



400 NORTH CAPITOL STREET, NW • SUITE 585 • WASHINGTON, DC 20001

TELEPHONE: (202) 624-1460 • FACSIMILE: (202) 393-5218

WWW.SHAREHOLDERCOALITION.COM

December 4, 2013

Elizabeth M. Murphy  
Secretary  
Securities and Exchange Commission  
100 F Street, N.E.  
Washington, D.C. 20549

Subject: SEC Roundtable on Proxy Advisory Services  
File Number 4-670

Dear Ms. Murphy:

The Shareholder Communications Coalition ("Coalition")<sup>1</sup> is pleased to provide its comments to the Securities and Exchange Commission ("SEC"), in connection with the Roundtable on Proxy Advisory Services to be held on December 5, 2013.

The Coalition is very supportive of the SEC's interest in reviewing the appropriate level of regulation of proxy advisory firms under the Federal securities laws. This review should include the role of these firms in the proxy system and the processes used by these firms to generate voting recommendations and make voting decisions for their institutional investor clients.

In its 2010 Concept Release on the U.S. Proxy System, the SEC acknowledged that proxy advisory firms have considerable influence on the proxy voting process. Many market participants agree, and this influence is only going to increase with growing shareholder activism and the Dodd-Frank requirement of regular "say on pay" votes.

Despite their large role in proxy matters, proxy advisory firms remain generally unregulated and unsupervised. Substantial concerns have been raised by many different participants in the proxy process about: (1) conflicts of interest involving several of their business practices; (2) a lack of transparency concerning their standards, procedures, and methodologies; and (3) their use of incorrect factual information in formulating specific voting recommendations.

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<sup>1</sup> The Shareholder Communications Coalition ("Coalition") comprises three associations: Business Roundtable, National Investor Relations Institute, and Society of Corporate Secretaries & Governance Professionals. More information about the Coalition and its advocacy activities can be accessed at [www.shareholdercoalition.com](http://www.shareholdercoalition.com).

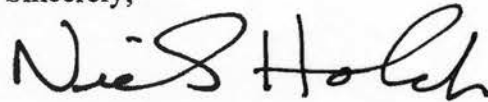
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Concerns have also been expressed about whether institutional money managers are exercising appropriate oversight over the proxy advisory firms they retain, consistent with their fiduciary duties as registered investment advisers.

As the SEC evaluates the role and legal status of proxy advisory firms, the Coalition has developed the attached recommendations for the agency to consider in connection with any new rulemaking or interpretive guidance on this subject.

Thank you for your consideration of these views. Please feel free to contact me or any member of the Coalition with any questions, or if you need additional information.

Sincerely,

A handwritten signature in black ink, appearing to read "Niels Holch". The signature is fluid and cursive, with the first name "Niels" and last name "Holch" clearly distinguishable.

Niels Holch  
Executive Director  


Attachment

cc: The Honorable Mary Jo White  
The Honorable Luis A. Aguilar  
The Honorable Daniel M. Gallagher  
The Honorable Kara M. Stein  
The Honorable Michael S. Piwowar  
Keith Higgins, Division of Corporation Finance  
Norm Champ, Division of Investment Management

# Regulatory Reform Recommendations – Proxy Advisory Firms

## Background

Public companies and many other participants in the proxy process have expressed concerns about the considerable influence in the shareholder voting process that is exercised by private firms providing proxy advisory services to institutional investors. These firms operate today with very little regulation or oversight. Concerns with respect to their role in the proxy process were discussed in a Securities and Exchange Commission (“SEC”) Concept Release, issued in July 2010.<sup>1</sup>

There is a lack of transparency in the way proxy advisory firms operate, with insufficient information available about their policies, procedures, guidelines, and methodologies. Conflicts of interest exist in several of their business practices; and concerns exist about their use of incorrect factual information in formulating specific voting recommendations.

Despite their large role in proxy matters, proxy advisory firms typically develop their policies using a “one-size-fits-all”—instead of a case-by-case—approach that applies the same standards to all public companies, instead of evaluating the specific facts and circumstances of each company they evaluate.

One of the reasons that proxy advisory firms have become so powerful is that many proxy participants interpret SEC and Department of Labor rules and guidance as requiring institutional investors to vote all their proxies at shareholder meetings as a part of the fiduciary duties they owe to their clients, investors, and beneficiaries. Moreover, SEC staff have issued no-action letters suggesting that investment advisers can avoid their own conflict of interest concerns through the use of proxy advisory firms.

Many institutional investors and their third-party investment managers—especially mid-size and smaller firms—reduce their costs by not having dedicated in-house staff to analyze and vote on proxy items. Instead, these institutional investors and managers typically outsource their voting decisions to proxy advisory firms, or make their voting decisions solely on the recommendations of proxy advisory firms.

The proxy advisory industry is not subject to any uniform regulatory framework. While the largest proxy advisory firm, Institutional Shareholder Services (“ISS”), is registered under the Investment Advisers Act of 1940, the second biggest, Glass Lewis, has failed to register as an investment adviser and is not subject to any regulatory supervision. Moreover, the SEC’s rules applicable to investment advisers do not reflect the unique role that these advisory firms perform in the proxy voting process.

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<sup>1</sup> Concept Release on the U.S. Proxy System, U.S. Securities and Exchange Commission, 75 Fed. Reg. 42,982 (July 22, 2010).

