



December 30, 2021

Vanessa A. Countryman
Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20548-1090

Re: Release No. 34- 93595; File No. S7-17-21(Proxy Voting Advice)

Dear Ms. Countryman:

The Society for Corporate Governance (“the Society”) respectfully provides these comments on the Commission’s proposed amendments on “Proxy Voting Advice” (“Proposed 2021 Rulemaking”).

Founded in 1946, the Society is a professional membership association of more than 3,400 corporate and assistant secretaries, in-house counsel, outside counsel, and other governance professionals who serve approximately 1,600 entities, including 1,000 public companies of almost every size and industry.

The Society has previously submitted extensive comments in support of greater regulatory oversight of proxy advisory firms,¹ including a comment letter on the Commission’s Proposed Amendments to Exemptions from the Proxy Rules for Proxy Voting Advice (“2019 Proposed Rules”).² The Society earlier summarized the concerns of issuers and offered various recommendations for proxy advisor reform in advance of the Commission’s November 2018 roundtable on the proxy process.³

¹ The Proposed 2021 Rulemaking refers to “proxy advisory voting businesses” (PVABs). This letter will use the terms “proxy advisory firms” and “proxy advisors” to refer to these businesses.

² See Society for Corporate Governance, Letter re: SEC File Number S7-22-19 (February 3, 2020), <https://www.sec.gov/comments/s7-22-19/s72219-6743687-207853.pdf>. This comment letter, which included member survey data on proxy advisor errors, omissions, and analytical flaws, is relevant to this rulemaking and we have attached a copy of that letter.

³ See Society for Corporate Governance, Letter re: SEC File Number 4-725 on Roundtable on the Proxy Process - Proxy Advisory Firms (November 9, 2018), <https://www.sec.gov/comments/4-725/4725-4640411-176449.pdf>. A Society representative also served as a panelist during the SEC’s December 2013 roundtable on proxy advisory services. <https://www.sec.gov/spotlight/proxy-advisory-services/proxy-advisory-services-participants.shtml>

Introduction: Background and Context

The Society continues to believe that proxy advisory firm research and recommendations are necessary to institutional investors that vote hundreds or thousands of proxy ballots each season. However, we also continue to believe that the proxy advice research and recommendations suffer from mistakes and omissions and can be subject to conflicts of interest.

We believe the final 2020 Commission rules (“Final 2020 Rules”), which added new conditions to the exemptions from the federal proxy rules’ information and filing requirements commonly used by proxy advisors, struck an appropriate balance of fairness and transparency. The final version of Rule 14a-2(b)(9)(ii) required proxy advisors to establish policies and procedures designed to: (1) allow all issuers that are the subject of their voting advice to be able to access that advice prior to or at the same time as the advice is disseminated to clients; and (2) provide a mechanism for proxy advice clients to access any response that the issuer provides to the voting advice.

These conditions were intended to address investors and issuers’ long-standing concerns about errors, analytical mistakes, and material omissions in proxy advisors’ voting reports. Moreover, they were approved after a very robust regulatory process over a decade in which compromises were struck and the original proposed rules were substantially modified after lengthy notice and comment.

The Commission’s newly Proposed 2021 Rulemaking does not include any relevant data or a sufficient policy explanation that would support reversal of the reasoned judgment of the Commission when it voted in 2020 to adopt Rule 14a-2(b)(9) and other conditions on proxy advisors. Other than a change in the composition of the Commission, the Society believes that nothing has changed since that time. We respectfully ask the Commission to allow the Final 2020 Rules to take effect rather than approve the rulemaking that is now proposed.

Proxy Advisor Firms Have Become Governance Standard Setters With Greater Impact Than the Commission

The U.S. market for proxy advice continues to be dominated by two for-profit firms (Institutional Shareholder Services (ISS) and Glass Lewis & Co.), which are now owned by a combination of private equity firms and foreign individuals or entities. In February 2021, German exchange operator Deutsche Boerse acquired an 81 percent stake in ISS.⁴ In March 2021, Glass Lewis was sold by two Canadian pension funds to Toronto-based Peloton Capital Management and Stephen Smith, a Canadian financial services entrepreneur.⁵ These firms, which have no accountability to shareholders generally, have become global corporate governance and disclosure standard

⁴ See Deutsche Boerse, “Deutsche Boerse successfully completes acquisition of ISS, strengthening the focus on sustainable investing” (February 26, 2021), <https://deutsche-boerse.com/dbg-en/media/press-releases/Deutsche-Boerse-successfully-completes-acquisition-of-ISS-strengthening-the-focus-on-sustainable-investing-2555110>.

⁵ See Glass Lewis, “Acquisition positions leading provider of global governance solutions to address the global demands of shifting governance activities,” (March 16, 2021), <https://www.glasslewis.com/press-release-peloton-capital-management-and-stephen-smith-acquire-glass-lewis/>

setters, a reality that both investors and issuers recognize.⁶ In fact, as the Society has said for many years, many of our members view ISS as their “largest shareholder” given that more than 20% of their company’s votes are controlled indirectly by ISS through the growing number of shares owned by ISS institutional clients. One example of this influence has been institutional voting on “say-on-pay” advisory votes; an ISS “no” recommendation has for years been associated with up to a 32% decline in shareholder support.⁷

When we step back and consider the implications of Deutsch Boerse, or Mr. Stephen Smith, a Canadian entrepreneur, setting standards for U.S. boardrooms, we can only scratch our heads. The influence of these proxy advice firms has not diminished since 2020 and is expected to continue to grow as more and more assets are held by institutional investors.⁸ Voting has been outsourced by many investment firms to the proxy advisors on the assumption that many individuals in managed accounts or IRA holders of mutual funds do not want to -- or are not able to -- cast votes on individual equities they hold (or are held by the funds they own). In addition, ISS and Glass Lewis have been successfully lobbied by activist investors over the past decade to tighten their voting policies on board accountability, takeover defenses, and ESG matters, while issuer concerns have been largely discounted.⁹ This is a troubling state of affairs, made more so because votes are being cast on research recommendations that are not regulated, overseen, or even known, to the Commission.

⁶ “As the largest proxy advisor in the world, ISS ‘really sets the global standard. . . . What they do can really impact how others look at this issue,’ ” Lauren Compere, director of shareholder engagement at Boston Common Asset Management, told *Responsible Investor* in November 2021. Boston Common was among the activist investors that urged ISS to recommend voting against more corporate directors based on climate risk. <https://www.responsible-investor.com/articles/investors-challenge-iss-over-inadequate-response-to-climate-in-planned-voting-advice-for-2022>

⁷ “The average “say on pay” vote result for companies that received an ISS “Against” recommendation is 31 percentage points lower than for companies that received an ISS “For” recommendation, which is at the high end of the historical average range of 24 to 32 percentage points.” See Semler Brossy, “[2021 Say on Pay and Proxy Results](https://semlerbrossy.com/wp-content/uploads/2021/07/SBCG-2021-SOP-Report-2021-09-29.pdf)” (September 2021), <https://semlerbrossy.com/wp-content/uploads/2021/07/SBCG-2021-SOP-Report-2021-09-29.pdf>

⁸ According to a 2019 OECD report, institutional investors dominate the ownership of listed companies in the United States. As of the date of that report, the 10 largest institutional investors’ average combined ownership in U.S. listed companies was 43%. Looking solely at the 622 largest U.S. companies, institutional investor holdings made up 72% of total holdings compared to “other free-float,” including retail investors, at 19%. See OECD, “Owners of the World’s Listed Companies” (October 27, 2019), <https://www.oecd.org/corporate/Owners-of-the-Worlds-Listed-Companies.pdf>.

⁹ While ISS typically conducts an annual policy survey and asks for feedback on some of its updated voting policies, the firm does not provide a reasonable amount of time for stakeholders to respond. In November 2021, ISS provided just a 12-day comment period on its proposed 2022 policy updates. Given the important role that ISS has in setting corporate governance practices, the Commission should not reduce its oversight. See ISS, “ISS Launches Open Comment Period for 2022 Proposed Benchmark Voting Policy Changes” (November 4, 2021), <https://insights.issgovernance.com/posts/iss-launches-open-comment-period-for-2022-proposed-benchmark-voting-policy-changes/>.

The significant problems, particularly proxy advice based on inaccurate or incomplete information, articulated by the Society and other stakeholders in earlier comment letters, have not diminished. For example, our February 2020 comment letter included the results from a December 2019 Society member survey, in which 42 percent of respondents answered affirmatively when asked if they were “aware of any factual errors, omissions of material facts, or errors in analysis in the last three years.” The Society’s 2020 letter included a lengthy list of examples of errors, analytical flaws, and omissions reported by our members.¹⁰

We do not believe that the prevalence of errors and omissions by the proxy advisors has changed since 2020. In fact, because ISS abandoned its decade-old practice of providing report drafts to S&P 500 companies last proxy season, we believe that errors have gone uncorrected. This decision by ISS, coupled with the suspension of the 2020 Final Rules, means that issuers now have neither a draft review process nor a right to ask proxy advisors to correct errors before votes are cast. Moreover, the clients of the proxy advisors are not given notice of an issuer’s concerns about specific proxy voting research. Thus, after a decade of comments, roundtables, and meetings with SEC staff, the proxy advisor firms are now subject to less oversight. If the Final 2020 Rules are not the appropriate framework, we ask the Commission to consider what the proper framework would be, keeping in mind proxy advisors’ reach, foreign ownership, and significant influence over U.S. companies.

The Commission Should Not Disregard the Robust Regulatory Process That Led to the Final 2020 Rules

As the Commission is aware, proxy voting advice is a topic of tremendous importance to public companies and the investment institutions that hire proxy advisory firms. The Commission has heard issuer concerns about the growing influence of proxy advisors for more than a decade and convened roundtables in 2013 and 2018 on proxy voting advice.¹¹ In addition, members of Congress have introduced legislation on the topic, while the U.S. Government Accountability Office has commissioned two reports.¹²

¹⁰ Here are some examples of the errors and omissions cited in the Society’s 2020 comment letter: routine errors in director information (e.g., incorrect current employment, number of outside boards, independence status, committee memberships/chairs, and failing to state that a director was retiring); incorrect financial information included in the report because the proxy advisor used financial data from a third party that adjusted the data to “normalize” it; incorrect statement that benchmarking targets for various components of the company’s compensation program were not disclosed when the proxy statement indicated that company does not use benchmarking targets; understatement of corporate disclosures in ISS recommendations on political spending proposals; repeated errors in the terms of the company’s performance-based restricted stock; and an error in reporting that CEO’s pay increased year over year when it had actually decreased (ISS failed to update language from the previous year’s report, this error was flagged during the advance review process).

¹¹ See Commission Concept Release on the U.S. Proxy System, 75 Fed. Reg. 42982 (July 22, 2010); Proxy Advisory Services Roundtable (December 5, 2013); Roundtable on the Proxy Process (November 15, 2018).

¹² In July 2020, Commissioner Elad Roisman, who helped oversee the agency’s proxy reform efforts, summed up the broad interest in increasing SEC oversight over proxy advisors. “We have heard from members of Congress, the Government Accountability Office, former members of the Commission, and public companies, among others. These calls have grown louder as institutional ownership of U.S. public companies’ equity has increased to unprecedented levels and rendered the voting advice sold by proxy voting advice businesses more widely

In advance of the Commission’s approval of the Final 2020 Rules on this topic, investors, companies, and other stakeholders submitted 667 separate comment letters as well as 120 form letters.¹³ In addition, commissioners and SEC staff held 84 separate meetings or calls with interested parties as it was considering these rules.

Following this comprehensive regulatory process, the Commission summarized the important role that proxy advisors play in the governance of public companies in its 2020 rulemaking release:

As explained in the Proposing Release, proxy voting advice businesses have become an increasingly important and prominent part of the proxy voting process as institutional investors, who own a majority of the outstanding shares in today’s market, often retain proxy voting advice businesses to assist them in making their voting determinations and voting their shares on behalf of clients. In recent years, registrants, investors, and others have expressed concerns about the role of proxy voting advice businesses. These concerns include the accuracy and soundness of the information, and the transparency of the methodologies, used to formulate proxy voting advice businesses’ recommendations. . . . In addition, questions have been raised about whether registrants have an adequate opportunity to review and respond to proxy voting advice before votes, informed by such advice, are cast and whether shareholders have an adequate opportunity to review the proxy voting advice, including in the context of any response from the registrant or others, before casting their votes.¹⁴

Notwithstanding these important policy considerations and this lengthy regulatory process, on June 1, 2021, the Chair ordered a new staff review of the legal basis for the 2020 Final Rules. On that same day, the Division of Corporation Finance announced that it would suspend enforcement of the 2020 Final Rules during this review.

In November, the Commission proposed the current rulemaking, which is a u-turn from the prior findings and policy conclusions that were given in support of Rule 14a-2(b)(9)(ii). While the latest release cites several news articles and a June 11 *ex parte* meeting with opponents of the 2020 Final Rules, the rulemaking cites no substantive evidence that was not known to the SEC prior to July 2020.

consumed—and influential—than ever before. The Commission has listened to the same concerns, over and over, in different settings, including at public roundtables, in private meetings, and at Congressional hearings. Congress has not only debated the issues, but members in both chambers, and in both parties, have called for greater oversight of proxy voting advice businesses.” Commissioner Elad Roisman, “Statement: Open Meeting to Adopt Amendments to the Proxy Solicitation Rules” (July 22, 2020), <https://www.sec.gov/news/public-statement/roisman-open-meeting-2020-07-22>.

¹³ See Comments on Proposed Rule: Amendments to Exemptions from the Proxy Rules for Proxy Voting Advice, Release No. 34-87457; File No. S7-22-19, <https://www.sec.gov/comments/s7-22-19/s72219.htm>.

¹⁴ See Final Rules, Exemptions From the Proxy Rules for Proxy Voting Advice, 85 Fed. Reg. 55082 (September 2020), <https://www.federalregister.gov/documents/2020/09/03/2020-16337/exemptions-from-the-proxy-rules-for-proxy-voting-advice>.

