CENTER FOR CAPITAL MARKETS COMPETITIVENESS

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September 2, 2014

Mr. Gary Retelny
President
Institutional Shareholder Services
702 King Farm Boulevard
Suite 400
Rockville, MD 20850

Re: 2015 ISS Policy Survey

Dear Mr. Retelny:

The U.S. Chamber of Commerce ("Chamber") is the world's largest business federation, representing more than 3 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 function fully and properly in a 21st century economy. In furtherance of this objective, a chief priority of the CCMC is to advance an accountable and transparent corporate governance regime.

The CCMC appreciates this opportunity to comment on Institutional Shareholder Services Inc.'s ("ISS") 2015 Policy Survey ("Survey").[1] This letter supplements our online responses to the Survey, electronically submitted today. Our comments focus on U.S. capital markets; our supplemental comments are organized by reference to the Survey questions that focus on U.S. corporate governance issues.

The CCMC is concerned that the development of the Survey lacks a foundation based on empirical facts and creates a one-size-fits-all system that fails to take into account the different unique needs of companies and their investors. We

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[1] *See* ISS, 2015 ISS Policy Survey, available at https://www.surveymonkey.com/s/2015_ISS_Policy_Survey.

believe that these flaws with the Survey can adversely affect advisory recommendations negatively impacting the decision making process for the clients of proxy advisory firms. The CCMC is also troubled that certain issues presented in the Survey, such as Pay for Performance, will be the subject of Securities and Exchange Commission ("SEC") rulemakings in the near future. While we have provided commentary to those portions of the Survey, we believe that their inclusion in the survey is premature pending the completion of those rulemakings.

Our concerns are discussed in greater detail below.

Discussion

The CCMC has, for many years, sought to advance a cooperative dialogue with key interested parties, including proxy advisors, institutional investors, investment portfolio managers, and corporate issuers, to improve the functionality of proxy advisory services. The focus of the CCMC's efforts is to ensure that potential benefits of a well-functioning proxy advisory industry are not outweighed by the potential systemic failures proxy advisory firms. Such failures could occur if the recommendations of proxy advisors are subject to conflicts of interest and could also arise if proxy advisors apply one-size-fits-all methodologies, offer check-the-box proxy voting policies, and engage in other practices that fail to acknowledge the inherently company-specific requirements of corporate governance.[2]

To advance these goals, the CCMC in 2013 issued the Chamber Best Practices and Core Principles, outlining principles and transparent processes for advisory firms, corporate issuers and investors. We believe, as is discussed below in greater detail, that the Survey fails to meet the universally-embraced goals the Chamber Best Practices and Core Principles seek to advance.

[2] 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, e.g.*, 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. *See also*, Chamber, *Best Practices and Core Principles for the* Development*, Dispensation, and Receipt of Proxy Advice* (March 2013) ("Chamber Best Practices and Core Principles"), available at http://www.centerforcapitalmarkets.com/wp-content/uploads/2010/04/Best-Practices-and-Core-Principles-for-Proxy-Advisors.pdf.

General Concerns with Survey

Before addressing the Survey's specific questions, several observations are in order vis-à-vis the Survey's design, content, and likely impact on the ability of investment advisers to fulfill their fiduciary duties to vote portfolio securities in the economic best interests of their clients.[3]

Many investment advisers use proxy advisory firms' advice as one of many data points to develop voting positions, and in doing so meet their fiduciary responsibilities. Our general concerns with the Survey, as outlined in this section of our letter, do not pertain to those investment advisers. Rather, we are concerned with the impact of the Survey as it pertains to those investors who rely exclusively on, and effectively outsource their voting functions to, proxy advisory firms.

