



May 30, 2018

The Honorable Dean Heller
Chairman
Subcommittee on Securities, Insurance and Investment
Senate Banking, Housing, and Urban Affairs Committee
United States Senate
324 Hart Senate Office Building
Washington, D.C. 20510

The Honorable Mike Rounds
Senate Banking, Housing, and Urban Affairs Committee
United States Senate
502 Hart Senate Office Building
Washington, D.C. 20510

The Honorable Thom Tillis
Senate Banking, Housing, and Urban Affairs Committee
United States Senate
185 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Tom Cotton
Senate Banking, Housing, and Urban Affairs Committee
United States Senate
124 Russell Senate Office Building
Washington, D.C. 20510

The Honorable David Perdue
Senate Banking, Housing, and Urban Affairs Committee
United States Senate
455 Russell Senate Office Building
Washington, D.C. 20510

The Honorable Tim Scott
Senate Banking, Housing, and Urban Affairs Committee
United States Senate
717 Hart Senate Office Building
Washington, D.C. 20510

Dear Senators Heller, Tillis, Perdue, Rounds, Cotton and Scott:

Thank you for your letter dated May 9, 2018. Institutional Shareholder Services Inc. (ISS) welcomes this opportunity to answer your questions, address common misinformation about ISS and proxy advisors, and provide clarity about our business practices and the regulatory requirements to which we are subject.

First, as a general note, ISS is a Registered Investment Adviser (“RIA”). As such, we are subject to the Investment Advisers Act of 1940 (“Advisers Act”) and the rules and regulations that the U.S. Securities and Exchange Commission (“SEC”) has promulgated thereunder. As an RIA, ISS owes a fiduciary obligation to our investor clients, which means ISS and our employees must carry out our duties solely in the best interests of clients and free from any compromising influences and loyalties. The Advisers Act and related SEC rules provide a mature and comprehensive regulatory regime that covers virtually every aspect of our business and that subjects ISS to the SEC’s continuing oversight and examination authority. We must and do comply with these rigorous federal legal requirements. Being regulated under the Advisers Act also aligns us with our investor clients, many of whom are themselves also registered and regulated under the Advisers Act.

In this context, I am confident you will find that the Advisers Act effectively addresses many of your concerns.

Our response to your letter is organized as a direct reply to each statement and question you’ve posed (*italicized*):

- *“For years, your organization has significantly increased it[s] influence in shareholder voting practices, and between Institutional Shareholder Services (ISS) and Glass, Lewis & Company (Glass Lewis), you now control 97 percent of the of the [sic] proxy advisory industry...”*

ISS is indeed an industry leader in the corporate governance space and we are proud to have earned our market share by virtue of the quality of our work and the level of service we have provided for more than a quarter century. The GAO report entitled “Issues Relating to Firms that Advise Institutional Investors on Proxy Voting” concluded as much when it wrote that ISS has “gained a reputation with institutional investors for providing reliable, comprehensive proxy research and



recommendations.”¹ While we have seen the widely circulated conjecture that two firms “control” 97% of the proxy advisory industry, this is not a statistic we have verified or can confirm.

There are no artificial barriers to entry into the proxy advisory industry in the United States. We operate in a competitive market and we have seen entrants come and go within the industry. Moreover, institutional investors are not required to purchase our services. In the free market, institutional investors purchase our services because they choose to do so, and find value in the products we provide.

We do, however, want to draw a distinction between our market leadership and your assertion that we influence “shareholder voting practices.” ISS clients control both their voting policies and their vote decisions. ISS is generally not a discretionary proxy voting manager, except in rare situations where a client has an actual conflict of interest (for example, a financial institution that holds and must vote the shares of its parent company), and asks ISS to make a proxy voting decision on the client's behalf.

In fact, ISS is relied upon by our clients to assist them in fulfilling their own fiduciary responsibilities regarding proxy voting and to inform them as they make their proxy voting decisions. These clients understand that their duty to vote proxies in their clients’ or beneficiaries’ best interests cannot be waived or delegated to another party. Proxy advisors’ research and vote recommendations are often just one source of information used in arriving at institutions’ voting decisions. As participants in the SEC’s 2013 Proxy Adviser Roundtable explained, many investors have internal research teams that conduct proprietary research and use proxy advisory research to supplement their own work.² Some investors use third-party proxy research as a screening tool to identify non-routine meetings or proposals. A number of institutional investors use the services of two or more proxy advisory firms. These views are consistent with the results of a 2012 survey of asset managers by Tapestry Networks that found proxy advisory firms’ “role as data aggregators” has become increasingly important to asset managers, and that even if smaller managers are more reliant on such advisory firms, they still acknowledge that responsibility for voting outcomes lies with investors.³ Said more simply, we are an independent provider of data, analytics and voting recommendations to support our clients in their own decision-making.