The Proposed 2021 Rulemaking relies heavily on the same arguments made by the proxy advisors and other opponents of the 2019 Proposed Rules that were fully considered by Commission in 2020 after years of engagement on this issue. Again, the Society knows of no reason why the Final 2020 Rules should be jettisoned. And unfortunately, because the Commission has provided only 30 days for comment during the December holidays and concurrent with other significant rulemakings, there is not sufficient time for Society members to gather supportive economic or other data on how they may be impacted by the Commission's significant policy reversal.

The Commission previously provided a 60-day comment period when it voted on November 5, 2019, to propose rules related to proxy advisory firms. Because of the time lag before that rulemaking was published in the Federal Register on December 4, 2019, stakeholders had almost three months to comment on these rules before the comment deadline on February 3, 2020.¹⁵ In recent years, the Commission has allowed more than 30 days for comments on other important topics to issuers and investors.¹⁶ At a minimum, the Commission should provide more time for comment on its latest rulemaking on proxy advice.

The 2020 Final Rules Accommodated the Concerns of Both Investors and Issuers

The most important reform sought by issuers has long been that proxy advisors provide a draft of their research reports to the companies that are the subject of those reports *in advance* of publication so the companies could check for any factual inaccuracies or misunderstandings before investors start voting. This advance review process was not a revolutionary idea; it was based in part on the draft review process that ISS voluntarily provided to S&P 500 companies for more than a decade. In fact, at the SEC's proxy advice roundtable in 2013, ISS President Gary Retelny stated his intention to make draft reports available to additional issuers. As Retelny remarked, "[W]e do it with every S&P 500 company. I wish we could do it with more, and that is something that we want to work on."¹⁷ As of this date, ISS still provides draft reviews to

¹⁵ See Amendments to Exemptions from the Proxy Rules for Proxy Voting Advice ("2019 Proposing Release"), Release No. 34-87457; File No. S7-22-19, 84 Fed. Reg. 66518 (December 4, 2019), <https://www.sec.gov/rules/proposed/2019/34-87457.pdf>.

¹⁶ For instance, the Commission provided almost three months for public input on climate change disclosure (Public Input Welcomed on Climate Change Disclosures, March 15, 2021); 60 days on proxy vote disclosure (Enhanced Reporting of Proxy Votes by Registered Management Investment Companies; Reporting of Executive Compensation Votes by Institutional Investment Managers, 86 Fed. Reg. 57478, October 15, 2021); 60 days on Form 13F reporting (Reporting Threshold for Institutional Managers, 85 Fed. Reg. 46016, July 31, 2020); 60 days on shareholder proposals (Procedural Requirements and Resubmission Thresholds Under Exchange Act Rule 14a-8, December 4, 2019); and 60 days on proposed amendments to Regulation S-K (Modernization of Regulation S-K Items 101, 103, and 105, 84 Fed. Reg. 44538, August 23, 2019).

¹⁷ See Transcript of Record at 141, Proxy Advisory Services Roundtable (December 5, 2013) (remarks by Gary Retelny, President, Institutional Shareholder Services). In addition, other ISS representatives made public statements prior to 2020 indicating that ISS was looking to extend draft reviews to a larger group of U.S. companies.

companies in Canada¹⁸ and France,¹⁹ which is further evidence that proxy advisors would be able to comply with such a requirement in the United States.

When crafting the Final 2020 Rules, the Commission decided, after hearing concerns from proxy advisors and their investor allies, to scale back the proposed advance review process so that proxy advisors would have the option to provide final reports to issuers *concurrently* with distribution to investors (instead of in advance). In reaching this decision, the Commission emphasized its intent to provide more flexibility to proxy advisors and reduce the chance for delays in the delivery of proxy advice. The Final 2020 Rules included a condition that proxy advisors notify their clients when a company indicates that it plans to submit a response to the proxy report. As the Commission explained, “we have modified these conditions in a number of respects in response to comments received to provide appropriate flexibility to proxy voting advice businesses to meet the principles that underlie the objectives of the rule, and to avoid unnecessary potential disruptions to their ability to provide their clients with timely voting advice.”²⁰

From an issuer standpoint, a concurrent review is less effective than the advance review process specified in the 2019 Proposed Rules because of the greater risk that investors will start voting before errors or misunderstandings can be corrected.²¹ Nevertheless, the Society and many issuers viewed the 2020 Final Rules as a necessary compromise and were pleased that the SEC had decided that all companies should receive proxy reports concurrently at no cost and that proxy advice clients would be notified if a company had a response.²²

Even though the Commission significantly scaled back the draft review conditions to accommodate the concerns of investors and proxy advice firms, ISS filed an amended lawsuit in September 2020 that challenged the final rules. In a court filing, the Commission defended the draft review condition, arguing that “the new exemption conditions give proxy voting advice

¹⁸ ISS currently provides a 24- to 48-hour advance review process for companies in the S&P/TSX Composite Index. See ISS, ISS Draft Review Process for Canadian Issuers, <https://www.issgovernance.com/iss-draft-review-process-canadian-issuers/>

¹⁹ ISS provides draft reviews in France to comply with a 2011 best practice recommendation of the *Autorité des marchés financiers*, the French securities regulator. In explaining this practice on its website, ISS observes that a draft review results in more accurate proxy research for its clients: “The purpose of providing a company with a draft report of its analysis is to allow the company to check the information prior to publication, thus *allowing us to provide more accurate reports to our clients*” (emphasis added). See ISS, French Market Disclosure, <https://www.issgovernance.com/policy-gateway/french-market-engagement-disclosure/>

²⁰ See Final Rules, 85 FR 55084.

²¹ See, e.g., Shareholder Communications Coalition, Comment Letter re Amendments to Exemptions to the Proxy Rules for Proxy Voting Advice (May 1, 2020).

²² It is important to consider all the concessions that the SEC made to proxy advisors and their clients when it approved the Final 2020 Rules. The SEC’s rules do not require proxy advisors to include a company’s statement, viewpoint, or hyperlink within the proxy firm’s own recommendations. The final rules also do not require proxy advisors to provide issuers with the opportunity to review or comment upon proxy advice prior to its delivery to its clients. Proxy advisors are not required to make any changes to their reports or recommendations.

businesses flexibility to comply by building upon practices they already have in place.” The Commission further stated that it had “rationally determined that it was appropriate to tailor proxy voting advice businesses’ exemptions to the important role they have come to play in facilitating their clients’ participation in the proxy process.”²³

Until the latest rulemaking, it had been the Commission’s consistent position that a draft review process is an appropriate requirement to place on proxy advice firms, given the vital role that these firms play in the proxy voting process. The current rulemaking fails to cite any new compelling evidence that would justify reversing that position.

Proxy Advisors’ Best Practices Are Not an Adequate Substitute for SEC Oversight

In an attempt to find some tangible evidence to justify the Commission’s policy reversal, the Proposed 2021 Rulemaking refers favorably to the efforts of the Best Practice Principles Group (“BPP Group”) and the business practices of the largest proxy advisors.²⁴ As the Commission observes, “we are aware that the largest PVABs have current practices that could address some of the concerns underlying the Rule 14a-2(b)(9)(ii) conditions.” The BPP Group, an industry group funded by proxy advisors, published a set of non-binding principles in 2014 (which were updated in 2019) on shareholder proxy research that was signed by ISS, Glass Lewis, and four other research firms.

However, even the BPP Group’s own Independent Oversight Committee calls on proxy advisory firms *to provide issuers with an opportunity to review proxy reports before publication*. In its latest annual report, the committee expressed general support for pre-publication review and said it “believes that timely issuer feedback can be a material contributor to research accuracy.”²⁵ Moreover, the BPP Group’s 2019 principles²⁶ recommend that proxy advisors “should have a policy (or policies) for dialogue with issuers, shareholder proponents and other stakeholders,” and should disclose “whether and how issuers are provided with a mechanism to review research reports or data used to develop research reports prior to publication to clients.” However, these principles do not specifically require that proxy advisors provide such a review mechanism to

²³ See Reuters, “SEC Asks Court to Toss Out Institutional Shareholder Services Lawsuit” (November 4, 2020), <https://tax.thomsonreuters.com/news/sec-asks-court-to-toss-out-institutional-shareholder-services-lawsuit/>

²⁴ Proposed 2021 Rulemaking, at 14-15.

²⁵ See *Responsible Investor*, “Proxy advisors’ independent oversight body ‘favours’ giving companies ‘opportunity to review and correct’ research” (July 2, 2021), <https://www.responsible-investor.com/articles/proxy-advisors-independent-oversight-body-favours-giving-companies-opportunity-to-review-and-correct-research> (“In general, the Committee favors a scenario in which companies have a timely opportunity to review and correct (where appropriate) Signatory factual descriptions and data, since this scenario could improve product accuracy”); BPP Group, “Annual Report of the Independent Oversight Committee on Best Practice Principles for Providers of Shareholder Voting Research & Analysis” (July 1, 2021), at 57, <https://bppgrp.info/wp-content/uploads/2021/07/2021-AR-Independent-Oversight-Committee-for-The-BPP-Group-1.pdf>

²⁶ See BPP Group, Best Practice Principles for Shareholder Voting Research (July 2019), at 23-24, <https://bppgrp.info/wp-content/uploads/2019/07/2019-Best-Practice-Principles-for-Shareholder-Voting-Research-Analysis.pdf>

companies, leaving it up to the proxy advice firms to decide whether to offer this important safeguard to large-cap issuers or no companies at all.

Given the non-binding nature of these BPP Group principles and the absence of any requirement for an issuer review, it is clear that these best practice recommendations are not an adequate regulatory substitute for the concurrent draft review conditions in Rule 14a-2(b)(9)(ii).

The proposed rulemaking also points to several mechanisms that two major U.S. proxy advisors have adopted to address issuer concerns, including the ISS Feedback Review Board and Help Desk and Glass Lewis' Issuer Data Report and Report Feedback Statement services. None of these mechanisms were created since the 2020 Final Rules were adopted and should not be taken as a substitute for SEC oversight and the exemptive conditions included in Rule 14a-2(b)(9)(ii). The ISS Help Desk has existed for more than a decade to answer issuer questions about the ISS proxy research process and to oversee ISS' since-discontinued draft-review engagement with S&P 500 companies. As the release acknowledges, the Feedback Review Board is intended for higher-level concerns about ISS business practices and is not the appropriate forum to review time-sensitive concerns from issuers about proxy report accuracy.²⁷

Glass Lewis launched its Issuer Data Report service in 2015; that service allows companies to review a data-only version (without recommendations and analysis) of its Proxy Paper reports before publication. The proxy firm launched its Report Feedback Statement service in April 2020. It is important to remember that Glass Lewis charges a fee for these services, and that Glass Lewis also charges issuers a fee to review the final version of its Proxy Paper reports.²⁸ In both cases, companies (or their outside advisors) have to pay Glass Lewis if they want to check the accuracy of the firm's proxy research. ISS still provides free copies of its final reports to issuers, but there is nothing in the Proposed 2021 Rulemaking that would prevent ISS from changing this policy and charging issuers to review final proxy reports.²⁹

In sum, the SEC should not repeal Rule 14a-2(b)(9)(ii) based on a set of non-binding best practice principles drafted by an industry group or a set of voluntary business practices that proxy advisors could change without any notice.³⁰ This is particularly the case when the proxy

²⁷The ISS webpage (<https://www.issgovernance.com/contact/feedback-review-board/>) for the Feedback Review Board (FRB) makes clear that it is not "a replacement for both established and primary channels for engaging with ISS on time-sensitive or company specific matters." The FRB webpage provides no transparency into complaints that have been submitted by issuers or their advocates or any details on how ISS has responded to issuer feedback.

²⁸ In April 2020, Glass Lewis [announced](#) that companies that purchase its proxy research reports will automatically have the right to submit a Report Feedback Statement (RFS) that includes the company's unedited feedback on its research. As of the date of that announcement, we were informed that the bundled cost of a proxy report and RFS for an S&P 500 company was \$6,000 (which is out of reach for some companies), compared with \$5,500 for the report on a standalone basis.

²⁹ The ISS business model is dependent in part on selling consulting services about its equity plan voting policies and governance ratings to issuers and their advisors, so it would not be surprising to see ISS seek to further monetize its dominant position in the U.S. market by charging companies for proxy reports.

³⁰ This rulemaking's reliance on non-binding principles drafted by an industry group is curious, given the skepticism that several commissioners have voiced about voluntary "principles-based" disclosures by issuers. *See, e.g.,* Commissioner Allison Herren Lee, "Statement: Regulation S-K and ESG Disclosures: An Unsustainable

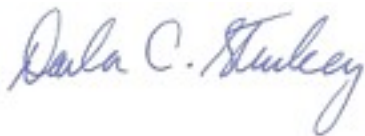
advice industry's own oversight body recommends that issuers should see draft reports. ISS and Glass Lewis have been sold multiple times over the past 15 years, so it is foreseeable that a new proxy advisory firm owner could decide to cut costs by further reducing a firm's full-time U.S. research staff, outsourcing more proxy research work overseas, or scaling back a firm's current mechanisms to catch errors. The recent decision by ISS to discontinue its long-standing practice of providing draft reviews to S&P 500 companies is further evidence that voluntary business practices should not be a substitute for legally enforceable Commission rules.

The Society, which has worked for more than a decade to share our members' views on proxy advice, urges the Commission not to throw out the carefully crafted Final 2020 Rules based on an expedited comment period and an insufficient administrative record. For all of the reasons stated in this letter, the Commission should table this proposed rulemaking for three years, so it can gather real-world data from companies and investors on the costs and benefits of Rule 14a-2(b)(9)(ii).

Respectfully submitted,



Ted Allen
Vice President, Policy & Advocacy
Society for Corporate Governance



Darla Stuckey
President and CEO
Society for Corporate Governance

Silence" (August 26, 2020), <https://www.sec.gov/news/public-statement/lee-regulation-s-k-2020-08-26> ("Reliance on principles-based disclosure rules alone can only work when regulators have the requisite resources, information, expertise, skepticism, and independence from industry.")