It is both surprising and very troublesome that the Survey does not contain a single reference to the paramount concern of investors and portfolio managers—public company efforts to maintain and enhance shareholder value—and seeks to elicit only abstract philosophies and opinions, completely eschewing any pretense of an interest in obtaining hard facts and empirically-significant data. This confirmation—that ISS' policies and recommendations are based solely on a miniscule sampling of philosophical preferences, rather than empirical data—is itself a matter that requires, but does not yet receive, appropriate disclosure and disclaimers on ISS research reports.[4]

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[3] *See SEC v. Capital Gains Research Bureau, Inc.*, 375 U.S. 180, 194 (1963). *See also*, Securities and Exchange Commission ("SEC"), STAFF LEGAL BULLETIN No. 20 (IM/CF), "*Proxy Voting: Proxy Voting Responsibilities of Investment Advisers and Availability of Exemptions from the Proxy Rules for Proxy Advisory Firms*" (June 30, 2014) ("*SEC Staff Guidance*"), available at http://www.sec.gov/interps/legal/cfslb20.htm.
A similarly stringent standard applies to pension fund advisers subject to ERISA. *See, generally*, "Proxy-voting May Not Be Solely for the Economic Benefit of Retirement Plans," Dep't of Labor, Office of Inspector General—Office of Audit, Employee Benefits Security Administration, Report No. 09-11-001-12-121 (Mar, 31, 2011) ("*EBSA IG Report*"), available at http://www.oig.dol.gov/public/reports/oa/2011/09-11-001-12-121.pdf.

[4] *See SEC Staff Guidance*, *supra*, n. 3, Answer to Question 3. The SEC Staff Guidance advises that proxy advisory firms should update investment adviser clients on any considerations appropriate to investment advisers' consideration of the nature and quality of services provided by the proxy advisory firm. The Guidance also clearly identifies investment advisers' responsibility to ensure that votes they cast are in the best interests of their clients. *Id.*, Answer to Question 1. It follows, then, that investment advisers casting votes based in whole or in part on proxy advisory firm recommendations must receive, and proxy advisory firms must provide, assurances that the policies and analysis underlying voting recommendations have a close nexus with enhancing shareholder value, *see In re Manarin Inv. Counsel,*

As fiduciaries, investment advisers owe duties of care and loyalty to their clients,[5] duties that extend to their exercise of proxy voting discretion.[6] The SEC recently reconfirmed that, to fulfill their fiduciary duties, investment advisers must adopt and implement procedures ensuring that proxies are voted in the best interests of their clients—that is, that portfolio securities are voted to further shareholder value.[7] It therefore follows ineluctably that, to the extent an investment adviser's voting decisions are predicated in part on the recommendations of proxy advisory firms, the investment adviser must have a reasonable basis to conclude that the proxy advisory firm's recommendations are firmly based upon the criterion of furthering shareholder value.

As past experience demonstrates, ISS' voting recommendations are based on policies that are supported primarily, if not exclusively, by the results of its policy surveys.[8] The current policy survey clearly reinforces that conclusion. But, investment advisers cannot fulfill their fiduciary obligations to clients by basing voting decisions on proxy advisory firm opinions that make no reference to, much less that do not even deign to establish, a causal connection between the proxy advisory firm's recommendation and the enhancement or furtherance of shareholder values.[9]

Ltd., et al., Inv. Adv. Act Rel. No. 3686 (Oct. 2, 2013) ("*Manarin*"), available at https://www.sec.gov/litigation/admin/2013/33-9462.pdf or, in the event such assurances cannot be given, that investment advisers are made aware of that fact.

[5] *See*, *e.g.*, *SEC v. Capital Gains Research Bureau*, *supra*, n. 3 (recognizing fiduciary duties of care and loyalty owed by investment advisers to their clients).

[6] *See* SEC, "*Proxy Voting by Investment Advisers*," Investment Advisers Act Rel. No. 2106 (Mar. 10, 2003), ("*IA Proxy Voting Rule Adopting Release*"), available at http://www.sec.gov/rules/final/ia-2106.htm.

[7] *See SEC Staff Guidance*, *supra*, n. 3, Answer to Question 1. *See also IA Proxy Voting Rule Adopting Release, supra n. 6,* at I (Investment advisers' "enormous voting power gives advisers significant ability collectively, and in many cases individually, to affect the outcome of shareholder votes and influence the governance of corporations. Advisers are thus in a position to significantly affect the future of corporations and, as a result, *the future value of corporate securities held by their clients*.") (emphasis supplied).

