

**Best Practices and Core Principles for the
Development, Dispensation, and Receipt of**

PROXY ADVICE

March 2013



CENTER FOR CAPITAL MARKETS

COMPETITIVENESS

The U.S. Chamber's Center for Capital Markets Competitiveness has long advocated policies that promote effective shareholder participation in the corporate governance process. Strong corporate governance is a critical cornerstone for the healthy long-term performance of public companies and their positive promotion of long-term shareholder value.

Proxy advisory firms, public companies, and investment portfolio manager organizations each play an important role in ensuring that corporate governance furthers the interests of shareholders through a process that relies heavily on fair shareholder communications and informed participation.

Over the past decade, important positive strides have been made to improve corporate governance, transparency, and accountability. Sarbanes-Oxley helped foster more active and independent public

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company boards; there has been a welcome and necessary increase in communications among boards, management, and investors; and asset managers have increasingly established programs to enhance their due diligence in executing shareholder votes, including robust internal capabilities focused on proxy voting as well as the use of proxy advisory firms' recommendations as one of a number of data points to inform their independent proxy voting decisions.

However, there have also been some negative trends. In particular, annual proxy solicitations increasingly have become a referendum on a growing and sometimes conflicting array of issues. As the range of issues proposed in the name of corporate governance has grown, the need for clear, objective, and empirically based corporate governance standards has also grown to help management and investors evaluate and improve corporate governance as a means of increasing shareholder value.

Proxy advisory firms play a growing role in this process. They are called upon to evaluate every issue for which corporate proxies are solicited and, in doing so, have become *de facto* corporate governance standard setters for public companies. And yet, as the involvement of proxy advisory firms in corporate governance-related shareholder voting issues has increased, their transparency in developing and recommending voting policies has not.

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Two firms, Institutional Shareholder Services Inc. (“ISS”) and Glass Lewis & Co., LLC (“Glass Lewis”), constitute 97% of the proxy advisory industry, and one of them employs a total of 180 analysts to evaluate 250,000 issues, spread over thousands of public companies, within a short six-month period. Because of conflicts of interest (such as ISS offering consulting services to the same companies about which it renders proxy voting advice, or Glass Lewis’s ownership by activist investors with defined agendas), one-size-fits-all voting advice, industry concentration, and policymaking conducted largely outside the public eye, proxy advisory firms’ influence in corporate governance parallels (and pragmatically may exceed) that of formal standard setters, such as government regulators, but without the corresponding benefit of strong transparency and accountability.

We have set forth core principles and a series of specific improvements to serve as a basis for proxy advisory firms, public companies, and investment portfolio manager organizations to engage in a dialogue to create a system that brings transparency and accountability to proxy advisory firms and fosters strong corporate governance.

This has caused obstacles to good corporate governance that, if unaddressed, may reverse the positive advances in corporate governance of the past 20 years.

In order to advance this collaboration constructively, we have set forth core principles and a series of specific improvements to serve as a basis for proxy advisory firms, public companies, and investment portfolio manager organizations to engage in a dialogue to create a system that brings transparency and accountability to proxy advisory firms and fosters strong corporate governance.

Best Practices and Core Principles for Proxy Advisory Firms and Their Affiliates

Proxy advisory firms and their affiliates (“PA Firms”) should provide clients with proxy voting advice that furthers the interests and objectives of their clients. To do so, PA Firms must disclose their research methodologies and conflicts of interest, and must regularly review and update their policies (based on their actual experience) to ensure that their recommendations advance shareholder value. To that end, best practices and core principles include:

Potential Conflicts of Interest

- A PA Firm’s acceptance and fulfillment of client retainers certifies that the PA Firm—
 - a. Has the experience, competence, and resources to provide its services with appropriate diligence;
 - b. Has carefully researched and taken into account all relevant aspects of a particular issue on which it is providing advice, including information, data, and views inconsistent with its ultimate recommendation;
 - c. Even after rendering initial advice, will provide clients with any information that the PA Firm receives from those companies about which the PA Firm has rendered advice; and
 - d. Is fully independent and conflict-free with respect to the client and each vote involved in each assignment.
- A PA Firm should develop and disclose an appropriate methodology to ensure that it devotes appropriate resources to each assignment.
- A PA Firm should develop and disclose appropriate procedures regarding potential conflicts that may affect its recommendations; these procedures should include, among other things:
 - a. Describing its current and recent interactions with its advisory clients (and affiliates);
 - b. Describing its recent interactions with anyone having a material interest (positive or negative) in the subject of the advice;