Nevertheless, in May 2013, the SEC sanctioned ISS under the Advisers Act for failing to establish or enforce written policies and procedures to prevent the misuse of material, non-public information by ISS employees with third parties.<sup>2</sup>

Additionally, the SEC has created an exemption from its proxy solicitation rules for these firms, so they are not required to file their reports or otherwise abide by solicitation and disclosure rules that apply to other participants in the proxy process. Thus, their reports, in contrast to company and shareholder proxy materials, are not publicly available, even after annual meetings.

Given the significant role of proxy advisory firms in the proxy process, the lack of a uniform regulatory framework for these firms needs to be addressed. Proxy advisory firms should be subject to more robust oversight by the SEC and the institutional investors that rely on them.

### Regulatory Reform Recommendations

The Shareholder Communications Coalition (“Coalition”)<sup>3</sup> recommends that the SEC adopt the following regulatory measures for proxy advisory firms:

1. **SEC Registration**. Registration of all proxy advisory firms, pursuant to the Investment Advisers Act of 1940.
2. **Regulatory Framework for Proxy Advisory Firms**. Development of a regulatory framework that reflects the role that proxy advisory firms perform in the proxy voting process. This regulatory framework should, at a minimum, require each proxy advisory firm to:
  - establish, maintain, and enforce written policies and procedures to address conflicts of interest;
  - establish, maintain, and enforce a written code of ethics and professional conduct;
  - establish, maintain, and enforce an effective internal control structure governing the implementation of and adherence to the policies, procedures, guidelines, and methodologies used to provide proxy voting recommendations to persons with whom the proxy advisory firm has a business relationship;

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<sup>2</sup> See Order Instituting Administrative and Cease-and-Desist Proceedings and Imposing Remedial Sanctions and a Cease-and-Desist Order, In the Matter of Institutional Shareholder Services, Inc., Administrative Proceeding File No. 3-15331, May 23, 2013, available at <http://www.sec.gov/litigation/admin/2013/ia-3611.pdf>.

<sup>3</sup> The Shareholder Communications Coalition comprises three associations: Business Roundtable, the Society of Corporate Secretaries & Governance Professionals, and the National Investor Relations Institute. More information about the Coalition can be accessed at [www.shareholdercoalition.com](http://www.shareholdercoalition.com).

- provide for website disclosure of the policies, procedures, guidelines and methodologies used by each proxy advisory firm to develop proxy voting recommendations; and
- require proxy advisory firms to maintain records and file annual or other reports required by the SEC.

3. **Additional Transparency Requirements.** Any regulatory exemption from the SEC's proxy solicitation rules should require that a proxy advisory firm comply with the following conditions:

- provide each public company with an advance copy (i.e., 5 business days before issuance) of any report that includes a proxy voting recommendation about such company, to permit the company to review and comment on the factual accuracy of statements made in the report.<sup>4</sup> Each public company should be permitted to share an advance copy of a report by a proxy advisory firm with its legal counsel and other advisers on a confidential basis;
- promptly correct any factual error in a report that is identified by a public company;
- disclose when comments have been received by a public company on the front page of a report about that company, with an Internet address or link provided for investors to access such comments; and
- make available on its website without charge (or file with the Commission) a copy of each report that contains a proxy voting recommendation about a public company, no later than 90 days after the shareholder meeting to which the voting recommendation relates.

4. **Fiduciary Responsibilities of Investment Advisers.** The Coalition recommends the withdrawal of the two No-Action letters issued in 2004, permitting registered investment advisers to rely on a proxy advisory's firm's general policies and procedures pertaining to conflicts of interest, instead of evaluating any specific conflicts of interest that an investment adviser or proxy advisory firm may have.<sup>5</sup>

<sup>4</sup> One proxy advisory firm—ISS—provides draft reports in advance (on a very short turnaround) only to companies that are listed in the S&P 500. Other companies are not permitted to review draft reports from ISS. The other major proxy advisory firm—Glass Lewis—does not provide draft reports in advance for any public company.

<sup>5</sup> See Letter from Douglas Scheidt, Associate Director and Chief Counsel, Division of Investment Management, to Kent S. Hughes, Managing Director, Egan-Jones Proxy Services, May 27, 2004, [available at http://www.sec.gov/divisions/investment/noaction/egan052704.htm](http://www.sec.gov/divisions/investment/noaction/egan052704.htm); and Letter from Douglas Scheidt, Associate Director and Chief Counsel, Division of Investment Management, to Mari Anne Pisarri, Pickard and Djinis LLP (on behalf of Institutional Shareholder Services, Inc.), September 15, 2004, [available at http://www.sec.gov/divisions/investment/noaction/iss091504.htm](http://www.sec.gov/divisions/investment/noaction/iss091504.htm).



Further, the SEC should consider issuing rules or guidance emphasizing the responsibility of registered investment adviser to exercise appropriate oversight over its proxy voting process, including its use of proxy advisory firms, to ensure that its voting decisions with respect to client securities are in the best interests of its clients. Client oversight of proxy advisory firms should include conflicts of interest; internal standards, methodologies, and controls; workflow management, and quality of analytical staff and work product.

The SEC should also consider the appropriateness of requiring registered investment advisers to publicly disclose on at least an annual basis the following: (a) any engagement by an adviser of a proxy advisory firm in connection with the voting of securities; and (b) the adviser's policies and procedures for oversight of the voting recommendations provided by each proxy advisory firm engaged for this purpose.

December 4, 2013