February 3, 2020

Vanessa A. Countryman
Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: SEC File Number S7-22-19

Dear Ms. Countryman:

The Society for Corporate Governance (the “Society”) appreciates the opportunity to provide comments to the U.S. Securities and Exchange Commission (“SEC” or “Commission”) on the Amendments to Exemptions from the Proxy Rules for Proxy Voting Advice (the “Proposed Rule”).

Founded in 1946, the Society is a professional membership association of more than 3,700 corporate and assistant secretaries, in-house counsel, outside counsel and other governance professionals who serve approximately 1,700 entities, including 1,000 public companies of almost every size and industry. Society members are responsible for supporting the work of corporate boards of directors and the executive managements of their companies on corporate governance and disclosure matters.

I. Introduction: Background and Context

The practices and influence of proxy advisors¹ has been a long-standing focus area of the Society. We believe the firms influence as much as 20% or more of the vote at most registrants,² yet their recommendations are not subject to a regulatory framework that provides for independent oversight or other protections to help ensure their accuracy. Proxy advisor reports and voting recommendations are not generally made available to the public to read (except to the institutions that purchase them). In fact, proxy advisors are the only participants in the proxy voting system who are not regulated in some way. Issuers, asset managers, proxy processors, shareholders, and anyone soliciting a proxy, are regulated. While one of the proxy advisory firms is a registered investment advisor, the business of vote recommendations has had no unique or relevant regulatory scheme. Until now.

¹ The terms “proxy advisor(s)” and “proxy advisory firm(s)” are used interchangeably throughout. No definitional distinction is intended.

² The terms “registrant,” “company” and “issuer” are used interchangeably throughout. No definitional distinction is intended.

We applaud the SEC's Proposed Rule, which we believe will help improve the proxy process by: 1) ensuring that proxy voting is done with the benefit of recommendations based on information generally available in publicly filed documents; 2) ensuring that all companies – not just the S&P 500 – have advance access to the reports so that they can review and advise of mistakes of fact so the reports can be corrected before their shareholders vote; 3) providing all registrants the ability to include in the report a link to a publicly filed statement explaining a mistake of fact or analysis in the hopes that investors will see it in a timely manner contemporaneous with a proxy advisor's recommendation or report; 4) requiring the proxy advisors to disclose their conflicts in a meaningful way; and 5) clarifying that the SEC and the listing exchanges are the corporate governance standard setters, and not the proxy advisors.

The Society would like to note that proxy advisors are important, indeed indispensable, to asset managers and other institutional investors who use them. We appreciate a recent comment by an investor who said that taking away the proxy advisor voting platform would be like taking away a Bloomberg terminal from a trader. We recognize their importance, particularly for the actual voting mechanics, and we understand the responsibilities of and burdens on investors, many of whom vote at hundreds or thousands of meetings in a single proxy season.

Given our members' various roles as governance professionals, we care deeply about having an effective and efficient proxy voting system. As general counsels, corporate secretaries and other governance professionals, our members are charged with managing their company's annual meeting and the associated shareholder voting process. We believe there is general consensus between issuers and shareholders that votes should be cast based on accurate information, free from conflict, and with transparency. While we believe many investors vote their shares in a thoughtful manner, the Proposed Rule will enhance access to and the transparency of relevant information for all investors.

We also understand some investors have raised concerns that if proxy advisors are regulated, their business models will be strained, which may result in fewer firms providing proxy advisor services. As further detailed below, the Society believes that the impact and benefits of the SEC's Proposed Rule to improve the proxy voting process will outweigh the associated costs.

The current proxy advisory firm market is essentially a duopoly consisting of Institutional Shareholder Services Inc. ("ISS"), owned by the private equity firm Genstar Capital, and Glass Lewis & Co. ("Glass Lewis"), a portfolio company of the Ontario Teachers' Pension Plan Board and Alberta Investment Management Corp. The proxy advisors have clients, which are primarily institutional investors who vote the shares of the companies they hold for their beneficial owners. The clients/institutional investors pay for the research and advice that the proxy advisors offer. This is their business.

However, one proxy advisor, ISS, has another business line. ISS pitches and sells vote consulting, compensation consulting, proxy drafting advice, and governance and ESG scoring consulting to issuers. The terms and prices charged for these consulting services vary and are not public. In fact, public companies that engage ISS consulting services are contractually prohibited from disclosing the consulting relationship publicly or to an ISS proxy voting representative. One reason provided by ISS for this restriction is to avoid a proxy voting employee possibly providing preferential treatment of some sort with respect to voting recommendations for consulting customers. To date, there has been no published data by ISS or others that we are aware of to

quantify the amount of revenue earned by ISS that is attributable to its consulting business. As we explain below, the Society estimates that ISS' consulting business represents approximately \$48 million annually in revenue—an amount, we believe, that is material to ISS' overall financial performance and, therefore, warrants disclosure to investors of a conflict of interest.

Because proxy advisor vote analysis and recommendations are not available publicly—issuers and proxy solicitors who do receive them are not permitted to disclose them—mistakes in such reports and potential conflicts of interest with respect to consulting services are shielded from public view. This dynamic is why there are few comment letters from issuers in the file. Many registrants are unwilling to provide specific information on errors in reports or other issues they have with proxy advisors, including at SEC Roundtables and in comment letters. Registrants are also concerned that investors who are clients of the proxy advisory firms may have an adverse reaction if a company were to write a comment letter supporting the Proposed Rule. These factors make it difficult to conduct market and academic analysis of the direct and indirect impact of proxy advisors on the capital markets, the market for corporate control and the economy overall.

II. Proxy Advisory Firm Influence Merits Regulation to Ensure Transparency and Accuracy

A. Proxy advisory firms have a significant influence on voting results

Voting recommendations made by ISS and Glass Lewis have a significant impact each year on the composition of a public company's board, its executive compensation policies, and an increasingly expansive range of shareholder proposals. Equally important, these recommendations can have profound ramifications on pivotal issues, transformative corporate events, and challenges throughout a company's lifetime. This influence directly and significantly affects matters being voted on at annual meetings.

For example, in 2019, ISS recommended "for" (and contrary to the management recommendation) a compensation-related shareholder proposal on a Society member's proxy statement. After the surge of initial voting, the proposal received 53.03% support of shares voted. Following this company's filing of supplemental proxy materials, ISS changed its recommendation to "against," which we presume was communicated through the automated voting platform to investors. Within 24 hours, support for the proposal went from 53.03% to 23.95%,³ thus clearly demonstrating the effectively real-time and outsized influence of the proxy advisor. The influence of the proxy advisor in this example clearly transcends the impact that even the company's largest shareholder could have had.

This degree of influence is more prevalent with certain types of shareholders, such as quantitative fund managers, or those who simply own one stock as a hedge against another position. Unlike many large active and passive asset managers,⁴ certain investors, in particular those who believe they are compelled to vote on every proposal due to prior SEC guidance, lack an incentive

³ The vote totals and timing are based on Broadridge daily vote tallies provided by a Society member who wishes to remain anonymous.

⁴ The Society would like to distinguish investors whose strategies de-emphasize the value of proxy voting from many investors and asset managers who vote their shares in an informed and thoughtful manner and clearly discharge their fiduciary obligation to their beneficiaries and/or individual investors/clients.

under their investment models to devote resources or expertise to in-house proxy teams to analyze and vote numerous ballot items for shareholder meetings. In contrast, large asset managers generally tend to have extensive in-house proxy teams that engage with issuers on corporate governance matters, analyze their company policies and proxy statements, and generate vote recommendations based on the respective manager's mandate. In addition, large asset managers have extensive research tools and resources, and proxy advisory firms are simply one of multiple data sources. These teams conduct a deeper analysis on companies that deviate from their own internal policies.

Despite many investors' commitment and practice of informed voting, an institutional investor's approach may depend on what percentage of their portfolio is invested in the company. A 2018 study by the American Council for Capital Formation found that the largest institutional investors are less likely to deviate from proxy advisory recommendations when casting votes at small companies.⁵ With the largest institutional investors owning a majority of the shares at most small companies, the study found that small companies are significantly more affected by proxy advisor recommendations. Stated differently, large institutional investors may be relying more on proxy advisor recommendations for small companies, where their investment likely represents a small fraction of the investment portfolio.

Because smaller registrants not included in the S&P 500 index cannot view their ISS reports in advance of dissemination, and no registrants can view their Glass Lewis reports in advance,⁶ any mistakes included in a report may not be corrected before some or even the majority of investors vote. If mistakes are found after the proxy advisor report is released, it is possible (but not at all certain) to have such errors corrected and the report re-issued, but all investors may not review these updates and change their vote, if warranted.

The Proposed Rule will correct this and require that all registrants regardless of size be given the opportunity to see their reports in advance if they comply with the updated rule. This is one of the most important inequities that exist in the proxy voting process. We commend the SEC for proposing a rule that will remedy it.

B. Mistakes and errors happen

We expect some commenters who do not support the Proposed Rule to deny that mistakes are made, or argue that if they are, they are not prevalent. The Society recently conducted a survey of its members to solicit feedback on errors in reports. The survey asked first whether they were aware of any factual errors, omissions of material facts, or errors in analysis in the last three years.⁷

⁵ Timothy M. Doyle, "The Conflicted Role of Proxy Advisors", American Council for Capital Formation (May 2018), available at https://accfcorgov.org/wp-content/uploads/2018/05/ACCF_The-Conflicted-Role-of-Proxy-Advisors.pdf

⁶ We note that Glass Lewis does permit a limited universe of registrants to sign up to review in advance an "issuer data report" (IDR) that contains certain (but not all) factual data that is used in the proxy report. The IDR is significantly less than the full Glass Lewis report.

⁷ Society Survey; conducted December 2019. The survey is attached as Appendix A. Minor changes were made to protect respondent anonymity. The survey instructions provided that only one member per company was permitted to respond on the company's behalf.

A total of 134 members responded to the question, with 56, or 42%, answering in the affirmative. Here are many of the written examples they provided:⁸

- Errors in the director information are routine, e.g. incorrect current employment, number of outside boards, independence status, committee memberships/chairs, and omitting to state that a director was retiring
- Incorrect statement that company would have no lead independent director when the current lead retired even though the company stated in its proxy that it would appoint one at the board meeting immediately following the annual meeting
- Incorrect number of record date shares outstanding based on third party data instead of using correct number of shares found in proxy statement
- Incorrect, non-GAAP financial information included in the report because the proxy advisory firm uses financial data from a third party that adjusts the data to “normalize” it
- Incorrect statement that benchmarking targets for various components of company’s compensation program were not disclosed when proxy stated that company does not use benchmarking targets
- Errors in the description of our equity compensation due to aggregating different types of equity with different terms into one category
- Repeated errors year after year on the terms of the company’s performance based restricted stock
- In proposals related to political activity and/or lobbying reporting, ISS understates what the company publicly discloses
- Error in reporting that CEO’s pay increased year over year when it had actually decreased: ISS failed to update the report from the prior year’s language. (This was corrected when pointed out in advance review)
- Error in the required number of anti-takeover votes
- Inconsistent application year over year of ISS’s own method on how to compute the value of CEO performance equity awards. As a non-S&P 500 company which did not receive a draft report, it took until a few days prior to the meeting for ISS to correct the error and change its say-on-pay recommendation from AGAINST to FOR

⁸ Condensed responses from public company Society members pursuant to Society survey, Question 5, December 2019.

- Omitted facts that had been reported on Form 8-K or Form 4; reliance on media articles rather than issuer filings
- Error in understanding why performance target was lower than in previous year
- Error concerning an outside directorship of one director
- Error in reporting that a CEO served only for a partial year rather than a full year
- Inaccurate director related party transactions
- Say on pay recommendation based on a failure to account for a one-time item, incorrectly reporting that EBITDA target was set below forecast; misunderstanding of revised ROIC methodology. ISS issued a revised report and changed the recommendation from AGAINST to FOR
- Incorrect fact about director attendance leading to a change in recommendation
- Incorrect statement of percent of vote required for shareholders to call special meeting
- Misstated classes of stock
- Misapplication by ISS of their own three year look back policy for director independence—they carried over facts from four years prior, but corrected the analysis after being contacted by the company
- Error in analysis relating to a shareholder proposal which was corrected when company pointed it out in the review period. We contacted the proxy advisory firm during our preliminary report review period, and the final report did not contain the error
- Errors in biographical data on directors
- Errors in number of boards our CEO serves on
- Misapplying a US analysis to a foreign corporation
- Misinterpretation of company's restricted stock plan and the annual grants and the effect of accelerated vesting of restricted shares on a change in control
- Errors regarding compensation elements, business mix and reliance on stale information
- Incorrect assumption that a 3 year performance period is short term
- Misrepresentation of the votes required to amend bylaws/charter

- Incorrect statement that company had no anti hedging policy when it did and the policy was publicly available
- Incorrect share count
- CEO compensation was incorrect
- ISS missed a bullet in the list of a Lead Director's responsibilities and thus recommended against management on an independent chair proposal. ISS subsequently issued a corrected voting recommendation
- Glass Lewis incorrectly described part of a feature of our compensation plan that did not apply and had to issue a revised report
- Incorrect information about shareholder rights to call special meetings
- Penalized and then credited in separate years by one proxy advisor for the same clawback policy (i.e., one year proxy advisor said it was deficient, and the same policy was deemed by the same proxy advisor to be acceptable in a subsequent year)

We believe a 41% error rate indicated by this group of companies over the last three years is significant.⁹ Several times one of these companies had received the draft report and was able to get a correction from the proxy advisor; however, companies not in the S&P 500 do not get that opportunity from ISS. The burden for registrants to correct an erroneous recommendation after the report is distributed to the institutional investors is much more challenging, as previously noted.

While emphasizing the significance of the error frequency described above, we would also urge the Commission not to fall prey to the false argument that it cannot act to regulate proxy advice without a showing of "prevalent" errors. The SEC's regulations reflect many instances of regulating undesirable conduct not based on its prevalence, but upon a belief that it should be avoided altogether.