[8] *See* ISS, Benchmark Policy Consultation, Auditor Ratification (U.S.) ("*ISS Auditor Ratification Policy Proposal*"), available at http://www.issgovernance.com/file/files/Auditorratification-US.pdf.

[9] The SEC has held an investment adviser's policies and procedures on affiliated brokerage transactions "not reasonably designed" to ensure "transactions were fair to shareholders, where the policies and procedures did not require any actual empirical investigation into the commissions charged by other broker-dealers for similar transactions, as one means of verifying their "reasonableness." *See Manarin*, *supra* n. 4, at ¶23. *See also*, *EBSA IG Report*, *supra*, n. 3.

These deficiencies make manifest that those investment advisers that rely in whole or in part upon ISS research and voting recommendations, cannot fulfill the fiduciary duties they owe their clients if they cast proxy votes:

- solely in reliance on ISS recommendations based on ISS policies
- that are supported solely or primarily by the results of ISS' opinion surveys, and
- ISS' policy is premised on an underlying rationale devoid of empirical research, rendering the policy devoid of any nexus between the voting decision and enhancement of shareholder values.[10]

The Survey, therefore, does not (indeed, cannot) provide ISS with any basis for arguing that its proxy voting policies reasonably facilitate the ability of SEC-registered investment advisers to fulfill their critical fiduciary obligations or comply with applicable regulatory standards.[11]

Discussion

Pay for Performance

2A. Which of the following statements best reflects your organization's view about the relationship between goal-setting and award values?

Other. The formulation of the responses to this question denies respondents' the ability to provide thoughtful responses to the complex issue of executive compensation**.** As indicated by the first response option, companies' compensation programs must take into account the need to attract and retain leadership talent. But, the second option also embodies important views on compensation that CCMC has

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[10] *See EBSA IG Report*, *supra*, n. 3, at p. 4. ("EBSA's proxy-voting requirements in 29 CFR 2509.08-2 require whoever is voting proxies (generally named fiduciaries and investment managers) to consider only those factors that relate to the economic value of the plan's investment and not subordinate the interests of the participants and beneficiaries to unrelated objectives. According to the regulations, any objectives or considerations, or social effects unrelated to the plan's economic interests cannot be considered.").

[11] *See IA Proxy Voting Rule Adopting Release*, *supra*, n. 6.

embraced—that compensation should be tied to executive contributions to their company's performance and, therefore, shareholder returns, on an adjusted basis, while also taking into account that some circumstances affecting company performance are beyond executives' ability to control.[12]

The Survey's approach to this issue is overly simplistic—it assumes that compensation should be tied to absolute returns, without accounting for—or even considering—exogenous factors. For example, in a stagnant economy, companies may be compelled to reduce revenue goals to account for reduced demand, market-wide. In such cases, shareholder returns relative to the overall market are closely linked to their company's ability to obtain a piece of a smaller economic pie, and executive talents and leadership are even more important than they are in good economic times. Thus, a reflexive reduction in compensation during stagnant economic circumstances often would not serve shareholders' interests and, indeed, might prove deleterious.

The third response option correctly reflects the need for a board's and compensation committee's exercise of discretion in designing compensation programs that incentivize executives to create long-term shareholder value. Of course, the exercise of discretion is not unlimited, since directors and compensation committee

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[12] The Chamber first articulated its Principles on Corporate Governance, Investor Responsibility and Executive Compensation in 2009. *See* Chamber, Letter to Treasury Secretary Geithner (Feb. 6, 2009) ("*Chamber Principles on Corporate Governance, Investor Responsibility and Executive Compensation*"), available at http://www.centerforcapitalmarkets.com/wp-content/uploads/2010/04/ExecutiveCompensationSecretaryGeithnerFeb62009.pdf

The Chamber Principles have four fundamental premises:

- Corporate governance policies must promote long-term shareholder value, but should not constrain reasonable risk-taking or innovation;
- Long-term strategic planning should be the foundation for managerial decision-making;
- Executive compensation should be premised on the enhancement of shareholder value through the combination of individual accomplishment, corporate performance, adherence to board risk management guidelines and regulatory compliance; and
- Robust and transparent management-shareholder communications.

