements for specified taxes (this effectively amended his long-standing employment agreement). Note that ISS’ conclusion as to whether the company had poor pay practices, and thus whether the Compensation Committee should be voted out, depended on the CEO’s unilateral act (not the Compensation Committee’s act), within a 24-hour period, to essentially amend his employment agreement and waive what amounted to about 0.1% of his total compensation.

* * * *

Financial Profile Information Incorrect -- ISS

We asked ISS to expressly acknowledge that our Company does not disclose the following financial metrics: operating income, EBITDA, operating margin and EBITD margin, and that ISS had instead used its own calculations for this information (and we asked them to disclose those specific calculations to investors). They agreed to include a statement that says they pulled the information from Standard & Poors.

* * * *

Hard Coded Description of Stockholder Proposals -- ISS

Common sense would seem to dictate that the ISS report refer to the stockholder proposals by the same names used in our proxy statement. However, despite the fact that neither the proposal nor the company's response uses the term "Bonus Banking," ISS used that new name when discussing our stockholder proposal on "Executive Compensation Annual Incentive Payout." It is not clear what "Bonus Banking" means, and the use of this term could have a negative connotation that potentially misleads or confuses investors. Therefore, we requested that ISS change the title of the proposal to “Executive Compensation Annual Incentive Payout,” consistent with our proxy statement.

Similarly, ISS referred to the stockholder proposal on special meetings as “Amend Articles/Bylaws/Charter – Call Special Meetings” which is incorrect and misleading. This title wrongly suggests that the proposal was asking that stockholders approve an amendment to our organizational documents and that we do not currently provide stockholders with the right to call special meetings -- neither of which is true. Instead, the proposal asked that the Board lower the company's existing threshold for special meetings. Therefore, we requested that ISS change the title of this proposal to “New Threshold for Calling Special Meetings,” consistent with our proxy statement.

ISS refused to change the titles of our shareholder proposals in their report because it said that the labels were "hard coded" into their system.

* * * *

Guarantee Bonus Non-Existent – ISS

ISS included in its pie chart for CEO 'Comp mix for most recent fiscal year' a designation that Cash Comp = Base + 'Guaranteed Bonus'. This is incorrect as the CEO does not receive any 'guaranteed' bonus. This was made clear in our CD&A.

When raised to ISS, the analyst first said that this was "hard-coded" and could not be changed. I pushed, and then he admitted that they'd gotten this comment from other companies who felt very strongly that it was misleading. He claims that Riskmetrics can't change the hard-coding at this point in the process but they will state in the narrative that our CEO's bonus is not guaranteed. Finally, he said that next year, we should expect to see a change (i.e., they'll remove the reference to "guaranteed bonus").

* * * *

Cut and Paste – ISS

ISS once "cut and pasted" another company’s say on pay recommendation into our proxy review.

* * * *

Long Term Compensation – Glass Lewis

Glass Lewis consistently double counts long-term comp because we award in February for the prior year's performance (e.g., they counted the Feb. 09 grant and the Feb. 10 grant this past year).

* * * *

Consulting Services

Proxy advisory firm changed its position on acceptability of certain provisions of our equity plan the same year we ceased buying consulting services from the firm.

* * * *

Peer Group Not Comparable – ISS

Overall compensation analysis: We disclose our compensation peer group in the proxy. This peer group includes 35 companies with similar job roles based on size, scope, and complexity. It includes companies outside our industry in recognition of the fact that competition for senior management talent is not limited to our industry. The Riskmetrics analysis ignores this peer group, substituting a much smaller group of companies based on Global Industry Classification Standard (GICS). This alternate peer group includes some companies that have revenue well below any single business unit at our company, as well as companies with primary businesses in which we do not compete and companies without any significant global reach. We question the usefulness of this alternative peer group.

When raised with ISS, they stated that they hear this complaint a lot; but they have no current plans to revisit their approach on peer groups.

