

August 1, 2018

VIA Electronic Delivery
Mr. Brett J. Fields
Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

RE: Agenda Items for the SEC Roundtable on Proxy Process Issues

Dear Mr. Fields:

The Center On Executive Compensation (“Center”) is pleased to submit comments to the Securities and Exchange Commission (“Commission”) providing its perspective on the agenda items for the upcoming roundtable on the proxy process. Since the introduction of mandatory “Say on Pay” voting in 2010, the proxy process, shareholder engagement, participation, and interaction with corporate governance and management has evolved dramatically.¹ The existing regulatory framework is ill-equipped to address these changes and to accommodate further evolution driven by technology, new sources of capital, and the growth in activism.

The Center believes it is time for a comprehensive review of various aspects of the proxy process and supports the Securities and Exchange Commission’s decision to begin the process by hosting a roundtable discussion. We hope during this process you will consider:

1. The Role and Influence of Proxy Advisory Firms; and
2. The Shareholder Proposal Process.

The Center believes the evolution of market practice surrounding engagement and governance since the 2010 Proxy Plumbing Concept Release has had significant impact on these issues, meriting specific attention by the Commission and Staff. The Center plans to submit comprehensive comments on each issue in the coming months.

The Center is a research and advocacy organization that seeks to provide a principles-based approach to executive compensation policy from the perspective of the senior human resource officers of leading companies. The Center is a division of HR Policy Association, which represents the chief human resource officers of over 375 large companies, and the Center’s more than 135 subscribing companies are HR Policy members that represent a broad cross-section of industries.

Proxy Advisory Firms

Currently, two proxy advisory firms – Institutional Shareholder Services (“ISS”) and Glass Lewis – control 97% of the U.S. proxy advisor market. These firms play an important role for institutional investors by providing proxy voting recommendations for the thousands of management and shareholder proposals for the hundreds or thousands of companies within their portfolios. However, the necessary

¹ “Since the 2010 concept release, we have seen a dramatic increase in the number of U.S. companies reporting shareholder engagement, with 72% of S&P 500 companies reporting engagement with shareholders in 2017, compared to just 6% in 2010.” Statement Announcing SEC Staff Roundtable on the Proxy Process, available at https://www.sec.gov/news/public-statement/statement-announcing-sec-staff-roundtable-proxy-process#_ftn4 (last visited August 1, 2018).

reliance on these firms by institutional investors combined with the market share proxy advisory firms control creates a scenario where the firms, and particularly ISS, have become *de facto* standard setters for corporate governance and executive compensation practices. At the same time, these firms are virtually unregulated.²

Given the lack of oversight and the outsized influence wielded by proxy advisory firms, the Center has significant concerns with several aspects – both procedural and structural – of the proxy advisory firm industry. The Center’s concerns focus on:

1. Major conflicts of interests inherent in the proxy advisory firm business and ownership structure;
2. The lack of opportunity for companies to provide reasonable input in the proxy recommendation process;
3. The lack of rigor and accuracy with proxy advisory firm analyses; and
4. A general lack of transparency surrounding proxy advisory firm voting policies and procedures.

The Center has repeatedly voiced these concerns to policymakers at the SEC and in Congress.³ Notably, these concerns were echoed by Chairman Clayton in his announcement of the SEC Roundtable on the Proxy Process.⁴

The Center urges the SEC to use the Proxy Process Roundtable agenda to conduct an in-depth analysis aimed at evaluating the issues plaguing the proxy advisory firm industry. By doing so, the Commission and Staff will be equipped with the proper framework to provide workable solutions for all involved stakeholders.

The Center plans to submit a set of comprehensive comments addressing the questions and the related issues during the fall to assist in the effort.

Shareholder Resolutions

Under current SEC rules, shareholders owning only \$2,000 worth of shares of a company for a year can submit a shareholder proposal to that company. Subsequently, even if almost nine in 10 shareholders reject the proposal, the shareholder can continue to submit the proposal to a shareholder vote in perpetuity.