C. Automated voting (i.e., robo-voting) amplifies the influence of proxy advisors

Automated proxy voting systems allow clients to: (1) populate each ballot with recommendations based on preset voting instructions or policies; and (2) submit the client's ballots for tallying without requiring the client to review the proxy advisor's analysis or confirm their vote. This precludes consideration of other sources of information and company-specific details before the vote is cast. In some cases, investors purchase a recommendation only service in which they do not receive the proxy advisory firm report – but merely the recommendation. The proxy advisor then populates the ballots as it has previously been instructed to do so based on agreed policies, and then the proxy advisor casts the vote, unless the investor overrides it. This process may be convenient, but allows for voting with no human input.

⁹ Society Survey, Question 5

The Society believes that many small and mid-size institutional investors and managers outsource their voting to proxy advisory firms that provide automated voting services to fulfill what they believe to be their proxy voting compliance obligations at the lowest cost. Moreover, a number of these firms adopt ISS and Glass Lewis “default” voting guidelines and policies,¹⁰ and then let the proxy advisory firms apply these policies by generating ballots that reflect these default positions for each shareholder meeting.¹¹ While technically the clients have the right to override a specific voting recommendation, in practice most of these ballots are submitted automatically without any client input or decision. These small investors collectively can own a considerable equity stake in a company. This practice is often referred to as “robo-voting.”

We believe the impact of robo-voting and the associated influence of proxy advisor recommendations are evident by reviewing the votes cast shortly after the release of their recommendations. The U.S. Chamber of Commerce’s Center for Capital Markets Competitiveness and Nasdaq conducted a survey of the 2019 proxy season in which 172 public companies participated.¹² This 2019 survey found, as it did for 2018, “that a large percentage of shares were robo-voted in the 24-48 hours after an ISS or Glass Lewis recommendation was released.” Moreover, large percentages of shares voted in line with proxy advisory firm recommendations. Specifically with respect to ISS, in 2019, several companies reported between 15% to 40% (compared to 10% to 15% in 2018) of their outstanding shares were voted in line with ISS’ recommendations within the 24 to 48-hour period following the issuance of its recommendations. The same 2019 survey also determined that 5% to 10% (compared to less than 10% in 2018) of the respondents’ shares automatically voted in agreement with a Glass Lewis recommendation within 24-48 hours of its issuance.

Consistent with these survey results, we have provided an example of one Society member’s experience which illustrates how shares voted within the 24 hours following the release of its proxy voting reports appear to follow in lockstep with the voting recommendations in those reports. The Society member tallied the votes cast and tracked the time of the vote executions following issuance of the ISS voting reports in 2018 and 2017. An estimated 13.1% and 9.3% of the total votes cast in 2018 and 2017, respectively, were cast in accordance with ISS’ recommendations within one business day after the release of the ISS report.¹³ By comparison, the percentage of votes cast on other business days just before the release of the ISS report typically was between 0.2% and 0.3%

¹⁰ So-called “custom” or “specialty” voting policies can often be the proxy advisors’ “default” policies (i.e. voting criteria or standards created by ISS/Glass Lewis) with minor changes from the client/institutional investor.

¹¹ Further amplifying the influence of the proxy advisors is the practice of asset managers or custodians that provide “managed accounts” for individuals to outsource proxy voting to ISS. For example, the Society is aware of several instances of managed accounts provided by asset managers or custodians stipulating that “ISS shall...vote proxies for these securities on your behalf, unless you elect not to delegate authorization to ISS.” (Custodian correspondence provided to Society by anonymous member. Available upon request.)

Given the relatively low retail shareholder participation rate in proxy voting, it seems quite likely that a substantial portion of ISS-outsourced managed accounts would, in fact, be voted in accordance with ISS default policies (with little further input from the managed account owners).

¹² U.S. Chamber of Commerce’s Center for Capital Markets Competitiveness and Nasdaq, “2019 Proxy Season Survey,” available at <https://www.centerforcapitalmarkets.com/resource/2019-proxy-season-survey/>

¹³ Daily vote tally information provided by a Society member who wishes to remain anonymous.

of the total votes cast in the annual meeting. To put this in perspective, the number of shares voted following release of the ISS report were larger than the total shares owned by this company's largest shareholder.

Results from the recent Society survey of public company members regarding the amount and timing of shares voted within 48 hours of the release of proxy voting recommendations buttress the Chamber's statistical evidence and company-specific anecdotes:

- 25% of respondents reported that more than 20% of shares are voted within 48 hours of the release of proxy voting advice;
- 32% of respondents reported that between 10-20% of shares are voted within 48 hours;
- 19% of respondents reported that between 5-10% of shares are voted within 48 hours; and
- 8% of respondents reported that between 0-5% of shares are voted within 48 hours.¹⁴

The precise volume and timing of shares that are voted automatically in line with proxy advisor advice is difficult to determine due to lack of transparency in voting results released by the proxy advisory firms themselves. Regardless, the existence of robo-voting and its material impact in the proxy voting process and results merits oversight and regulation to ensure fairness and accuracy.

In light of the impact of robo-voting, the Society suggests that the SEC consider requiring proxy advisory firms to "disable the automatic submission of votes"¹⁵ if the registrant has submitted a response and where the proxy advisor is recommending against the management position. By disabling the robo-voting feature in these limited circumstances, the SEC can ensure that the appropriate level of human consideration is applied in the situations where it is most needed.

III. Process for Review of Proxy Voting Advice

The Society applauds and supports the Commission's efforts to encourage greater accuracy and completeness in the voting recommendations and related information included in proxy advisory reports. By mandating a review-feedback-review process, the Proposed Rule creates the due process essential to providing accurate and timely proxy voting advice to investors. In addition, the opportunity for registrants to provide a hyperlink to a company response on a particular issue(s) will provide investors a much-needed and convenient way to access the company perspective on erroneous statements. The due process provided by the Proposed Rule is critical to ensuring "that proxy voting advice be based on the most accurate information reasonably available."¹⁶

¹⁴Society Survey, Question 10; 14% of respondents stated that they did not know, were unsure, made bespoke estimates (e.g. "anywhere from 15-25%," "between 20-30%,") or stated they believed the impact to be minor. Percentages do not equal 100 due to rounding.

¹⁵ Proposed Rule, p. 116, <https://www.sec.gov/rules/proposed/2019/34-87457.pdf>

¹⁶ Proposed Rule, p. 10, <https://www.sec.gov/rules/proposed/2019/34-87457.pdf>

A. Review Timelines

The Society appreciates that the Commission is proposing that all proxy advisory firms will be required to give all registrants the opportunity for advance review of their proxy advisor reports if certain deadlines are met. The Society appreciates that the proposed amount of review time for an issuer is potentially longer than the time currently provided, which in some cases can be less than 24 hours or over a weekend or holiday. As cited by the Commission in footnote 114 of the Proposed Rule, according to Broadridge Financial Solutions, Inc., registrants customarily file definitive proxy material 35-40 days before a stockholder meeting. As such, we note that many registrants will be required to accelerate their proxy statement preparation schedules to benefit from the full five-business day report review period included in the Proposed Rule, and that there are likely to be a significant number of registrants who will be unable to do so, at least in the shorter term. The Society's recent survey supports this conclusion.¹⁷

The Society also commends the Commission on proposing to incorporate a mandated review by the registrant of the final version of the report before it is distributed to the proxy advisory firms' clients and to provide a method for the issuer to provide further correction or comment. As the Society survey data indicates, registrants' proposed factual corrections and suggestions often are not incorporated, without explanation from the proxy advisory firm.

Some have argued that the Proposed Rule's review process somehow compromises the independence of the proxy voting advice and that such advice is akin to buy-side analyst reports, which are prohibited from being reviewed by the company to avoid compromising the integrity of such reports. This argument is surprising since ISS voluntarily provides reports to a limited number of issuers today. ISS provides its reports to S&P 500 companies in advance and takes comment on any factual errors in a 48-hour timeframe, although companies are sometimes given less response time.¹⁸ It is difficult to understand how, if ISS' voluntary review and comment processes do not currently compromise the independence of their advice, the Proposed Rule's review and comment period for all public companies would do so. The Society believes that the independence of proxy voting advice will not be affected by the Proposed Rule.

B. Hyperlink to issuer response

The Society commends the Commission on proposing to provide a method for the issuer to correct mistakes in proxy advisory firms' final recommendations or reports via a company hyperlink contained in the proxy advisors' final report. Because factual errors have frequently been found after the voting recommendation has been disseminated to the many institutional investors who subscribe to ISS' and Glass Lewis' services, the impact of additional proxy materials can be

¹⁷ Society Survey; Question 3; 148 respondents, 37% generally file their definitive proxy statement more than 45 days before their meeting and 56% generally file their definitive proxy statement between 35 and 45 days before their meeting.

¹⁸ Glass Lewis provides registrants who have signed up to participate with an opportunity to review certain factual data that are used in their report and provide corrections to that data. Glass Lewis does not provide the complete voting report as part of the review process and only makes its final report available to issuers for a fee **after** the report has been disseminated.

limited. As a result, the Society is supportive of the Proposed Rule's requirement that proxy advisors must include a hyperlink to a written, publicly-filed, statement prepared by the issuer.

IV. Proxy Advisory Firms Offer Services That Constitute Proxy Solicitations

A. The Society supports amending the definition of the term "solicitation"

The Society agrees with adding the Proposed Rule's new paragraph (A) to Rule 14a-1(l)(1)(iii) to clarify that the terms "solicit" and "solicitation" include any proxy voting advice that makes a recommendation to a shareholder as to its vote, consent, or authorization on a specific matter for which shareholder approval is solicited, and that is furnished by a proxy advisor that markets their expertise as a provider of such advice, separately from other forms of investment advice, and sells such advice for a fee.¹⁹

The Society supports the Commission's interpretation of the term "solicitation." The Society agrees that the analysis of what constitutes a solicitation should not turn on whether the proxy advisor is seeking authorization to act as a proxy or is uninterested in the vote results. Moreover, the analysis also should not incorporate whether the proxy advisory firm provides recommendations based on the client's own proxy voting guidelines or whether the client declines to follow the proxy advisor's advice. The Society believes the Proposed Rule reflects the correct approach and concurs with the Commission's explanation supporting its proposed interpretation.²⁰

In addition, the Proposed Rule states that each voting recommendation contained within the general benchmarking policies or specialty policies (sometimes referred to as specialty reports) would be considered a separate solicitation under the amended rules. The Society agrees with this determination. General benchmark policies and specialty policies are compilations of voting recommendations on a wide range of topics that could potentially be included on a shareholder agenda. The specialty policies, such as socially responsible investing policies or Taft-Hartley labor policies, provide recommendations that take into consideration certain values, regulatory

¹⁹ The Exchange Act does not define "solicitation" in connection with Section 14(a). Over the years, the Commission has defined which communications are solicitations and promulgated rules and regulations in order to protect investors in the proxy voting process. *See* Proposed Rule at 13 *citing* 15 U.S.C. § 78n(a); 15 U.S.C. § 78c(b); 15 U.S.C. § 78w. Exchange Act Rule 14a-1(l) currently defines the term "solicitation," to include, among other things, a "communication to security holders under circumstances reasonably calculated to result in the procurement, withholding or revocation of a proxy." *See* 17 C.F.R. § 240.14a-1(l).

²⁰ Commission Interpretation on Proxy Voting Advice at 9-10, "The communication generally is in the form of a voting recommendation based on the [proxy advisory] firm's analysis of the proxy materials and whether a particular matter is consistent with, not consistent with, or not covered by client voting criteria; it is typically transmitted to the client shortly before the meeting to aid the client's voting determination; and it may be a factor in the client's voting determination. Also, as noted above, proxy advisory firms market their services based on their expertise in researching and analyzing proxy issues for purposes of helping their clients make proxy voting determinations. As a result, even when based on the client's own voting guidelines, we believe the communication, if it reflects more than administrative or ministerial work, should be viewed as part of a commercial service that is designed to influence the client's voting decision. We believe this to be the case even in circumstances where the client may not follow this advice." <https://www.sec.gov/rules/interp/2019/34-86721.pdf>

requirements or investment objectives of a particular investor audience and their recommendations are often predetermined.

B. ESG Ratings Firms

ESG ratings firms provide ratings and analysis of companies on a wide range of environmental, social and governance issues to many institutional investors. The number and influence of ESG ratings firms has been growing. As the asset management industry increases the number of ESG-related products offered and continues to commit to consider ESG factors in their investment decisions, some ESG ratings are being incorporated into portfolio construction, with concomitant impacts on capital allocation. The Society believes the SEC should be alert to changes with respect to capital formation, conduct appropriate analysis, and to the extent required, act accordingly.

We believe the Commission should consider current practices by proxy advisors with respect to the incorporation of ESG-related information or analysis in proxy voting reports and add appropriate clarifications in the Proposed Rule. For instance, ISS includes ESG related analysis in its “Proxy Analysis & Benchmark Policy Voting Recommendations,” even in cases where there is no specific environmental or social item to be voted upon. Having said that, the increased attention of investors on environmental and social (E&S) issues could make them relevant to an investors’ assessment of director performance,²¹ despite not being called out specifically in any particular item. In the context of E&S information and analysis being included in a proxy advisor report, we believe the Proposed Rule should be clarified to apply to such ESG information and analysis.

Glass Lewis presents a somewhat different context. Glass Lewis incorporates Sustainalytics²² E&S analysis in its “Proxy Paper” report, yet it retains all authority to actually make any E&S-related recommendations contained in its proxy voting advice.²³ In effect, Glass Lewis is incorporating third party analysis into its proxy voting report but not necessarily its proxy voting advice. Nonetheless, it appears to the Society that such third-party information constitutes a part of the “solicitation” which, therefore, ought to be regulated under the Proposed Rule. Accordingly, the information disclosure requirements contemplated under the Proposed Rule should properly apply to any third-party information incorporated into proxy voting advice, including with respect to methodology, sources of information, conflict of interest, and use of standards that materially differ from relevant standards or requirements that the Commission sets or approves.