* * * *

Peer Group Compensation Data Not Available in Year Compared – ISS

In 2008, Riskmetrics claimed to comparing our company to the 'Median peer group '2007" when in fact 2007 data for several of these companies was not available. Specifically, the following companies in Riskmetrics' alternative peer group have not submitted 2007 proxies as of the time of the report: X, Y, Z, Therefore, we asked RMG to expressly state in the report that they were comparing 2007 Company data v. 2006 other company data. One other company in the peer group had submitted a preliminary-proxy which was not included in current Equilar results. One of the other comparables had been acquired in October 2007, so no additional executive compensation information will be filed with the SEC. We noted these facts to highlight our concern about RMG's use of an alternative peer group.

ISS responded that the Median Peer Group 2007--was "hard-coded" and couldn't be changed, despite the fact that several of these companies have not disclosed compensation data for 2007, and therefore the data used will be 2006 info. The analyst at ISS said he would try to expressly call that out (2007 v. 2006) in a footnote to their report. The acquired company is now off the list and will be replaced by another company whose name he could not provide me at that time.

* * * *

"Median" Compensation Measured against and Average Revenues -- ISS

ISS is inconsistent when using median and average when comparing our Company to the peer group. Compensation is measured by median, but revenues are measured by average. This is misleading because the average peer group revenue is $21B, while the median revenue is $6B. Likewise, the average peer group total compensation value would be higher than the median $8.8M included in the report. Again, the disparity between ISS's alternative peer group and our Company's comparative data highlights our concern about the relevancy of the ISS peer group.

ISS was unwilling to make this change and stated that they believe that measuring compensation by median -- but financials by mean -- makes sense, and is appropriately disclosed.

* * * *

Definition of CEO "Tenure" Only Means Board Tenure – ISS

We asked ISS to clarify "tenure." Under CEO stats, since our Chairman has been with the Company for 34 years, but only 8 as a Director. ISS refused noting that the statistic they use for tenure is as a director, so they kept their reference to 8 years.

* * * *

Other Factual Errors

- ISS has an error in first paragraph under "Voting Results and Company Response to Shareholders". The particular shareholder proposal received 51% of the vote, not 61%.

- The paragraph on peer groups is misleading. Our Company does target the median of its peer group, not the Riskmetrics peer group. Therefore, the peer group comparison should be clarified to state that CEO's total compensation of 2.78 times the median of the Company's peer group is not referring to the Company's peer group of 35 companies as disclosed in the CD&A. Instead, this peer group refers to 11 companies that share the Company's GISC number.

- The sentence that states, "The Company's Personal Pension Plan began in 1999...." is incorrect. The 1999 Personal Pension Plan is a continuation of the Company's US pension plan that was established in 1945. Our CEO began accruing benefits under this plan when he was hired in over 30 years ago.

- ISS recommended vote against a director based on erroneous facts - but which facts they had correct in their CGQ database. Because we're a small company, the report was issued without prior review by us.

- CEO Compensation Profile. As disclosed in our proxy, Mr. X became CEO in March 2002, not 10 years ago as indicated in the draft ISS report. They agreed to fix the mistake.

- We have a unique capital structure which does not "fit" within the advisory firms system so the information is always inaccurate.

- The Report incorrectly states that our Company is a Delaware company.

- Reports have contained numerous factual errors. For example, in one year, the report contained compensation information from the wrong year.

- In one year, the final report was different from the report provided to us for review. It contained a change in rating in one category based on an incorrect statement that certain information was not disclosed in the proxy statement. When asked about it, ISS acknowledged the error but said they would not issue a corrected report to their clients during the proxy season.

IV. GRId ERRORS

ISS made a significant error in its GRId Profile for our Company. Under the compensation section, ISS states that "The company has not voluntarily adopted 'say on pay' and had a related proposal that received majority support." The second part of this statement is wrong. The shareholder proposal on say on pay failed to receive majority support at our Company in both 2009 and 2010.

We did not understand (i) how this significant mistake was made and (ii) why this disclosure was not included in any of the draft materials that ISS provided to us to review for accuracy. We asked ISS to confirm that it would correct this error and send the revised profile to all parties to whom they sent the original profile, alerting them about the mistake.

ISS corrected our GRId profile to state: The company has not voluntarily adopted "say on pay" and has not been the target of a related shareholder proposal that received majority support. However, ISS also stated that because the erroneous language was not published in conjunction with our proxy analysis and had no impact on the score, users of GRId data would not have been impacted.

We remained concerned that ISS had distributed a report to numerous parties with the erroneous statement that our Company ignored a shareholder proposal that received a majority vote. We believe the damage was done merely by the fact that your subscribers were incorrectly informed that (i) our Company shareholders supported a Say on Pay proposal by majority vote and (ii) we failed to respond to that vote. Quite simply we have no way of knowing how important this was to ISS subscribers. In fact, the only reason we knew about the mistake was that one of ISS subscribers contacted us and provided us with a copy of your report to ask for an explanation about why we had not disclosed, or responded to, a shareholder SOP proposal that received majority support.

* * * *

ISS Mistakes (Voting Requirements)

The GRId profile for our Company stated that we required a super-majority vote to approve certain amendments and transactions. This is not the case as is clearly reflected in our organizational documents. ISS put this information in our profile despite the fact that information they sent us to review in early 2010 was accurate -- i.e., that the Company's charter and bylaws may be amended by a simple majority vote and that mergers/business combinations similarly require only a simple majority vote.

We asked for an explanation as to how this factual information was changed -- incorrectly -- without us knowing.

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GRId Score Changes

Even though the GRId score is supposed to change only (1) as a result of the annual review or (2) in certain cases where the company discloses something that would affect the score, we have gotten e-mail alerts several times (I would guess four) since our annual meeting (held in April) indicating that our score had changed (i.e., downgraded). It has literally taken days to straighten out the reason for each change, and during that time we've been given a consummate runaround and oodles of misinformation as to the reason for the change and on some occasions have had to re-enter ALL the data we need to supply for the GRId score. This has been particularly frustrating since in all cases we've eventually been told that the change was a mistake. On one recent occasion we were told that we'd get an e-mail confirmation that the changed score was in error, but we never received it, and when we followed up we were told that our spam filter must have deleted the confirmation from the queue.

V. GLASS LEWIS

Internal Investigation Discussion – Glass Lewis

Glass Lewis has selectively summarized the factual background of an internal investigation detailing all wrongdoing and recovery from former directors and officers but omitting conclusions about a lack of evidence to proceed with charges against current directors. They then charged that the current directors should not be elected to the board because they failed in oversight duties.

*   *   *   *

Vote Against Committee Chair –Glass Lewis

At times Glass Lewis has recommended votes against the audit committee chair based on the fact that the proxy statement identified only one or two continuing directors on the audit committee, failing to recognize that board vacancies were to be filled by shareholder election at the meeting, following which time the company would make such (new) assignments.

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Pay for Performance Model Formulaic – Glass Lewis

Glass Lewis utilizes a pay-for-performance model that is formulaic and basically a black box.

The Glass Lewis model does not recognize differences in business models and performance criteria for various industries.

Glass Lewis uses the same performance metrics for all industries and are weighted the same for all companies, regardless of industry group. For example, change in operating cash flow and return on assets are not relevant metrics for us. Glass Lewis analysis considers ROE for just one year; not sure how they define ROE.

Glass Lewis has acknowledged that the model is designed to quantify a linkage between pay and performance that is easily administered across the range of all 4,000 U.S. companies they analyze so is lock-step and is not adjusted for industry.

Glass Lewis does not disclose the peers used in its pay-for-performance model – does not use same peers as company does.

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Glass Lewis report contained factual errors, e.g., erroneously described how bonuses were awarded under the incentive plan.

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Glass Lewis does not provide an opportunity for issuers to review their report prior to issuance.