These Principles have been referenced in numerous CCMC comment letters on corporate governance and executive compensation addressed to the SEC and other regulators.

members are legally obligated to design (and disclose to shareholders) compensation programs that further shareholder interests.[13]

2B. *Is there a threshold at which you consider that the magnitude of a CEO's compensation should warrant concern even if the company's absolute and relative performance have been positive, for example, outperforming the peer group?*

Other. Pay magnitude can be a relevant factor in setting executive compensation, but only if the magnitude is unrelated to value creation. All criteria employed by compensation committees should be focused, ultimately, on preserving and enhancing shareholder value. The imposition of a "threshold" at which pay magnitude "warrants concern," irrespective of performance, represents the imposition of a non-performance-based pay criterion, in contravention of ISS' professed pay for performance philosophy.[14]

The question and answer options reflect ISS' "one-size-fits-all" approach to executive compensation, by providing two answer options that suggest extreme polar opposite views on compensation, and two answer options that imply reliance on inflexible tests, all of which do not appropriately account for the need to consider shareholder interests in light of the relevant facts applicable to each company. The first answer option implies that the magnitude of compensation will always be irrelevant. While we embrace the view that non-salary compensation should not be subject to either a floor or a ceiling, pay magnitude is an appropriate ancillary consideration, since the magnitude of executive compensation should reflect a strong relationship to value creation.

The fourth answer option implies the imposition of a "one-size-fits-all" cap on compensation that, as ISS has recognized in the past, would negatively affect

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[13] *See*, *e.g.*, RR Donnelley, "Annual Meeting Handbook 2014 Edition," at pp. 20-27 (2014), available at http://www.lw.com/WebShareRedirect.aspx?id=7056&sharetype=1.

[14] *See*, *e.g.*, *ISS 2014 Summary Guidelines*, at p. 38 (March 2014), available at http://www.issgovernance.com/file/2014_Policies/ISSUSSummaryGuidelines2014March12.pdf (describing ISS' "global principle" regarding pay for performance as one that "encompasses overall executive pay practices, which must be designed to attract, retain, and appropriately motivate the key employees who drive shareholder value creation over the long term").

shareholders' economic interests.[15] The second and third answer options imply that compensation limits should be somewhat flexible, based on absolute company performance or performance relative to the company's peer group. These are appropriate considerations, and CEO compensation programs should consider the company's absolute and relative performance, among many factors.

Moreover, this survey question is a solution in search of a problem, given that shareholders have overwhelmingly supported their companies' compensation programs.[16]

> **2C.** *If you chose "Yes" above (that pay magnitude may be a cause for concern, irrespective of performance factors), are any of the following appropriate tool(s) for determining excessive pay magnitude?*

Decline to Answer. Each of the answer options offered proposes tools that may, depending on the specific circumstances, be reasonable considerations for determining the "excessiveness" of CEO compensation. However, the utility of this question would depend on ISS reading the responses objectively, rather than elevating policy goals as the prism for its interpretation of the data. A high multiple of CEO compensation relative to that of other named executives (Option 2) could be a negative factor for some shareholders, but a high multiple could also have positive consequences for shareholders—for example, if the CEO's compensation motivates other non-CEO company executives to remain with the company and strive to outperform peers in their service to the company.

> **2D.** *With respect to evaluating the say-on-pay advisory vote, how does your organization view disclosed positive changes to the pay program that will be implemented in the succeeding year(s) when a company demonstrates pay-for-performance misalignment or other concerns based on the year in review?*

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[15] *Id.*, at p. 51 ("Vote against shareholder proposals seeking to set absolute levels on compensation or otherwise dictate the amount or form of compensation").

[16] The average voting support for U.S. companies' say-on-pay proposals was 92% in 2013 and 2014. *See* Sullivan & Cromwell, 2014 Proxy Season Review, at p. 27 (June 2014), available at http://www.sullcrom.com/siteFiles/Publications/SC_Publication_2014_Proxy_Season_Review.pdf

Option 1. Option 1 suggests that prospective changes to a company's pay program may substantially mitigate current year "concerns." CCMC believes that prospective positive (or negative) changes to a company's compensation program can, on a case-by-case basis, substantially mitigate current year "concerns." For example, a company may have pre-existing legacy employment agreements containing what may seem to be "problematic provisions" to which the company is contractually committed. In such cases, a commitment to eliminate such provisions in the future might appropriately be considered favorably. Moreover, to the extent that a company intends to make what shareholders deem improvements to its compensation program, the company should be afforded time to execute those improvements in a thoughtful manner. By not crediting companies with positive future improvements (Option 3), ISS would effectively be encouraging hasty decisions, which could prove detrimental to the interests of shareholders.