²¹ The recent letters from Blackrock and State Street Global Advisors make clear that board oversight and governance of environmental and social risks (e.g. climate change and human capital management) are now highly relevant to these large asset managers’ voting in director elections. See <https://www.blackrock.com/corporate/investor-relations/larry-fink-ceo-letter>; and <https://www.ssga.com/us/en/intermediary/ic/insights/informing-better-decisions-with-esg> (Accessed Jan. 29, 2020)

²² Sustainalytics is a leading provider of ESG information to investors including ratings and environmental and social analysis.

²³ Based on Glass Lewis representations.

V. The Society Supports the Proposed Conflicts of Interest Disclosure

The Society strongly supports the Commission’s proposal to require enhanced conflict of interest disclosure. As noted by the Commission in the Proposed Rule, proxy advisory firms regularly engage in activities that present conflicts of interest that should be disclosed to investors. For example, as noted above, ISS’ consulting business sells to corporate customers advice on the design of corporate governance structures or compensation plans and then ISS subsequently makes a recommendation to investor clients on how to vote for related proposals.

The conflict presented by selling consulting services (very frequently compensation, governance and shareholder proposal-related consulting services or, more recently, consulting related to ESG scores)²⁴ is compelling. According to a recent Society survey, 62% of the companies polled²⁵ noted that they have purchased ISS consulting services within the last three years. Moreover, 39% of companies polled noted that they had been solicited by ISS “following a negative voting recommendation.”²⁶ One registrant described it as follows: “As many issuers have found, it took ISS little to no time to send their sales team in our direction after our low “say on pay” vote, asking us if we would be interested in purchasing their consulting services to learn how we might avoid getting a negative recommendation in the future. This often feels like a request to pay protection money as the “route to safety” is often not knowable without paying an additional fee.”²⁷

The Society is not alone in its concerns about proxy advisor conflicts; a prominent labor union has expressed the same view. In 2013 at the SEC Roundtable on proxy advisors, an AFL-CIO representative noted that the “business model of having consulting services provided to issuers and at the same time providing proxy advisory services to investors...I think that business model is inappropriate, just as I don't think that type of model is appropriate for an auditor. And this is a longstanding view that the AFL-CIO has expressed for a long time.”²⁸

²⁴ The ISS Corporate Solutions website includes the following services: **Governance Solutions:** [Improve Governance Ratings](#), [Pinpoint Risks & Develop Roadmaps](#), [Analyze Institutional Voting Behavior](#), [Monitor Activist Activity](#), [Assess Proposal Success Rates](#), [Gauge Proxy Advisory Outcomes](#), [Develop Shareholder Engagement](#); **Compensation Solutions:** [Design Equity Plan Proposals](#), [Anticipate Shareholder Concerns & Optimize Disclosures](#), [Benchmark Executive Pay & Pay Mix](#), [Test Pay-for-Performance Alignment](#), [Build, Analyze & Monitor Peer Groups](#), [Design Performance Awards, Metrics & Goals](#), [Develop Shareholder Engagement](#); **Sustainability Solutions:** [Improve ESG Ratings](#), [Pinpoint ESG Disclosure Gaps and Develop Roadmaps for Improvement](#), [Benchmark Current Practices Against Peers](#), [Analyze Institutional Shareholder Environmental & Social Policies](#)

²⁵ Society Survey, Q 11, 62%, 78 of 124 responses.

²⁶ Society Survey, Q 14, 39%, 48 of 121 responses.

²⁷ Provided by a Society member who wishes to remain anonymous.

²⁸ It’s worth noting that the AFL-CIO representative in the same discussion stated that “where a client is a proponent of a resolution, that that ought to be disclosed;” presumably referring to the scenario where the proxy advisory firm provides research, reports, and other services, including voting services, to a shareholder resolution proponent while also providing a voting recommendation to investors on the same resolution/proposal submitted by the proxy advisory firm client. We believe this is a less well understood conflict. <https://www.sec.gov/spotlight/proxy-advisory-services.shtml> (See “Transcript” link on webpage, accessed January 29, 2020.)

Requiring conflicts of interest disclosure is further justified because the standard ISS consulting contract forbids the issuer from disclosing the existence of a consulting relationship.²⁹ Requiring disclosure of these consulting relationships will allow much needed “sunlight” into this proxy advisor business area.³⁰

The Society therefore supports the detailed disclosures in proposed Rule 14a-2(b)(9)(i) in order to provide investors with information to understand the full nature and scope of proxy advisory firms’ conflicts of interest. Furthermore, we support the types of disclosure specified by proposed Rule 14a-2(b)(9)(i)(A) through (D), as these cover both the types of conflicts of interest that are problematic, as well as any policies and procedures of proxy advisory firms that may address such conflicts. Moreover, we support the Commission’s proposal to make the proxy advisory firms’ exemptions from the information and filing requirements of the federal proxy rules contingent upon the disclosures required by proposed Rule 14a-2(b)(9)(i).

A. The requirement to disclose consulting arrangements should NOT be subject to a materiality standard

Society survey data and ISS disclosed consulting information³¹ strongly suggest that the revenue earned by ISS through its consulting business, which we estimate at more than \$48 mil annually, is material to the firm’s overall financial performance.³² This creates at least a theoretical conflict of interest relative to each recommendation subject to an existing (or even potential) consulting relationship. While any individual consulting relationship may not be economically material to ISS, the practical import of the conflict created by the overall consulting revenue manifests itself on a company-by-company basis. As a result, the only practical way to equip investors to adjust for the existence of a conflict is to require company-by-company disclosure, regardless of the “materiality” of that amount to the proxy adviser’s overall income.

For this reason, we believe that requiring only “material” interests, transactions, or relationships that present conflicts of interest may unduly limit the disclosure that proxy advisory firms provide. Rather, the Society recommends that the proposed Rule 14a-2(b)(9)(i)(A) through (D) should be clarified to require disclosure of any interest, transaction or relationship with respect to the proxy advisory firm that may present a conflict of interest, and the dollar amount thereof.

²⁹ Based on review of ISS Corporate Services contract Terms and Conditions.

³⁰ISS currently provides inadequate boilerplate disclosure in small font at the end of every report that simply says the issuer “may have” purchased services from the ISS consulting business. If clients of ISS want more detail, they have to request it from ISS.

³¹ ISS Corporate Solutions notes that it “helps over 1300 corporate clients throughout the year.” <https://www.isscorporatesolutions.com/solutions/executive-compensation-advisory-services/>

³² The Society estimates ISS Corporate Solutions revenue at more than \$48,000,000 annually. Based on Society member responses to Question 13 in the Society survey (attached) regarding ISS consulting fees, we estimate the average annual consulting fee at approximately \$37,500. The ISS Corporate Solutions website notes over 1300 S&P 1500 companies as clients. \$37,500 x 1300 (clients)=\$48,750,000.

B. The Proposed Rule should ensure conflict of interest disclosures are user-friendly

On a related note, we are concerned that the Proposed Rule does not provide sufficient guidance to proxy advisory firms on the manner in which the disclosure on conflicts of interests should be provided. For example, we support clear disclosure that will inform investors about these conflicts of interests both in plain English and sufficiently sized font.

We further support adding instructions to the Proposed Rule specifying that a proxy advisory firm also provide a clear initial statement in its proxy voting advice, both in bold and sufficiently sized font size, that the proxy advisor does have a consulting relationship with the company subject to the voting recommendation. The SEC imposes disclosure location and appearance requirements in other contexts³³ and should do so here.

VI. Proposed Amendments to 14a-9

The Society supports the SEC proposal to amend the list of examples in Rule 14a-9 to include the “proxy voting business’s methodology, sources of information, conflicts of interest or use of standards that materially differ from relevant standards or requirements that the Commission sets or approves.” The Society believes that including such examples in Rule 14a-9 will provide needed further definition as to the information necessary to ensure that proxy voting advice is not misleading due to lack of essential context.

We can see no principled distinction between subjecting an “ordinary” proxy solicitation to 14a-9 liability and somehow exempting a solicitation made by a proxy advisory firm. As the SEC noted in the release announcing the Proposed Rule, “we continue to believe that subjecting proxy voting advice businesses to the same antifraud standard as registrants and other persons engaged in soliciting activities is appropriate in the public interest and for the protection of investors.”³⁴ We agree.

A. Disclosure of proxy advisor rules/standards that differ from SEC/stock exchange rules/listing standards

The Society strongly supports the inclusion in Rule 14a-9’s list of examples of the “use of standards that materially differ from relevant standards or requirements that the Commission sets or approves” (i.e., rules or standards promulgated by the SEC and/or its Staff or approved by the SEC as part of its oversight and regulation of securities exchanges).

Proxy advisors apply standards or policies that differ from SEC and/or stock exchange listing requirements frequently enough that it strains credulity to believe that the reasonable investor always understands whether a voting recommendation reflects (non)compliance with existing rules/regulations/standards or simply proxy advisor judgment. For example, proxy advisory firms apply standards that differ from SEC, stock exchange rules and certain state laws with respect to:

³³ 17 CFR § 229.10 – e-1-i-A.

³⁴ Proposed Rule, p. 68.

- Director independence
- Executive compensation
- Say on pay voting results
- Shareholder vote counting methodology

Ensuring that investors have the relevant information they need to understand whether a recommendation reflects issuer compliance with *de jure* regulatory requirements instead of a proxy advisor’s policy judgment will ensure that votes cast in accordance with the recommendations actually reflect an investor’s informed evaluation of the proxy advisor’s opinion.

VII. Proxy Advisors Should Not Be Permitted to Charge Issuers for Draft Reports

Question 31 of the SEC release³⁵ asks whether proxy advisors should be allowed to “seek reimbursement from registrants and other soliciting persons.” We strongly believe that requiring issuers to pay for the draft reports would largely just recreate the status quo ante. Currently, ISS provides draft reports to S&P 500 companies. To quote a member:

Although ISS has a longstanding practice of circulating their draft reports to us for review, Glass Lewis does not have such a practice and has forced us to purchase reports from them, simply for the ability to review and comment on the report (and then pray that they’ll address any inaccuracies after it’s been published, which is often too late). A company may learn from its advisors what Glass Lewis has recommended, but these advisors are restricted from sharing the reports under their licensing agreements. This often feels like a hold up where we have to pay money simply to defend ourselves or know what has been said about us—if we don’t pay we find ourselves shadow boxing in response to rumors that we hear piecemeal. Requiring proxy advisory firms to circulate their reports for comment would eliminate this...”

The Society strongly believes that basic notions of fair play preclude charging issuers for the opportunity for due process in the formulation of recommendations applicable to what is for many registrants the single most important and impactful governance activity of the year.

We appreciate the opportunity to comment on this Proposed Rule and would be happy to provide further information or context, to the extent you find it useful.

³⁵ Proposed Rule, p. 68, <https://www.sec.gov/rules/proposed/2019/34-87457.pdf>

Respectfully submitted,



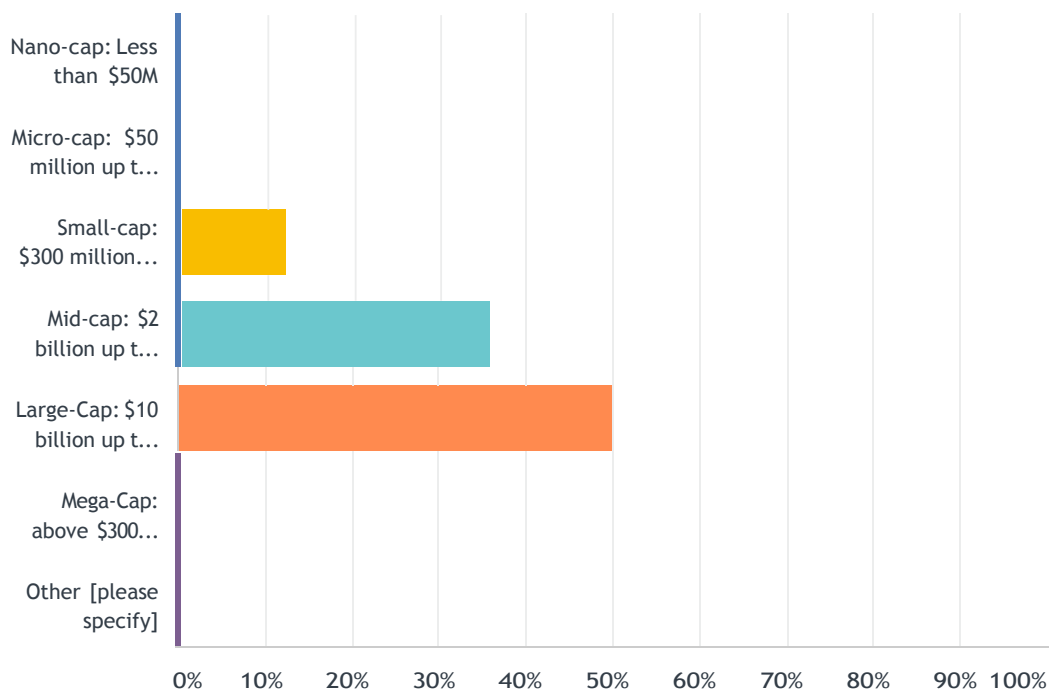
Darla C. Stuckey
President and CEO
Society for Corporate Governance

cc: The Honorable Jay Clayton
The Honorable Robert J. Jackson, Jr.
The Honorable Hester M. Peirce
The Honorable Elad L. Roisman
The Honorable Allison Herren Lee
William Hinman, Director, Division of Corporation Finance
Dalia Blass, Director, Division of Investment Management

APPENDIX A

Q1 What is your market cap?

Answered: 149 Skipped: 0

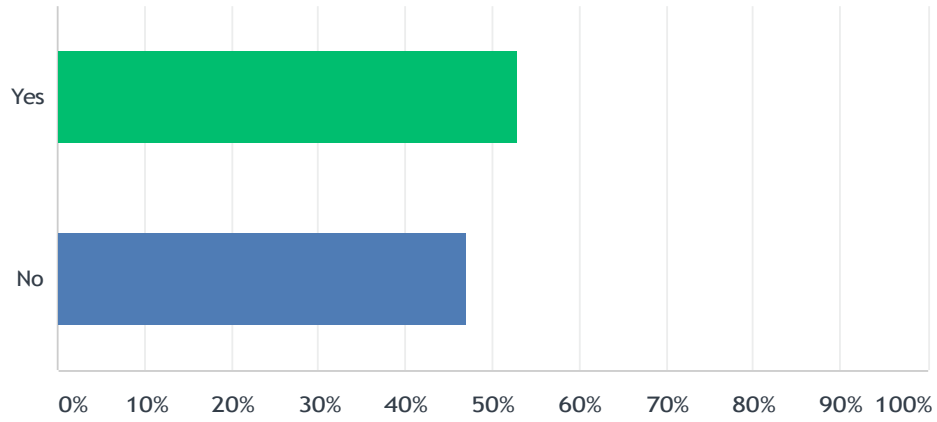


ANSWER CHOICES	RESPONSES
Nano-cap: Less than \$50M	0.67% 1
Micro-cap: \$50 million up to \$300 million	1.34% 2
Small-cap: \$300 million up to \$2 billion	12.08% 18
Mid-cap: \$2 billion up to \$10 billion	35.57% 53
Large-Cap: \$10 billion up to \$300 billion	49.66% 74
Mega-Cap: above \$300 billion	0.67% 1
Other [please specify]	0.00% 0
TOTAL	149

#	OTHER [PLEASE SPECIFY]	DATE
	There are no responses.	

Q2 Is your company in the S&P 500?

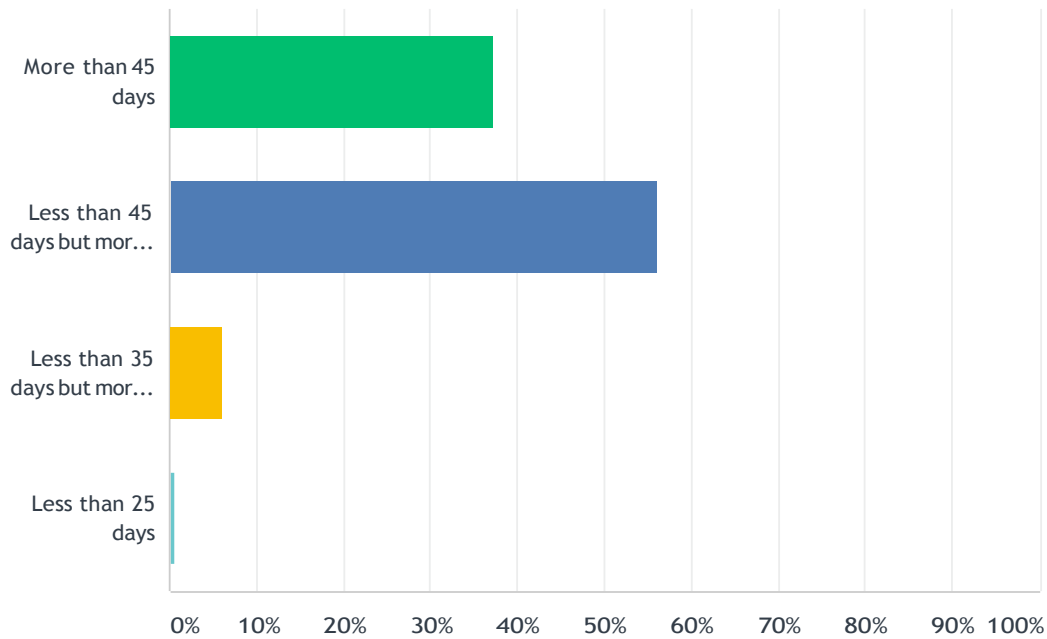
Answered: 149 Skipped: 0



ANSWER CHOICES	RESPONSES
Yes	53.02% 79
No	46.98% 70
TOTAL	149

Q3 How many days prior to your annual shareholder meeting does your company generally file its proxy statement?

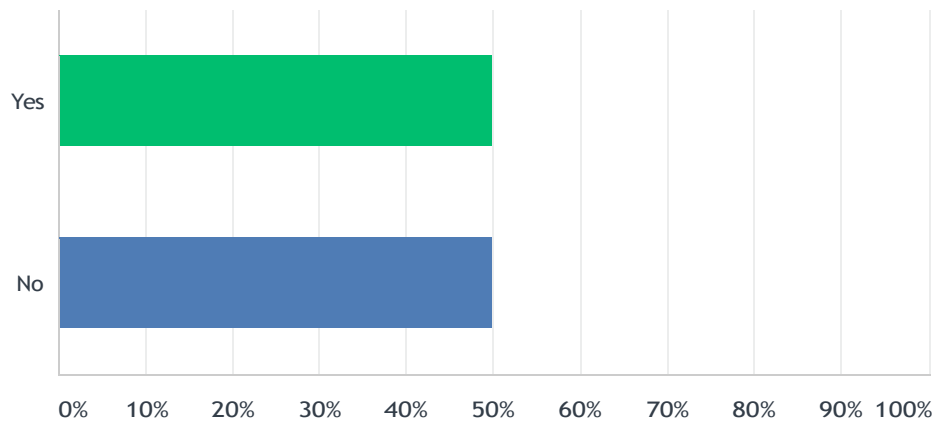
Answered: 148 Skipped: 1



ANSWER CHOICES	RESPONSES	
More than 45 days	37.16%	55
Less than 45 days but more than 35 days	56.08%	83
Less than 35 days but more than 25 days	6.08%	9
Less than 25 days	0.68%	1
TOTAL		148

Q4 The proposal provides that if the company files its definitive proxy statement 25 - 45 days before the date of the shareholder meeting, proxy advisors would be required to provide the company at least three business days to review their proxy voting advice and provide feedback, and if the company files its definitive proxy statement 45 calendar days or more before its shareholder meeting, proxy advisors would be required to provide the company at least five business days to review their proxy voting advice and provide feedback. Issuers that file their proxy statement less than 25 calendar days before the meeting would get no review and feedback period. Would you consider filing your proxy statement earlier to take advantage of the proposal's review and feedback time periods?

Answered: 91 Skipped: 58



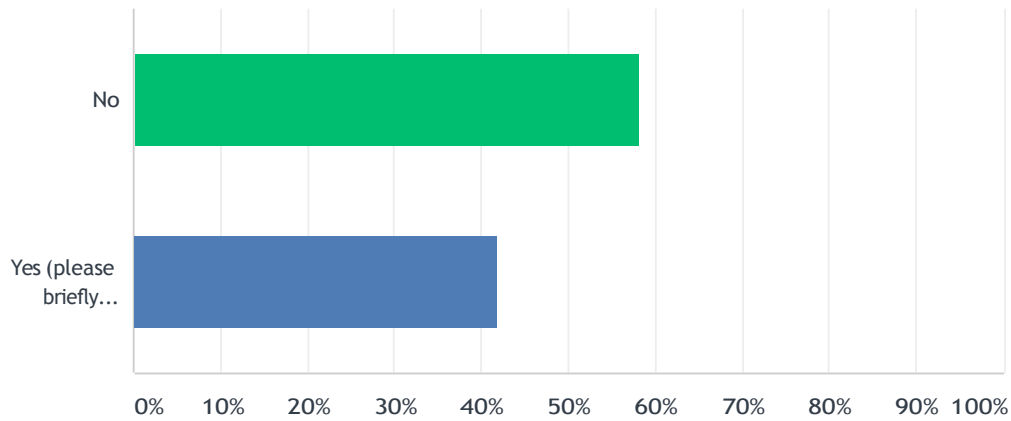
ANSWER CHOICES	RESPONSES	
Yes	50.55%	46
No	49.45%	45
TOTAL		91

Society Survey on Proxy Voting Advice

#	COMMENTS: (PLEASE EXPLAIN)
1	Already file early enough
2	Barring any other reason for waiting to file later, we would file earlier. Might depend on the receipt of responses to no-action letters or negotiations with proponents.
3	Ensuring that we have an opportunity to review and respond to proxy advisors' reports would be a significant factor in filing by or before the proposed rule's deadline.
4	Given our current filing timelines (40-42 days prior to meeting, generally), the proposed review and feedback time periods would be acceptable, and the benefit of two additional review days coming from the 45+ day filing would not outweigh the cost of accelerating filing.
5	I can generally review the reports and respond within three business days.
6	I doubt this would influence our timeline
7	I would consider filing it earlier, but s a practical matter that would be very challenging. Better if the 5 day review opportunity were aligned with the requirement for using notice and access - file at least forty days out. This is more manageable from issuer perspective, and has a good anchor, and probably lots of issuers doing that already.
8	I would consider this but it would be a secondary consideration.
9	our filing date is mandated by the corporate law that applies to us.
10	Our largest shareholder completely delegates its proxy voting to ISS. We have reached out to that shareholder and have been advised that they have no need to talk to us because of their practice.
11	Our proxy preparation schedule is very tight, so it would be difficult to accelerate the filing in order to get additional review time for proxy advisory reports.
12	So far, we have not had any issues with shareholder votes impacting proposals. Until we see a reason for concern, we will probably would not change the timing of our SEC filing.
13	Two extra days, which we need to get last minute etc. comments, Board clearance, etc., is not worth it and under most circumstances three days is going to be more than enough.
14	We file at least 40 days prior to annual meeting date to take advantage of notice and access rules. 3 days to review and provide feedback on the proxy voting advice would be sufficient for our company.
15	We file in the 25 - 45 day window and would have three days to review. We would not push our file date back to more than 45 days prior to gain only two more review days.
16	We have had several instances when the proxy advisors have been incorrect. We would like a reasonable oppty to correct
17	We typically get at least 24 hours to review and respond to the proxy report and we manage around this time frame fairly well. We would need to file 3 days earlier to gain additional days to review. On balance, we would probably prefer to file on the same timeframe as we have been.
18	We would be inclined to keep filing date as is (which would give us 3 business days)
19	We would consider filing our proxy statement earlier than we otherwise would if it entitled us to three business days to review the report.
20	We would consider it, especially if we were on the cusp of the 45 day window (which we often are).
21	We would have the 3 days, which is generally more than enough for us. The issue is, we've had the proxy advisors send us their draft reports late on Fridays and count Saturdays and Sundays as review days. That makes it tough to get comprehensive comments from all internal stakeholders.
22	We would have to move our annual meeting in order to do that because we can't file the proxy statement any earlier than we do.
23	We would indeed consider filing our proxy earlier, but on our current annual meeting schedule, that would be very difficult to do.
24	We would probably file right at 45 days to get the extra 2 days of review (5 days instead of 3), but that's because it won't change our calendar much.
25	While we do provide comments to the proxy advisors to correct errors, those comments are not always incorporated. We then will take the corrections directly to our largest shareholders.
26	yes, if we filed that late.

Q5 Are you aware of any factual errors, omissions of material facts, or errors in analysis in proxy advisor recommendations with respect to your company in the last three years?

Answered: 134 Skipped: 15



ANSWER CHOICES	RESPONSES	
No	58.21%	78
Yes (please briefly describe)	41.79%	56
TOTAL		134

Society Survey on Proxy Voting Advice

#

PLEASE BRIEFLY DESCRIBE:

- 1 In connection with a shareholder proposal, ISS cited in their supporting statement a completely unrelated (and factually inaccurate) news article as support for the proposal. Because we are in the S&P500, I was able to review and inform them of the inaccuracies, which led to their removal of the reference (but not a change in their recommendation).
- 2 Each year for the shares outstanding number, ISS includes a number of shares from our 3rd Qtr 10-Q in a table that says all information is as of the record date. I always note that the record date shares outstanding is in the proxy statement (it's required) and provide that number. I usually get the response back that "this data comes from a third party provider" - that doesn't excuse the fact that it is inaccurate.
- 3 In the compensation analysis, ISS always states that we do not disclose benchmarking targets for various components of our comp program. Each year I point out that we affirmatively state in the proxy that we do not use benchmarking targets. Sometimes they correct it, sometimes they don't.
- 4 ISS often has errors in the description of our equity comp because they lump different types of equity with different terms into one bucket. They also always describe the terms of our performance based restricted stock incorrectly - each year for at least the last three, I have had to point them to the correct information in the proxy statement. And then in the next year's report, they make the same errors again.
- 5 There are routinely factual errors in the director information that we have to correct in the advance review - things like incorrect current employment, number of outside boards, committee memberships/chairs, etc.
- 6 Advisors failed to read disclosure in our proxy statement that while our lead independent director was retiring, we would appoint a new one at the board meeting immediately following the annual meeting. Advisors indicated we would have no lead independent director.
- 7 All minor and corrected
- 8 Both proxy advisory firms refused to take into account or cite lengthy commentary on the circumstances related to executive pay for our company (which we consider a material set of facts) in recommending against "say on pay" or to address that commentary in response to comments (ISS provided a chance to comment ahead; Glass Lewis required us to purchase the report in order to comment). All shareholders that we spoke with, with the exception of one, subsequently supported the management recommendation on "say on pay," and many noted that the context (which ISS and Glass Lewis refused to reflect) was helpful in reaching the determination to support management.
- 9 Certain executive compensation matters, such as vesting of stock options and restricted stock. In addition, certain corporate governance matters, such as anti-takeover required shareholder votes.
- 10 Errors in governance descriptions.
- 11 errors in reporting regarding environmental matters reported in Glass Lewis report
- 12 Errors regarding compensation elements, business mix. Relying on stale information.
- 13 Errors were made by misapplying a US analysis to a foreign corporation.
- 14 Factual error in failing to note that a CEO served for a partial year. (This was more than three years ago, but a significant miss.)
- 15 Glass Lewis incorrectly described part of a feature of our compensation plan that didn't apply to us and had to issue revised report.
- 16 Glass Lewis incorrectly identified a director as "over-boarded".
- 17 Glass Lewis recommended against the chair of our Governance Committee after making an unexpected vote recommendation based on no communicated policy with respect to independence-related disclosures made. Also have experienced the repetition of previously corrected data in prior year proxy reports in current year reports, necessitating very careful proofing each year. Biographical details have been misquoted as well.
- 18 I have had to correct factual errors and add facts that have been omitted from the analysis. The omitted facts were items that had been reported on Form 8-Ks or Form 4s or issuer press releases. Also, the advisor actually seemed to base some analysis on media coverage versus the issuer's filings.

