CENTER FOR CAPITAL MARKETS
COMPETITIVENESS

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The Honorable Mary Jo White
Chair
U.S. Securities and Exchange
Commission
100 F Street, NE
Washington, DC 20549

Dear Chair White:

The U.S. Chamber of Commerce is the world's largest business federation, representing more than three million businesses and organizations of every size, sector, and region. The Chamber created the Center for Capital Markets Competitiveness ("CCMC") to promote a modern and effective regulatory structure for capital markets to fully function in the 21st century economy. It is an important priority of the CCMC to advance an effective and transparent corporate governance system that encourages shareholder communications and participation.

We would like to thank the Securities and Exchange Commission ("SEC") for holding—and we look forward to participating in—the upcoming roundtable on proxy advisory firms.

The prevalent conflicts of interest and lack of transparency and accountability of proxy advisory firms is a troubling trend that can undermine confidence in and stall progress of strong corporate governance. An examination of the influential role of proxy advisory firms has become even more important as the number and complexity of issues on proxy ballots has grown exponentially.

For instance, despite Congress' clear intent that companies and their shareholders should decide whether say-on-pay resolutions should be held every one, two or three years, based on their individual circumstances[1], both Institutional

[1] Pub. L. No. 111-203, 124 Stat. 1376, §951 (2010).

Shareholder Services ("ISS") and Glass, Lewis & Co. ("Glass Lewis"), which together account for 97% of the market for proxy advisory services in the United States[2] and effectively "control" 38% of the vote at many companies,[3] have adopted blanket policies favoring annual votes in all cases.[4] As a consequence, annual say-on-pay voting has become virtually universal in the United States[5], and institutional investors have become even more reliant on proxy advisors to handle this additional workload.[6]

Were it the case that the proxy advisors' universal position was based on rigorous economic analysis demonstrating a positive impact on shareholder value, this state of affairs would not be as problematic. However, we are aware of no such analysis conducted or relied upon by proxy advisors in reaching this conclusion.[7] Moreover, it is exceedingly unlikely that a single corporate governance arrangement is appropriate for all companies, all the time. Thus, the proxy advisors' one-size-fits all approach to corporate governance, together with their apparent lack of diligence in assessing the impact of their proxy voting advice, is an exercise of influence which, if it continues essentially unchecked, will have damaging consequences for our capital markets.

The experience with say-on-pay is only one clear illustration of the current state, in which proxy advisors' influence over corporate governance in the United States far outstrips their level of transparency, accountability, and responsiveness. And yet, proxy advisors have resisted steps to ensure their voting recommendations are

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[2] *See* J. Glassman & J. Verret, HOW TO FIX OUR BROKEN PROXY ADVISORY SYSTEM, 8, Mercatus Center, George Mason University (Apr. 16, 2013), available at http://mercatus.org/sites/default/files/Glassman_ProxyAdvisorySystem_04152013.pdf.

[3] *See* Ertimur, Yonca, Ferri, Fabrizio and Oesch, David, SHAREHOLDER VOTES AND PROXY ADVISORS: EVIDENCE FROM SAY ON PAY, 7th Annual Conference on Empirical Legal Studies Paper (Feb. 25, 2013), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2019239.

[4] *See* Institutional Shareholder Services, 2013 U.S. PROXY VOTING SUMMARY GUIDELINES, 41 (Jan. 31, 2013), available at http://www.issgovernance.com/files/2013ISSUSSummaryGuidelines1312013.pdf, *see also* Glass, Lewis & Co., PROXY PAPER GUIDELINES, 8 (2012), available at http://www.glasslewis.com/assets/uploads/2012/02/Guidelines_UnitedStates_2013_Abridged1.pdf.

[5] Emily Chasan, Most Companies Opt for Annual Say-On-Pay Votes, CFO JOURNAL, April 9, 2013, available at http://blogs.wsj.com/cfo/2013/04/09/most-companies-opt-for-annual-say-on-pay-votes/.

[6] Bew, Robyn and Fields, Richard, VOTING DECISIONS AT US MUTUAL FUNDS: HOW INVESTORS REALLY USE PROXY ADVISORS, 2 (Jun. 2012), available at http://www.irrcinstitute.org/pdf/Voting_Decisions_at%20US_Mutual_Funds.pdf.

[7] There is academic research demonstrating that proxy advisors' favored policies on compensation may in fact have a negative impact on share value. *See* D. Larker, A. McCall and G. Ormazabal, THE ECONOMIC CONSEQUENCES OF PROXY ADVISOR SAY-ON-PAY VOTING POLICIES, Stanford Graduate School of Business Research Paper No. 2105 (July 5, 2012), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2101453.

developed based on clear, objective, and empirically-based corporate governance standards to help companies and investors evaluate and improve corporate governance as a means of increasing shareholder value.[8]

For example, in 2011, France's Autorité Des Marchés Financiers issued Recommendation 2011-06 ("AMF Recommendation"), calling on proxy advisors to take a number of important steps to introduce greater transparency, accountability, and responsiveness to proxy advisors' conduct in four areas: 1) establishing and issuing the voting policy; 2) establishing and submitting voting recommendations to investors; 3) communicating with listed companies, and; 4) preventing conflicts of interest.[9] In response, ISS and Glass Lewis each took a very minor, check-the-box step outlined in the AMF Recommendation, which they touted publicly in press releases, without addressing the spirit and intent of the AMF Recommendations.[10] This reactionary, check-the-box approach to reform further demonstrates the need for leadership on this important issue from the SEC.