- c. Identifying all its recent interactions with anyone relating to the subjects of its proxy advisory services;
- d. Disclosing if the proponent of any shareholder proposal on which it will provide advice is a client, or has any other relationship with the PA Firm providing benefits to the proponent;
- e. Understanding, and determining whether it can facilitate, the objectives of its advisory clients;
- f. Providing full disclosure to prospective clients of all potential conflicts and interrelationships, without requiring any action or analysis by its prospective clients; and
- g. Affirmatively representing to prospective or existing clients, in connection with each project, the nature of any conflict that could affect its ability to render fair and impartial advice.

Advice

- A PA Firm's acceptance of an assignment certifies, among other things, that the PA Firm's advice—
 - a. Relates to a subject on which the PA Firm is (or will be) competent to opine;
 - b. Reflects (and sets forth) advice that carefully considered significant alternative and countervailing arguments; and
 - c. Discloses the extent to which the same advice on the same subject has been (or will be) rendered to other clients, and the reasons why this advice is consistent with differing or multiple client interests and objectives.
- A PA Firm should have policies and procedures in place to ensure that the advice it provides is consistent with and in furtherance of its clients' interests and objectives.
- When communicating their recommendations to investment portfolio manager organizations ("IPMOs"), PA Firms should affirmatively advise that the recommendations

(and their underlying research) are intended solely as guidance to assist IPMs in exercising their own judgment on each significant voting issue, and that the ultimate voting decision cannot be delegated to or exercised by the PA Firm.

- PA Firms should provide IPMOs with a thorough understanding of the PA Firm’s collection and use of data, as well as the methodologies that the PA Firm employs in developing advisory research.
- PA Firms should obtain from each IPMO, with respect to each engagement, a full and fair understanding of the investors’ interests in managed funds.
- PA Firms should provide IPMOs with robust substantive research on relevant issues, as well as the advantages and disadvantages of any voting advice.
- In rendering advice to IPMOs, PA Firms should state in writing:
 - a. The percentage of the community of funds similarly situated to those that the IPMO-client manages that received (or will receive) the same advice rendered to the IPMO-client;
 - b. A reasonable time after voting ends, the percentage of similarly situated funds that received the same advice from the PA Firm and that the PA Firm reasonably believes have implemented the same advice; and
 - c. The way in which the PA Firm determined that its advice furthers the interests and objectives of its clients.

Research

- PA Firms should adopt and disclose clear policies and procedures to ensure the accuracy of data contained in their reports and on which their recommendations are based.
- PA Firms should adopt policies and procedures to govern their communications and dealings with public companies (“PCs”) and other interested persons and entities on a timely basis.

- PA Firms should provide PCs with drafts of proposed research reports relating to those PCs about which the PA Firms' research reports relate, sufficiently in advance of finalizing those reports, to enable the subject PCs to identify any factual inaccuracies or other concerns. PCs should be afforded a reasonable opportunity to seek advice about the draft research reports from external advisors, subject to appropriate confidentiality restrictions.
- PA Firms should explain their methodologies to clients in sufficient written detail.
- PA Firms should, consistent with protecting their proprietary data, provide interested persons—including PCs, IPMOs, investors, regulators, and the public—with analytical methodologies and modeling utilized in their research.
- PA Firms should review the effects of their recommendations six months, or as practicable, after relevant proxy votes, and publish those results (with other necessary data) to permit interested persons to assess the accuracy, validity, and appropriateness of the PA Firm's recommendations. Reports of these reviews should be published biannually, distinguishing between results for proposals and contests. These reviews should permit regularly revisiting and, if appropriate, modifying, proxy voting policies to ensure that they have a positive—or at a minimum no negative—effect on shareholder value.