The Center believes shareholder input through the proposal process is a valued and necessary component of corporate governance. However, the current ownership submission requirements and the

² ISS is a Registered Investment Advisor under the Investment Advisers Act. Despite claims to the contrary, this regulatory scheme does not provide the correct framework for oversight given ISS’s business model and the fundamental differences between ISS and a typical investment adviser registered under the Advisers Act.

³ See “Hearing entitled ‘Examining the Market Power and Impact of Proxy Advisory Firms’,” available at <https://financialservices.house.gov/calendar/eventsingle.aspx?EventID=335917> (last visited August 2, 2018); and “Hearing entitled ‘Legislative Proposals to Enhance Capital Formation, Transparency, and Regulatory Accountability’,” available at <https://financialservices.house.gov/calendar/eventsingle.aspx?EventID=400629> (last visited August 2, 2018).

⁴ See Statement Announcing SEC Staff Roundtable on the Proxy Process, available at https://www.sec.gov/news/public-statement/statement-announcing-sec-staff-roundtable-proxy-process#_ftn4 (last visited August 1, 2018). In announcing the SEC Roundtable on Proxy Process Issues, Chairman Clayton provided five examples of areas of the proxy advisory firm industry which warrant attention. These questions align with concerns the Center has voiced over the years about the Proxy Advisory Firm industry.

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shareholder resubmission thresholds no longer fit the status quo given the landscape of shareholder engagement where most companies are engaging major shareholders annually.

The current rules allow a very small number of activist shareholders to submit a significant portion of the overall number of proposals. According to Center On Executive Compensation data on S&P 500 shareholder proposals, four shareholder proponents provided 82 out of 379 shareholder proposals which went to a vote (22%). Of the 82 proposals, only 13 received majority support. Additionally, 32 proposals were "Repeat" proposals which had also been voted on in 2016. The shareholder proponents owned, on average, 0.0000324% of the company at which they submitted the proposal.

In submissions to the SEC and Congress, the Center has voiced concerns with the shortcomings of the shareholder proposals process and the need for changes to the outdated regulatory framework.⁵ Significantly, Chairman Clayton echoed the concerns the Center has raised in announcing the Roundtable on Proxy Process Issues.⁶ By using the Roundtable to evaluate the concerns with the shareholder proposals process, the Center believes the Commission and Staff will be equipped with the proper tools to develop a modernized framework which benefits all stakeholders.

Conclusion

The Center appreciates this opportunity to provide feedback on the Commission's ongoing effort to streamline the proxy process. If you have any questions about the Center's comments, please do not hesitate to contact me at Heickelberg@execcomp.org.

Sincerely,



Henry Eickelberg
Chief Operating Officer

cc: Securities and Exchange Commission:
Hon. Jay Clayton, Chair
Hon. Kara M. Stein, Commissioner
Hon. Hester Peirce, Commissioner
Hon. Robert Jackson, Commissioner

⁵ See "Center Presses for Legislation to Update Resubmission Thresholds for Shareholder Proposals," available at <http://www.execcomp.org/News/NewsStories/center-presses-for-legislation-to-update-resubmission-thresholds-for-shareholder-proposals> (last visited August 2, 2018); and "Center Submits Rulemaking Petition to SEC Urging Shareholder Proposal Resubmission Threshold Reform" available at <http://www.execcomp.org/News/NewsStories/center-submits-rulemaking-petition-to-sec-urging-shareholder-proposal-resubmission-threshold-reform> (last visited August 2, 2018)

⁶ See Statement Announcing SEC Staff Roundtable on the Proxy Process, available at https://www.sec.gov/news/public-statement/statement-announcing-sec-staff-roundtable-proxy-process#_ftn4 (last visited August 1, 2018). In the announcement, Chairman Clayton suggested four areas regarding the shareholder proposals process which warrant attention. These questions echo the concerns with the shareholder proposal process voiced by the Center.