2E. *If you chose either the first or second answer in the question above (prospective pay program changes can mitigate current concerns), should shareholders expect disclosure of specific details of such future positive changes (e.g., metrics, performance goals, award values, effective dates) in order for the changes to be considered as a potential mitigating factor for pay-for-performance or other concerns for the year in review?*

No. The requirement that specific details of prospective changes be immediately disclosed could encourage hasty (and ill-advised) decisions. Companies should be *encouraged*, as a matter of best practice, to provide shareholders with as much detail as is prudent under all the relevant circumstances.

Unilateral Adoption/Amendment of Bylaws

3A. *Where a board adopts without shareholder approval a material bylaw amendment that diminishes shareholders' rights, what approach should be used when evaluating board accountability (in potentially voting against directors for adopting changes to governing documents without prior shareholder approval)?*

Option 1. Boards, subject to applicable law, should be free to adopt bylaw/charter amendment(s) that, in the proper exercise of their business judgment, further shareholders' best interests. State laws, in some circumstances, empower

directors to amend governing documents without shareholder approval,[17] in recognition of the fact that directors are bound by their fiduciary duties to shareholders, and often must be able to take swift and decisive action to further shareholder interests.[18] When exercising this authority, boards are legally and pragmatically obligated to explain to their shareholders the rationale behind their actions on shareholders' behalf.

3B. *If you chose "It depends" in question 3A, what factors would you consider (in potentially voting against directors for adopting changes to governing documents without prior shareholder approval)?*

Decline to Answer. Each of the factors listed may, in certain circumstances, be apt factors to use in assessing the appropriateness of *any* board action; we reiterate our concern, however, about the lack of detail in the response options, which could lead to unwarranted and deleterious ISS conclusions. For example, the third answer option enables respondents to indicate whether *unspecified* "other governance concerns" should be taken into account in evaluating whether boards should be permitted, in ISS' view, to amend company governing documents without shareholder approval. The omission of what "other governance concerns" ISS's response option encompasses could permit ISS to interpret Survey responses that select this option to justify vote recommendations based on ISS' amorphous belief that "other governance concerns" are present.

3C. *If you chose "It depends" in question 3A, would the following bylaw/charter amendments without shareholder approval be a concern (in potentially voting against directors for adopting changes to governing documents without prior shareholder approval)?*

Other. Every company, proxy vote, and board action or resolution must be assessed by reference to the specific factual context presented. It is inappropriate to establish "one-size-fits-all" policies for evaluating whether certain board actions raise concerns, without considering the particular reasons for the board's decision.

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[17] *See*, *e.g.*, DEL. CODE ANN. Tit. 8, §242 (2014), available at http://delcode.delaware.gov/title8/c001/sc08/index.shtml. *See also*, DEL. CODE ANN. Tit. 8, §109 (2014), available at http://delcode.delaware.gov/title8/c001/sc01/.
[18] *See*, *e.g.*, *Air Products & Chemicals v. Airgas, Inc.*, 16 A.2d 48 (Del. Ch. 2011).

3D. *Should directors be held accountable if shareholder-unfriendly provisions were adopted prior to the company's IPO (in potentially voting against directors for adopting changes to governing documents without prior shareholder approval)?*

No. Directors should not be "held accountable" for actions that occurred prior to the company's IPO. Any governance provisions adopted by a company prior to its IPO must, by law, be fully disclosed to shareholders in the IPO. If such provisions were deemed by shareholders to have a materially negative impact on the value of the shares, they presumably were aware of this before making their investment in (or subsequent to) the IPO, and the fact that they purchased in or after the IPO is itself the best indication that, whatever concerns those actions may have raised, they were not sufficient to discourage shareholder investments.