Best Practices and Core Principles for Public Companies

PCs should engage in a dialogue with shareholders to understand their interests. As part of their broader shareholder communications strategy, PCs should endeavor to communicate with proxy advisory firms on corporate governance matters so that shareholders may evaluate what is at stake for them with respect to any matter presented for shareholder approval. With the passage of Sarbanes-Oxley and various corporate initiatives, shareholder communications, board independence, and accountability have increased. To ensure the continuation of these positive trends, the following best practices and core principles should be followed:

General

PCs typically interact with PA Firms in one of two ways:

- a. PCs hold shareholder votes on a variety of matters, and encounter PA Firms when PCs solicit proxies (“Proxy Engagement”); and/or
- b. PCs occasionally purchase services from PA Firms relating to corporate governance issues (“Purchasing Services”). PC Boards must discharge their fiduciary duties when interacting with PA Firms in Proxy Engagement or Purchasing Services, and must act in their shareholders’ best interests.

PC Interactions with PA Firms

- Before Purchasing Services from or undertaking Proxy Engagement with a PA Firm, PCs should undertake to adequately understand, among other things:
 - a. Any prevailing PA Firm and PC institutional shareholder assessments of the PC’s corporate governance;
 - b. General knowledge of their shareholder base and the relative likelihood that the company’s shareholders would be influenced by PA Firms (or particular PA Firms) in making those voting decisions;

- c. Methodologies that the PA Firm employs with respect to the types of matters on which the PC's shareholders will vote or with respect to which the PC intends to obtain a PA Firm's advice; and
- d. Conflict-avoidance policies and procedures utilized by the PA Firm, especially with respect to matters of the type for which the PA Firm's services will be sought.

PC Engagement with PA Firms

- PCs should determine if the decision-making process to engage a PA Firm is a matter of routine business, or if it may be necessary to involve independent board members in decisions on whether to engage a PA Firm on specific proxy issues.
- As part of their proxy disclosure obligations, and to avoid confusion or misperceptions on the part of PA Firms, PCs should make meaningful disclosure to their shareholders of the underlying reasons for any proposal, election contest, or transaction for which shareholder votes will be sought.
- PCs should ensure timely public disclosure of all significant information that the PC intends to provide, or has provided, to any PA Firm.
- Before engaging in discussions with PA Firms about matters to be submitted to a shareholder vote, PCs should, among other things:
 - a. Identify the main issues that PA Firms likely will focus upon in the next annual proxy solicitation period;
 - b. Research various positions favoring or opposing the issues identified; and
 - c. Develop an effective rationale for the PC's position on those issues.
- PCs should attempt to have appropriate personnel review and analyze the market's reaction to specific PA Firm recommendations and, if relevant, consider sharing that analysis with the investing public.

- PCs should publicly disclose changes they make to existing governance policies and practices as a result of their interactions with PA Firms.

PC Interactions with PA Firms as Service Providers

- In deciding whether to purchase a PA Firm's services vis-à-vis governance matters, PCs should ascertain and evaluate whether the PA Firm—
 - a. Would also provide advice and recommendations to IPMOs on voting their holdings of the PC's shares;
 - b. Discloses to IPMOs (in advance of or concurrently with distributing its voting recommendations) whether the PA Firm has an existing relationship with PCs about which the PA Firm renders advice;
 - c. Will allow the PC to review draft recommendations that the PA Firm may be planning to make regarding voting issues, to enable the PC to correct factual errors or address misperceptions; and
 - d. Renders advice tailored to the specific circumstances affecting the PC.

Best Practices and Core Principles for Investment Portfolio Manager Organizations

There is a broad variety of IPMOs—that is, persons or entities exercising or influencing investment and proxy voting decisions on behalf of, among others: individual investors; hedge funds; mutual funds; corporate, state, municipal, and labor union pension funds; endowment funds; trust funds; bank collective investment funds; investment banking firms; venture capital funds; insurance companies; and commercial banks. Because IPMOs manage or influence the disposition of the assets of others, they are obligated to ensure that their proxy voting decisions reflect their independent judgment, and are intended to further the best interests of their shareholders, investors, and clients.

Recently, some IPMOs have utilized PA Firms as one of several sources in formulating independent voting decisions on highly significant issues, consistent with the interests and objectives of their shareholders, investors, and clients. This positive trend, in conjunction with the increased dialogue between public companies and shareholders, has improved the proxy voting process. Where IPMOs are already structured to facilitate the exercise of their independent judgment, the best practices discussed below are merely suggestions of alternative ways operative core principles might be achieved. Where IPMOs are not already structured in a manner that ensures their exercise of independent judgment in satisfying proxy voting responsibilities, the following best practices and core principles are intended to guide IPMOs' receipt of necessary data from PA Firms.

General

- IPMOs must exercise independent judgment when developing and executing voting guidelines and standards with respect to highly significant and nonroutine proxy-related matters on which they receive a PA Firm's recommendations.
- IPMOs' responsibilities extend beyond the investment decisions they make, to all facets of their efforts on behalf of their shareholders, investors, and clients, including the exercise of voting power in connection with portfolio assets.
- While IPMOs can use outside experts to assist them with their responsibilities, the ultimate responsibility to act in the best interests of their shareholders, investors, and clients always remains with the IPMO.

Selection and Use of PA Firms

- IPMOs should identify the criteria they will employ, and the practices they will follow, in retaining or continuing to retain a PA Firm.
- The policies and practices pursuant to which IPMOs select PA Firms should be developed or approved by an independent authority within (or affiliated with) the IPMO. Periodically thereafter, the same independent authority should review the manner in which the IPMO's policies and procedures are implemented, to provide reasonable assurances that the selection of a PA Firm is consistent with the best interests of the IPMO's shareholders, investors, and clients.
- While many items presented for a shareholder vote are uncontested or uncontroversial, some items are contested, by their nature lend themselves to strong differing views, or can have a significant impact on shareholders. For items in the latter categories the IPMO should consider the following criteria, among others, when retaining or continuing to retain a PA Firm:
 - a. Whether the PA Firm maintains transparent policies and procedures to allow an IPMO to make a reasonable determination that advice received is consistent with, and furthers, the interests and objectives of their shareholders, investors, and clients;
 - b. Whether the PA Firm has adequate experience to render the type of advice for which it is being retained;
 - c. Whether the PA Firm discloses actual or potential conflicts of interest related to the rendering of advice or recommendations such that the IPMO would be aware of their existence, and whether utilizing the PA Firm's advice presents actual or potential conflicts of interest within the IPMO;
 - d. Whether the PA Firm has carefully considered and communicated to the IPMO significant and countervailing viewpoints known by the PA Firm;
 - e. Whether the PA Firm discloses the extent—if any—to which the same advice on the same subject has been rendered to its other clients, as well as the reasons that this advice is nonetheless consistent with, and furthers, the best interests of the IPMO's clients;

- f. Whether the PA Firm provides reports on internal controls to give IPMOs reasonable assurance of the accuracy of the data in their reports and recommendations;
 - g. Whether the PA Firm provides an adequate explanation of, and the data underlying, its methodologies and modeling; and
 - h. Whether utilizing the PA Firm's advice presents actual or potential conflicts of interest.
- Before selecting a PA Firm, or continuing to use a PA Firm, the IPMO should be satisfied that it understands the PA Firm's methodologies, and that both these methodologies, as well as the PA Firm's recommendations, further the interests and objectives of the IPMO's shareholders, investors, and clients.
 - IPMOs should vest ultimate decision-making authority on whether and how to exercise proxy-related decisions solely in a person (or persons) possessing the ultimate authority to exercise judgment on how to vote the IPMO's shares. This does not preclude IPMOs from delegating vote execution or clerical tasks to one or more third parties (which may include a PA Firm).
 - IPMOs should regularly assess and be comfortable with the performance and reliability of any PA Firm.
 - In rare circumstances that IPMOs may confront potential conflicts that can affect a particular vote, those issues maybe best resolved by applying solutions appropriate to each IPMO and not standardized guidance.