Moreover, in their paper, *The Power of Proxy Advisors: Myth or Reality?*,⁴ University of Pennsylvania Law School Professor Jill Fisch, along with colleagues from New York University, analyzed the effect of proxy advisor recommendations on voting outcomes in uncontested director elections. The authors estimate that, after controlling for underlying company-specific factors that influence voting outcomes, far from being determinative of outcomes, an ISS recommendation appears to shift a very small percentage (6 to 10 percent) of shareholder votes, but that this influence may stem from ISS’ role as information agent:

¹ Jones, Y. D. (2007). *Issues Relating to Firms that Advise Institutional Investors on Proxy Voting*. (GAO-07-765). Washington, DC: Government Accountability Office (hereafter, “2007 GAO Report”) at 13.

² Remarks of Michelle Edkins, currently Managing Director, Global Head of BlackRock Investment Stewardship, BlackRock, Inc. Transcript of Proxy Advisory Firms Roundtable (“Roundtable Transcript”), available at www.sec.gov/spotlight/proxy-advisory-services/proxy-advisory-services-transcript.txt (December 5, 2013) at 45; remarks of Anne Sheehan, Director of Corporate Governance, CalSTRS, *Id.* at 153-54; remarks of Lynn Turner, Managing Director, LitiNomics, Inc., discussing his experience at Colorado Public Employees’ Retirement Association, *Id.* at 51-52.

³ Bew, Robyn and Fields, Richard, Voting Decisions at US Mutual Funds: How Investors Really Use Proxy Advisers (June 2012) at 2. Available at SSRN: <http://ssrn.com/abstract=2084231>. (“Across the board, participants in our research said they value proxy firms’ ability to collect, organize, and present vast amounts of data, and they believe smaller asset managers are more reliant on those services. Nonetheless, participants emphasized that responsibility for voting outcomes lies with investors”).

⁴ Choi, Stephen J., Fisch, Jill E. and Kahan, Marcel, *The Power of Proxy Advisors: Myth or Reality?* 59 Emory L. J. 869 (2010); University of Pennsylvania, Institute for Law & Economics Research Paper No. 10-24. Available at SSRN: <http://ssrn.com/abstract=1694535>.

[W]e find evidence that ISS's power is partially due to the fact that ISS (to a greater extent than other advisors) bases its recommendations on factors that shareholders consider important. This fact and competition among proxy advisors place upper bounds on ISS's power. Institutional Shareholder Services cannot issue recommendations arbitrarily if it wants to retain its market position. Doing so would lead institutional investors to seek the services of other proxy advisory firms. Thus, ISS is not so much a Pied Piper followed blindly by institutional investors as it is an information agent and guide, helping investors to identify voting decisions that are consistent with their existing preferences (emphasis added).⁵

Many large institutional investors have their own customized voting and corporate governance principles that proxy advisory firms use as the basis for making tailored, client-specific vote recommendations for that particular investor. What this means is that a client with their own unique view of how to assess and vote upon proxy voting matters will look to ISS for assistance in the administration of their own customized proxy voting policy as opposed to using one of ISS' policy frameworks. As of January 1, 2018, approximately 85% of ISS' top 100 clients used a custom proxy voting policy. To provide further context, we note that during calendar year 2017, approximately 69% of the ballots processed by ISS on behalf of clients globally were linked to clients' custom policies, representing approximately 87% of the total shares processed by ISS during this period.

Moreover, in addition to both customized policies and our ISS "benchmark" proxy voting guidelines, ISS provides options for our clients in the form of multiple thematic, specialty policy options for investors who require a particular philosophical approach to proxy voting and corporate governance, including a policy set for faith-based investors and two focusing on social and environmental investing priorities. Again, the choice of which policy to use belongs to the client, not ISS. In other words, ISS does not have a monolithic view on proxy voting issues nor do we dictate how investors themselves think about these issues. Indeed, ISS has presented opposing recommendations on the same ballot proposal to different clients based on the differing policies/approaches of those clients and the proxy voting policies that they themselves select. In short, ISS provides investors with research, data and vote recommendations that enable them to implement their own proxy voting and corporate governance philosophies.

ISS is sometimes mislabeled as an "activist" organization. While the foregoing demonstrates that we are not, in fact, a monolith to which that or any similar label could apply, we think it is worth noting that for calendar years 2015, 2016 and 2017, under our "benchmark" policy guidelines, ISS recommended votes in support of the management position over 90% of the time (91.3%, 92.2% and 91.3% in each year, respectively).