Boardroom Diversity

4A. *In general, how does your organization consider gender diversity when evaluating boards?*

Option 4. Diverse board membership is an important and legitimate consideration but, as with other criteria, cannot be viewed or assessed in a vacuum, as ISS' Survey implies. The Chamber is a forceful advocate for promoting and empowering women business leaders to achieve their personal and professional goals by increasing opportunities for women to serve on corporate boards and in the C-suite; mentoring women at all stages of their careers; and building a network for women entrepreneurs to encourage peer-to-peer networking, education, and professional growth.[19] Diversity is one of many appropriate considerations to be used in evaluating a board. That said the most important consideration in evaluating a board is whether the board effectively promotes shareholder value. If the board would be more effective by increasing the overall diversity of its membership, it should do so. However, the positive effects that may or may not be achieved through greater diversity are highly situation specific, and cannot be reduced to a simple formula or "one-size-fits-all" voting policy.

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[19] *See*, *e.g.*, Chamber of Commerce, CENTER FOR WOMEN IN BUSINESS, available at http://www.uschamberfoundation.org/center-women-business.

Equity Plans

5A. *As a general matter, what weight (relative out of 100%) would you view as appropriate for each of the categories indicated below (notwithstanding that some factors, such as repricing without shareholder approval, may be 100% unacceptable)? Amounts in each box should be entered as an integer and tally 100.*

Decline to answer. Plan cost, features and prior related company practices are all important factors that should be considered when evaluating an equity plan. Nevertheless, by requiring respondents to provide a generic relative weight to each of these three factors, the question erroneously assumes that, in all situations, the relative weight of each factor will always be the same.

While the CCMC supports the use of a "balanced scorecard" approach to assessing equity plans specifically, and corporate governance more broadly, we are concerned that ISS' adoption of a new approach to equity plan analysis, if not thoroughly and effectively communicated to public companies and the investing public, will foster uncertainty that ultimately will benefit ISS' corporate consulting business at the expense of companies and their shareholders.

Risk Oversight/Audit

6A. *How significant are the following factors when evaluating the board's role in risk oversight in your voting decision on directors (very significant, somewhat significant, not significant)?*

Decline to Answer. Each of the factors listed is potentially relevant in determining a board's effectiveness in risk oversight. However, the fundamental issue presented by the question is whether ISS is qualified to make an informed, unbiased, judgment and vote recommendation in the wake of "well-publicized failures of boardroom risk oversight." In the question's preamble, ISS makes mention of several events that purport to be examples of "well-publicized failures of boardroom risk oversight," without defining that term or attempting to establish a nexus between alleged directorial failures and resulting events.

In order to ensure that its vote recommendations are appropriate and focused on enhancing shareholder value, ISS must ensure, on a case-by-case basis, that negative vote recommendations reflect a balanced and objective view of all relevant facts that

- An actual failure of the part of the board or its members caused, significantly contributed to, or exacerbated the underlying company event;
- The board did not take reasonable and remedial steps in the wake of the troublesome event to ameliorate its consequences; and
- Only a leadership change will promote shareholder value.

Vote recommendations must not be driven by media hysteria, but rather by well-developed facts.

6B. *In making informed voting decisions on the ratification of the outside auditor and the reelection of members of audit committees, how important (very important/somewhat important/not important) would the following disclosures be to you?*

Decline to Answer. The accounting profession is highly regulated, and corporate outside independent auditors are required to be selected by independent directors serving on audit committees, subject to rigorous regulatory standards.[20] ISS' apparent direction on the issue of auditor ratification conflicts with the conclusions of numerous governmental and industry policymakers, which have repeatedly rejected "one-size-fits-all" strictures, particularly regarding auditor tenure, which figures prominently in the Survey's question. With this question, ISS apparently is creating a predicate for expansion of its ill-conceived proposed auditor tenure policy to a number of other audit-related issues.[21] In effect, ISS is seeking to substitute its own judgment for that of Congress,[22] the PCAOB, [23] the

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[20] *See* Sarbanes-Oxley Act, §301, codified as Securities Exchange Act §10A(m), 15 U.S.C. §78j-1, incorporating mechanisms aimed at enhancing the independence of audit committees.

[21] *See ISS Auditor Ratification Policy Proposal*, *supra*, n. 8.

[22] Congress has explicitly rejected the idea of mandatory audit firm rotation three times in little over a decade. *See* GOP.gov, Legislative Digest, H.R. 1564, available at http://www.gop.gov/bill/113/1/hr1564. *See also*, JOBS Act, §104 "Auditing Standards", available at http://www.gpo.gov/fdsys/pkg/BILLS-112hr3606enr/pdf/BILLS-

Government Accountability Office,[24] and a majority of institutional investors.[25]

Cross-Market Companies

7A. *Which of the following best describes your organization's view on how ISS should generally evaluate such companies?*

Option 3. Shareholder voting issues require a case-by-case analysis that elevates considerations of shareholder value over check-the-box, "one-size-fits-all" voting policies. Depending on the context, every company's voting issues raise different considerations from those of other companies (even those in the same industry), and portfolio managers are obligated to cast votes based solely on the best interests of their investors. The question's focus on whether U.S. or non-U.S. proxy voting guidelines should be applied in a given case reflects ISS' mechanical and slavish reliance on "one-size-fits-all" voting policies, and ignores the need for every portfolio manager to ensure that its vote is premised on verifiable linkages between specific voting decisions and the enhancement of shareholder value.

112hr3606enr.pdf; and the Audit Integrity and Job Protection Act, H.R. 1564, available at http://business.cch.com/srd/h1564_rh.pdf.

[23] PCAOB, Auditor Independence and Auditor Rotation Concept Release (Aug. 16, 2011), available at http://pcaobus.org/Rules/Rulemaking/Docket037/Release_2011-006.pdf. *See also*, GAO, Comment on PCAOB Concept Release (Dec. 14, 2011), available at http://www.gao.gov/products/P000031 ("*2011 GAO Letter*") ("[T]he root causes of audit deficiencies are complex, vary in nature, and . . . may not have necessarily resulted from a lack of objectivity or professional skepticism . . . . Even if [there were a clear link between] a lack of independence or objectivity . . . [and] audit quality problems, it is *unclear that such a problem would be prevented or mitigated by a mandatory audit firm rotation requirement*") (emphasis supplied).

[24] *See* GAO, *Required Study on the Potential Effects of Mandatory Audit Firm Rotation*, at p. 6 (Nov. 21, 2003) ("*2003 GAO Study*"), available at http://www.gao.gov/new.items/d04216.pdf ("GAO believes that mandatory audit firm rotation may not be the most efficient way to strengthen auditor independence and improve audit quality considering the additional financial costs and the loss of institutional knowledge of the public company's previous auditor of record, as well as the current reforms being implemented. The potential benefits of mandatory audit firm rotation are harder to predict and quantify, though GAO is fairly certain that there will be additional costs") (but, left the issue open to further study). *See also*, *2011 GAO Letter*, *supra* n. 23.

[25] *See* Ernst & Young, *Respondents to PCAOB Overwhelmingly Oppose Mandatory Audit Firm Rotation* (Jan. 5, 2012), available at http://www.ey.com/Publication/vwLUAssets/TechnicalLine_BB2256_AuditFirmRotation_5January2012/$FILE/TechnicalLine_BB2256_AuditFirmRotation_5January2012.pdf. Academic research confirms investors' dim view of audit firm rotation, given observed negative market reactions to forced audit firm rotation. *See*, *e.g.*, J. Carcello & L. Reid, *Investor Reaction to Mandatory Audit Firm Rotation* (Jan. 23, 2014), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2384152.

Conclusion

CCMC appreciates this opportunity to comment on ISS' 2015 Survey. However, as discussed above, we believe the Survey is fundamentally flawed, since it seeks to elicit opinions that have no clear nexus to the enhancement of shareholder value. Proxy votes cast in reliance on proxy voting policies based upon this Survey cannot—by definition—be reasonably designed to further shareholder values. We would be happy to discuss the issues raised in this letter with your or the appropriate staff, if you would find that helpful.

Sincerely,

Tom Quaadman