Society Survey on Proxy Voting Advice

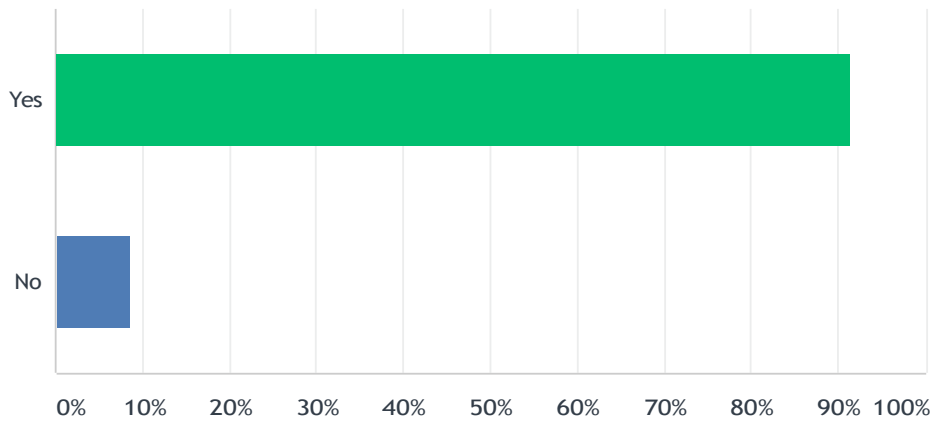
- 19 In advance of our 2016 annual meeting, ISS issued a negative (i.e., "AGAINST") vote recommendation on our "say-on-pay" proposal. Their recommendation was based upon numerous factual and analytical errors (e.g., failure to account for a one-time item affecting comparability to prior year figures; incorrectly stating that EBITDA target was set below forecast; total misunderstanding of revised ROIC methodology; etc.). We ended up pointing all these errors out to them and filing additional definitive soliciting materials. ISS then issued a revised report, with an affirmative (i.e., "FOR") vote recommendation.
-
- 20 In proposals related to political activity and/or lobbying reporting, ISS understates what we publicly disclose (when the additional disclosures are clearly included in the same one page document with information they did include in their report). In one year, they did correct the description once it was pointed out in our advance review. In another year, they only corrected a portion of the description.
-
- 21 Inaccurately described director related party transactions
-
- 22 Inconsistent application year-over-year by ISS of its own method on how to compute value of CEO performance equity awards. Their own mid-year written advice to us was ignored in the published report 6 months later. Since we are not S&P 500 and do not receive a preview of the report, it took a challenge to ultimately have the report changed just a few days before the meeting and significant time from management to explain all of this to stockholders (many of whom had voted upon the first, faulty recommendation). The revised, corrected ISS report turned their say-on-pay recommendation from AGAINST to FOR.
-
- 23 Incorrect characterizations and recitation of facts
-
- 24 Incorrect data on governance
-
- 25 Incorrect information about shareholder rights to call special meetings
-
- 26 Incorrect, non-GAAP financial information included in the report because the proxy advisory firm uses financial data from a third party that adjusts the data to "normalize"
-
- 27 Independence issue with our Chairman who is also a former CEO.
-
- 28 ISS did not apply their three-year lookback policy for director independence properly. They initially carried over facts which occurred four years ago (and then fell off). However, ISS did correct the analysis when we commented on their error.
-
- 29 ISS has included in our peer group companies that are externally managed and thus do not pay any compensation or only a small portion to their executive officers (thereby skewing comparative pay metrics).
-
- 30 ISS is pretty good for accuracy. MSCI and Sustainalytics include inaccurate information that they have not corrected after we pointed out the inaccuracy. One example is the number of boards that our CEO serves on - they just have incorrect information and have not corrected it.
-
- 31 Minor errors relating to our equity compensation program.
-
- 32 Misrepresentation of vote require to amend bylaws/charter, inappropriate controversies flag, characterization of business in sustainability report (health care provider is not in "the Social "basic needs" category 2"), incorrect labeling of incentive plan metrics, and much more.
-
- 33 Misstated classes of stock.
-
- 34 Misstatement of existing percentage required to call a special meeting when a lower percentage was the topic of a shareholder proposal; omission of description of changes to how LTI was paid (cash vs stock) that explained changes in summary comp table.
-
- 35 Misunderstanding disclosure explaining why performance target was lower than in previous year
-
- 36 Nothing material to the voting recommendations.
-
- 37 Nothing specific to point out but there is always something to correct.
-
- 38 Only very minor, non-substantive corrections.
-
- 39 outdated reporting on status of litigations, mis-categorizing directors as non-independent.
-
- 40 Routinely for proposals requesting a 10% threshold for shareholders to call a special meeting, ISS states "Commonly, companies have a 10% threshold". They then cite stats that indicate less than 15% of the Russell 3000 actually have a 10% threshold. I have repeatedly pointed out that less than 15% does not align with an recognized definition of "Commonly", and am routinely ignored.
-

Society Survey on Proxy Voting Advice

- 41 Statements that are not supported by the data that the proxy advisor includes elsewhere in its recommendation.
-
- 42 The most egregious was a situation with a director who missed a couple of meetings due to a business conflict and then missed a meeting due to a sick family member. In our view the latter should have been excused, i.e., not counted, but ISS said that because she had more unexcused absences than excused, their recommendation against stood. They also recommended against our say-on-pay because they said we did not disclose something. When we pointed out that it had been disclosed, they came up with a different reason and still recommended against.
-
- 43 There was an error in analysis regarding a shareholder proposal. We contacted the proxy advisory firm during our preliminary report review period, and the final report did not contain the error.
-
- 44 There was one factual error concerning a directorship for one of our directors. However, I would not consider the error to be material.
-
- 45 They have always corrected errors we point out.
-
- 46 They have made assumptions about our executive compensation program components that they categorized as short term but we believe we long term as it measured performance over a 3 year period.
-
- 47 They left out of their "board and management updates" section the fact that one of our longer term directors was retiring (it was all over the proxy and "unmissable").
-
- 48 They make errors all the time, e.g., they insisted we had no anti hedging policy when we did and it was publicly available. They got our remaining share count wrong. They had our CEO's compensation wrong
-
- 49 They misinterpreted our restricted stock plan (and the annual grants which are part of executive comp) as well as effect of accelerated vesting of restricted shares upon a change in control.
-
- 50 Unfortunately I can not remember specifics. It may have been around who was on what committee or the chairs of the committee.
-
- 51 We enhanced our proxy disclosure in accordance with Glass Lewis's updated voting guidance on virtual shareholder meetings. However, in its initial report, Glass Lewis said we had "insufficient shareholder protections for virtual-only meeting," which is frustrating and perplexing given that we had enhanced our disclosure to address the issues in Glass Lewis's proxy voting guidance. Glass Lewis later revised its report to omit this statement when, according to Glass Lewis, an investor questioned what the statement meant and why Glass Lewis didn't recommend an "against" vote if it felt the proxy disclosure was inadequate.
-
- 52 We frequently see inaccuracies in basic data and subjective commentary in positions taken with respect to shareholder proposals.
-
- 53 We usually update our information with the proxy advisor during the year to ensure that the information is correct.
-
- 54 When our CEO's pay decreased, the report said it increased year over year (because they failed to update the report from the prior year's language). This was corrected when I pointed it out in our advance review - again, a clear indication of why that review is so critical.
-
- 55 yes, an incorrect fact about director attendance in one case, and another factual error in another, both of which led to changes in voting recommendations.
-
- 56 Yes, however, we have had the ability to review and provide corrections.
-
- 57 Yes. ISS missed a bullet in the list of our a Lead Directors responsibilities and recommended for an independent chair proposal and had to issue a new voting recommendation.
-

Q6 Did your company attempt to communicate with the relevant proxy advisory firm(s) about the errors/omissions and the company perspective?

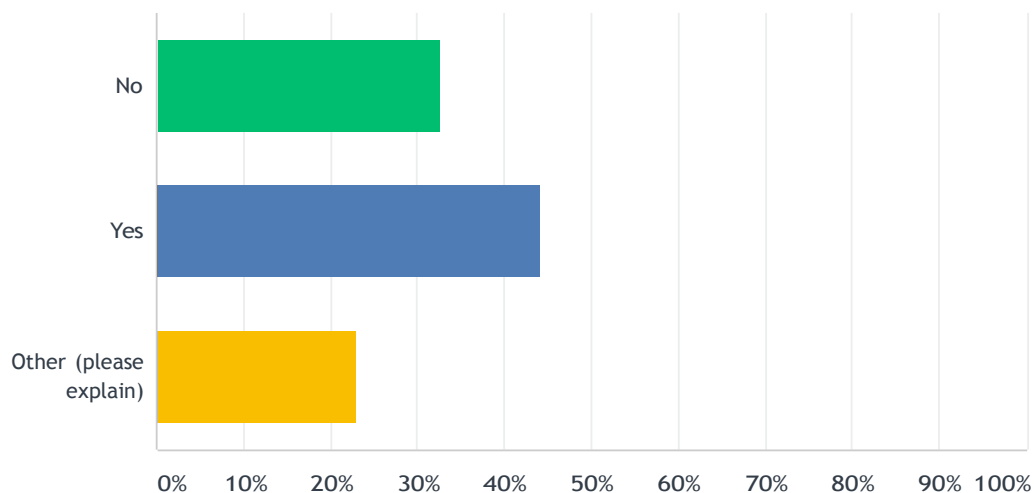
Answered: 58 Skipped: 91



ANSWER CHOICES	RESPONSES	
Yes	91.38%	53
No	8.62%	5
TOTAL		58

Q7 If, and after the factual errors/omissions were brought to the attention of the proxy advisor(s), were the errors/omissions corrected?

Answered: 52 Skipped: 97

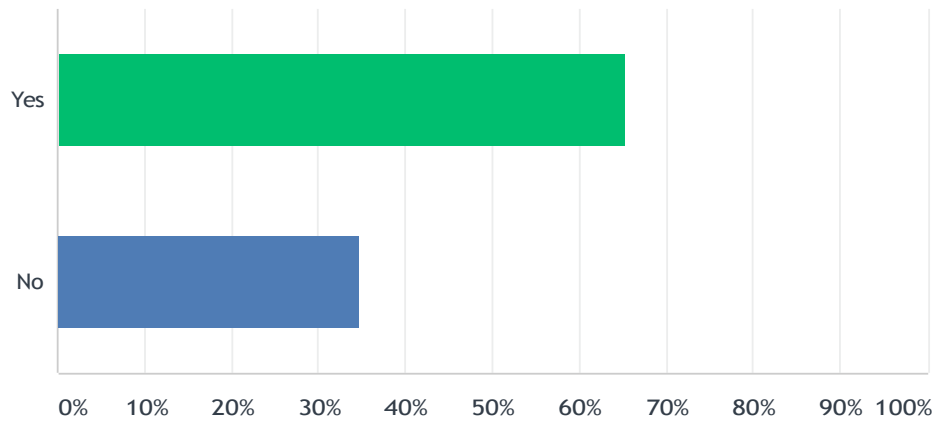


ANSWER CHOICES	RESPONSES	
No	32.69%	17
Yes	44.23%	23
Other (please explain)	23.08%	12
TOTAL		52

#	OTHER (PLEASE EXPLAIN)
1	we pointed this out in the draft version we received; the language was modified for the final version
2	See comments in the earlier question - sometimes yes, sometimes no, and often the errors are repeated from year to year
3	Yes, unless the advisors disagreed with our characterization of the relevant provisions in question.
4	inaccuracies in basic data is generally corrected; subjective analysis in response to shareholder proposals is generally not changed
5	not always
6	some were, others weren't
7	In a couple of instances they were corrected.
8	sometimes.
9	Error was blatantly wrong in this instance
10	They came up with other reasons to keep their original recommendations against.
11	Some were corrected; others were not
12	One advisor amended their report. One did not.

Q8 Were the errors/omissions and correction(s) communicated to investors before the annual meeting?

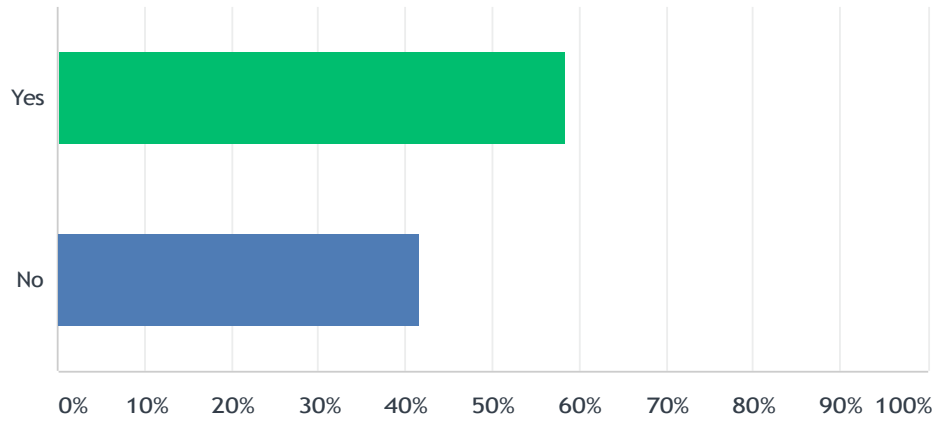
Answered: 23 Skipped: 126



ANSWER CHOICES	RESPONSES	
Yes	65.22%	15
No	34.78%	8
TOTAL		23

Q9 Did investors change their vote based on the corrected recommendation?

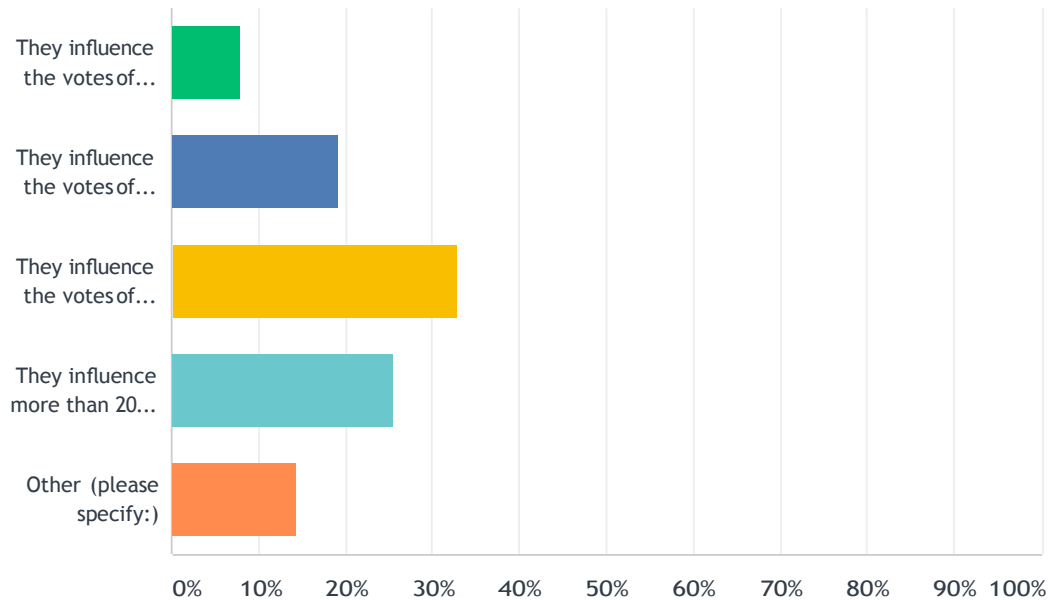
Answered: 12 Skipped: 137



ANSWER CHOICES	RESPONSES	
Yes	58.33%	7
No	41.67%	5
TOTAL		12

Q10 How would you describe the "robo-voting" impact of proxy advisory firm recommendations on the outcome of proposals presented in your company's annual meeting? In this context, robo-voting would be measured by the percentage of your company's outstanding shares automatically voted in line with the proxy advisory firm's recommendations within two days of release of the voting recommendation.

Answered: 125 Skipped: 24



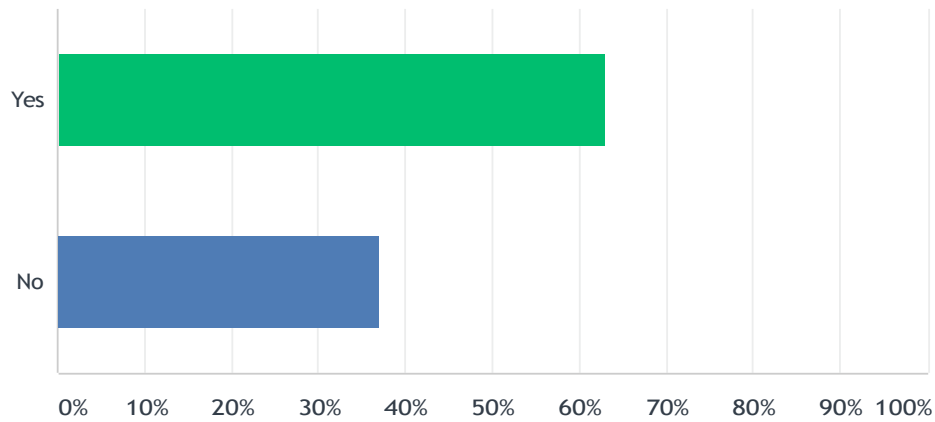
ANSWER CHOICES	RESPONSES	
They influence the votes of 0-5% of shares voted	8.00%	10
They influence the votes of 5-10% of shares voted	19.20%	24
They influence the votes of 10-20% of shares voted	32.80%	41
They influence more than 20% of shares voted	25.60%	32
Other (please specify:)	14.40%	18
TOTAL		125

Society Survey on Proxy Voting Advice

#	OTHER (PLEASE SPECIFY:)
1	I don't know how to get this information with certainty, but I strongly suspect more than 20%.
2	Unknown
3	anywhere from 15-25% - I can't access the detailed reports today, but will try to pull them to get the more precise numbers next week.
4	We have no way of knowing with any certainty.
5	not sure that i can quantify this.
6	Support for shareholder proposal moved from 39% to 55% the day after ISS released its report that recommended "FOR" the proposal.
7	ISS, Glass Lewis and Egan Jones collectively influence at least 70% of the institutional investors in our stock!
8	not sure. Most of our larger investors wait until later to vote
9	Not absolutely sure of the impact.
10	I do not believe we have analyzed the impact of robo voting.
11	don't know
12	I don't know because I don't know which votes are "automatic."
13	Working on finding an answer to this question.
14	Over several years, it has ranged from over 10% to over 20%.
15	between 20% - 30%
16	Not sure
17	I believe 5-10%.
18	Unknown at this time; not likely a huge percentage.

Q11 Do you purchase any consulting services from ISS or have you purchased any consulting services from ISS in the past three years?

Answered: 124 Skipped: 25



ANSWER CHOICES	RESPONSES	
Yes	62.90%	78
No	37.10%	46
TOTAL		124

Q12 What types of services (e.g., compensation consulting)?

Answered: 76 Skipped: 73

Society Survey on Proxy Voting Advice

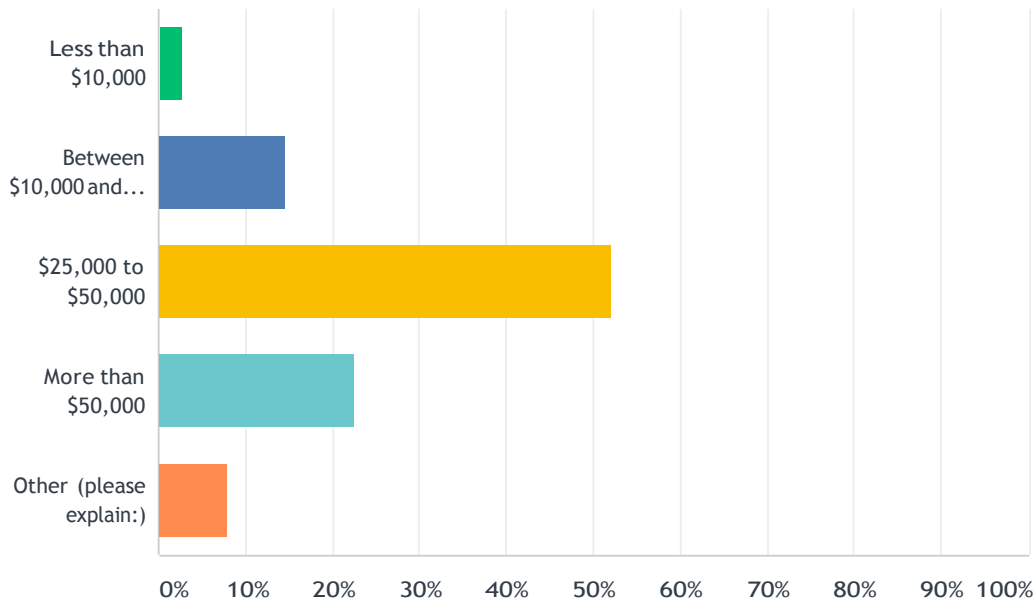
#	RESPONSES
1	Access to online tools and equity plan consulting.
2	Comp and esg
3	comp consulting
4	Comp consulting
5	Comp consulting for equity plan approval
6	comp/gov
7	Compensation
8	Compensation and Consulting Services
9	Compensation and governance consulting services contract with ISS.
10	Compensation and governance consulting.
11	Compensation and governance information
12	Compensation c
13	Compensation consulting
14	compensation consulting
15	Compensation consulting
16	Compensation consulting
17	Compensation consulting
18	Compensation consulting
19	Compensation consulting
20	Compensation consulting
21	compensation consulting and consulting on amendments to stock incentive plan requesting additional shares
22	Compensation consulting and governance consulting
23	Compensation consulting and governance suite.
24	Compensation consulting and review services- 2020 will be the first year
25	Compensation consulting in order to obtain advance review of a comp plan up for a vote.
26	Compensation consulting New ESG reporting/consulting module
27	Compensation consulting, E&S quality score, governance quality score
28	Compensation consulting, Sustainability consulting.
29	Compensation consulting; consulting re quickscore
30	Compensation Consulting; Equity Measurement Tool
31	Compensation Plan analysis
32	compensation plan consulting
33	Compensation plan modelling
34	Compensation, additional share request, new incentive (equity plan) analysis
35	compensation, governance and E&S consulting
36	consulting
37	Consulting for new equity compensation plan
38	Consulting on our proposal to add shares to our incentive compensation plan.
39	consulting on proposal to add shares to equity plan
40	Equity plan
41	Equity plan

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42	Equity Plan consulting
43	equity plan consulting, ISS pay for performance modeling
44	Equity Plan scorecard (modeling outcome)
45	ESG and Proxy exec comp
46	ESG PRODUCT
47	Executive compensation consulting
48	executive compensation consulting services.
49	Executive compensation, governance and E&S consulting
50	For approval of benefit plans
51	general services plus add on executive comp every 2-3 years depending on issues
52	governance and compensation consulting
53	Governance and compensation consulting and modeling services
54	Governance and compensation consulting both
55	Governance consulting
56	governance data
57	Governance suite
58	Governance Suite and Exec Comp Analytics
59	Governance Suite, ExecComp Analytics, and, in years when we have an exec comp plan up for shareholder approval, we do the plan advisory tool.
60	Governance.
61	ICC compensation evaluation and share solution for LTI
62	Incentive compensation plan advice
63	Iss consulting
64	Modeling services
65	Pay for performance modeling and CD&A review services
66	review of proxy, compensation disclosure, equity plan
67	Services in connection with the stockholder approval of a long-term equity plan in 2019.
68	The full suite offered by ICS.
69	the incentive plan review
70	the model for equity compensation plans
71	The normal governance consulting services and, from time to time, equity plan consulting services. Mostly done to get access to QualityScore data and information. It's very expensive and of limited usefulness.
72	We have subscribed to both ISS governance and ESG consulting.
73	We purchase ISS governance suite from ISS corporate solutions only.
74	We purchase the ISS Governance and Sustainability consulting services (both).
75	We typically purchase their services when we are requesting additional shares or the renewal of a stock plan.
76	We use the basic ICS governance services.

Q13 How much do you pay annually for ISS consulting services or how much have you paid in any year that you have purchased such services?

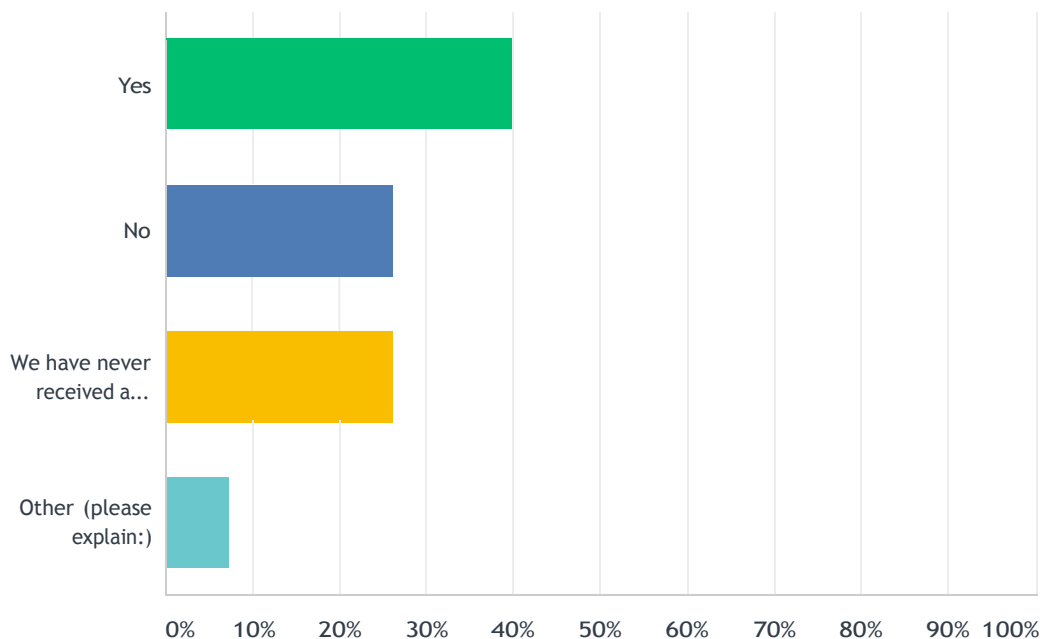
Answered: 75 Skipped: 74



ANSWER CHOICES	RESPONSES	
Less than \$10,000	2.67%	2
Between \$10,000 and \$25,000	14.67%	11
\$25,000 to \$50,000	52.00%	39
More than \$50,000	22.67%	17
Other (please explain:)	8.00%	6
TOTAL		75

Q14 Have you been solicited by or on behalf of ISS to obtain consulting services from ISS following a negative voting recommendation?

Answered: 121 Skipped: 28



ANSWER CHOICES	RESPONSES	
Yes	39.67%	48
No	26.45%	32
We have never received a negative voting recommendation, but have been solicited to obtain consulting services	26.45%	32
Other (please explain:)	7.44%	9
TOTAL		121

#	OTHER (PLEASE EXPLAIN:)
1	We are routinely solicited by ISS to obtain consulting services, including after any negative voting recommendation.
2	They solicit us all the time.
3	Solicited every year regardless of voting recommendations
4	We received a negative voting recommendation while already an ICS client.
5	No, but our consulting arrangement pre-dated my joining the company and I don't know the history of how that began.
6	We were solicited for services right after a large and unexplained drop in our ISS score.
7	We are regularly solicited by ISS for services
8	We have been solicited by ISS. The solicitation is in the regular course and does not appear related to any negative voting recommendation.
9	We have received hard selling in connection with our renewal of shares in our benefit plans.