However, more regulation is not the answer. Instead, we believe that government should encourage public companies, investors, and proxy advisory firms to engage in a dialogue to create a system that brings transparency and accountability to proxy advisory firms. This dialogue should build on other positive trends in the

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[8] To follow-up on an active dialogue that the Chamber had fostered with corporate secretaries and ISS to correct some of these flaws, the Chamber in 2010 wrote to ISS and the SEC with a proposal to inject transparency and accountability into this system by creating Administrative Procedure Act-like processes for voting policies and recommendations. *See* Memorandum from U.S. Chamber of Commerce to ISS (Aug. 4, 2010), available at http://www.sec.gov/comments/s7-14-10/s71410-268.pdf. This would have allowed for an open dialogue in which all stakeholders could have participated, and would have better informed ISS of circumstances material to the interests of its clients. To date, ISS has not acted or commented on these recommendations. The Chamber, to date, has not had substantive discussions with Glass Lewis.

[9] Autorité Des Marchés Financiers, AMF Recommendation 2011-06, PROXY VOTING ADVISORY FIRMS (March 18, 2011), available at http://www.amf-france.org/en_US/Reglementation/Doctrine/Doctrine-list/Doctrine.html?category=I+-+Issuers+and+financial+disclosure&isSearch=true&xtmc=2011-06&lastSearchPage=http%3A%2F%2Fwww.amf-france.org%2FmagnoliaPublic%2Famf%2FResultat-de-recherche.html%3FLANGUAGE%3Dfr%26valid_recherche%3DValider%26isSearch%3Dtrue%26TEXT%3D2011-06%26simpleSearch%3Dtrue&docVersion=1.0&docId=workspace%3A%2F%2FSpacesStore%2F12e1aead-0ff9-4f26-8fd0-d0ebe29d0efe&xtcr=1&docVersion=1.2&langSwitch=true.

[10] Both proxy advisors make their reports available to the subject companies following their release to clients, although AMF's recommendation was to make reports available to companies for pre-publication review. *See* ISS, ISS Updates Compliance with AMF Recommendation No. 2011-06 of March 18 2011 on Proxy Advisory Firms (Mar. 2012), available at http://www.issgovernance.com/policy/FrenchDraftReviewAnnouncement. *See* also Glass, Lewis, AMF Recommendation for Proxy Advisors, available at http://www.glasslewis.com/issuer/amf/.

proxy system, including greater communication between companies and shareholders, and enhanced due diligence by asset managers in executing shareholder votes.

Attached, you will find ***Best Practices and Core Principles for the Development, Dispensation and Receipt of Proxy Advice***. The CCMC has developed these best practices and core principles to improve corporate governance by ensuring that proxy advisory firms:

- **Are free of conflicts of interest that could influence vote recommendations;**

- **Ensure that reports are factually correct and establish a fair and reasonable process for correcting errors;**

- **Produce vote recommendations and policy standards that are supported by data driven procedures and methodologies that tie recommendations to shareholder value;**

- **Allow for a robust dialogue between proxy advisory firms and stakeholders when developing policy standards and vote recommendations;**

- **Provide vote recommendations to reflect the individual condition, status and structure for each company and not employ one-size-fits all voting advice; and**

- **Provide for communication with public companies to prevent factual errors and better understand the facts surrounding the financial condition and governance of a company.**

You will also find attached the June 5, 2013 testimony from former SEC Chairman Harvey Pitt, to the House of Representatives Subcommittee on Capital Markets and Government Sponsored Enterprises, on behalf of the Chamber, which discusses the ***Best Practices and Core Principles for the Development,***

Dispensation and Receipt of Proxy Advice in more depth. We respectfully request that both of these documents be distributed to the roundtable participants.

We are encouraged that the SEC has taken up this important issue, and we look forward to SEC support for efforts to bring about a reasonable and cooperative solution, involving all stakeholders, to instill greater transparency, accountability, and fairness in the conduct of proxy advisory firms, given their influence over the governance of US companies. We look forward to working with you on this important issue.

Sincerely,

David Hirschmann

cc:
The Honorable Luis A. Aguilar
The Honorable Daniel M. Gallagher
The Honorable Michael S. Piwowar
The Honorable Kara M. Stein
Mr. Keith F. Higgins, Director of Corporation Finance
Mr. Norm Champ, Director of Investment Management