As noted by the Council of Institutional Investors (CII), a leading nonpartisan and nonprofit association of public, corporate and union employee benefit funds and state and local entities with combined assets exceeding \$3.5 trillion:

Proxy advisory firm influence is exaggerated by analyses that confuse correlation with causation. ISS and Glass Lewis tend to follow investors on governance policy, not lead them. In setting their policy frameworks, the two firms have a business interest to ensure they reflect investor (client) perspectives, in part through extensive consultative processes, and to consider empirical evidence. Their franchises are built on credibility with investors. As a result, advisors' views reflect those of many funds. Indeed, if there were a sharp divergence, we would expect to see advisors punished in the marketplace.⁶

At the end of the day, institutional investors are not required to use proxy advisors' services or to use only one proxy advisory company, nor are they required to follow the vote recommendations of any proxy advisor they choose to use. The

⁵ *Id.* at 906.

⁶ June 13, 2016 letter from the Council of Institutional Investors to Rep. Hensarling, Chair of House Committee on Financial Services and Rep. Waters, Ranking Member of House Committee on Financial Services at 2.

ultimate voting decision for each resolution at a company meeting remains the responsibility of our clients, the owners of the corporation, as we believe it should be.

Question 1 - ISS' Voting System

- *"We request that you provide detailed information on how the Proxy Exchange voting service works and why you think your company is in compliance with SEC Staff Legal Bulletin 20, especially in circumstances where each client does not have to formally approve or submit the pre-populated electronic ballot that you are producing for each shareholder meeting."*

Exchange Act Rule 14a-1(l) defines a proxy "solicitation" to include the "furnishing of a form of proxy or other communication to security holders under circumstances reasonably calculated to result in the procurement, withholding or revocation of a proxy."⁷ The furnishing of a proxy pursuant to a security holder's unsolicited request is excluded from this definition.⁸

Both the SEC and its Staff have historically recognized the distinction between unsolicited and solicited proxy advice, applying the Exchange Act proxy rules to the former, but not the latter. For example, in a 1979 release, the SEC explained that, "As a general matter, unsolicited proxy voting advice would constitute a 'solicitation' subject to the proxy rules."⁹ In making this observation, the SEC cited an earlier opinion of the SEC's General Counsel that addressed proxy advice in a broker-dealer context:

In our view, a broker normally is not engaged in solicitation where he merely responds, whether orally or in writing, to an unsolicited request from a customer for advice as to how to vote. Since the broker is merely responding to his customer's request for advice in his capacity as adviser to the customer and not actively initiating the communication, it may be concluded that he is not engaged in 'soliciting.'¹⁰

Unfortunately, the longstanding regulatory distinction between unsolicited and solicited proxy voting advice has been blurred as a result of more recent Staff guidance. In addressing the interplay between proxy advisory services and the federal proxy rules, Staff Legal Bulletin ("SLB") 20 (issued in June 2014) paraphrased the SEC's 1979 release, but omitted the critical "unsolicited" qualifier, thereby erroneously suggesting that all proxy advice is a solicitation.¹¹

ISS submits that a registered investment adviser who is contractually obligated to furnish vote recommendations based on client-selected guidelines is not providing "unsolicited" proxy voting advice, and thus is not engaged in a "solicitation" subject to the Exchange Act proxy rules.

ISS does not choose the ballots or agenda items on which we render advice. Rather, at a client's direction, we are asked by our clients to analyze and provide a voting recommendation for each agenda item related to every equity security held in our clients' portfolios. Furthermore, as a disinterested fiduciary, ISS has no financial stake in the outcome of a particular vote. We are agnostic as to whether clients support a proposal, reject the proposal or abstain from voting altogether. We are similarly indifferent to whether clients choose to follow an ISS vote recommendation or not. ISS' only job is to analyze proxy statements

⁷ Rule 14a-1(l)(iii)

⁸ Rule 14a-1(l)(2)(i).

⁹ *Shareholder Communications, Shareholder Participation in the Corporate Electoral Process and Corporate Governance Generally*, SEC Release No. 34-16104 (August 13, 1979), 44 Fed. Reg. 48938 (August 20, 1979) at note 25.

¹⁰ *Broker-Dealer Participation in Proxy Solicitations*, SEC Release No. 34-7208 (January 7, 1964). This view was restated in a letter from Abigail Arms, Chief Counsel of the Division of Corporation Finance to Richard G. Ketchum, EVP, Legal, Regulatory & Market Policy of the NASD, Inc. dated May 19, 1992.

¹¹ SLB 20, Question 6.

and provide informed research and vote recommendations based on the policies and guidelines the institutional investors have selected, and in many cases developed, themselves. