



United States Proxy Exchange

proxyexchange.org

November 4, 2011

VIA E-MAIL (policy@issgovernance.com)

Global Policy Board
Institutional Shareholder Services Inc.
2099 Gaither Road
Rockville, Maryland 20850

Re: ISS 2012 Proxy Voting Policies – Proxy Access Proposals (US)

Dear Sir or Madam:

Thank you for this opportunity to comment as you develop policies for making shareowner voting recommendations in 2012. This letter addresses policies with regard to Rule 14a-8 proxy access proposals.

After twenty years of obstructing shareowner efforts to achieve proxy access, the SEC finally released Rule 14a-11. While ostensibly providing proxy access at public corporations, it was anti-democratic. Two particularly objectionable aspects of the rule were:

1. A high ownership threshold of 3% of a corporation's outstanding stock in order to nominate. This disenfranchised all individual shareowners and all but the very largest of institutional shareowners, at least at medium or large corporations.
2. A hard cap on the total number of shareowner nominations was set equal to 25% of the number of board members, which ensured Rule 14a-11 would never have more than token impact.

The courts may have their own reasons for vacating Rule 14a-11, but we agree with their conclusion that the rule could be seen as "arbitrary and capricious."

While we object to Rule 14a-11, we applaud the SEC for amendments to Rule 14a-8 to allow shareowners to submit their own proposals for alternative—and presumably better—forms of proxy access at individual corporations. This "private ordering" approach to proxy access would

Institutional Investor Services, Inc.

November 4, 2011

Page 2 of 2

allow shareowners to experiment with different approaches to proxy access at individual firms, to see what worked.

Now that Rule 14a-11 has been vacated, prospects for private ordering experimentation are dimming. Large institutional investors that intend to submit proxy access proposals appear poised to base those proposals on Rule 14a-11, incorporating the two anti-democratic aspects of that rule, which I have already mentioned.

In formulating a policy for making voting recommendations with regard to proxy access, we encourage you to *make voting recommendations as if Rule 14a-11 were never vacated*. If that were the case, Rule 14a-11 would be a minimal baseline already applicable at all corporations, and the purpose of proxy access proposals would be to experiment with innovative alternatives. We see no reason that should change just because Rule 14a-11 was vacated. Vacated or not, Rule 14a-11 was a bad rule, and shareowners need to innovate and experiment with alternatives, implemented through the Rule 14a-8 proposal process, to find a means of proxy access that works.

The United States Proxy Exchange (USPX) is developing a model proxy access proposal. This will provide a reasonable—but not necessarily easy—means for *most long-term shareowners* to participate in nominating directors. It will impose no hard cap on the total number of shareowner proposals, although it will provide safeguards that obstruct parties seeking a change of control through proxy access.

We will encourage shareowners to submit our model proposal or to use it as a starting point to develop their own proposals. We hope that shareowners will also submit completely different proposals of their own design. The success of proxy access depends on experimentation to find what works. This entails risk, of course. Democracy always does. The USPX intends to fully support the process, and we hope ISS will too.

We will forward our model proxy access proposal to you when it is complete.

Sincerely,



Glyn A. Holton
Executive Director

cc: Laura Berry, ICCR
Michael Garland, Change To Win
Brandon Rees, AFL-CIO
Michael Ring, SEIU
Anne Sheehan, CalSTRS
Anne Simpson, CalPERS
Ann Yerger, CII
Michael Zucker, AFSME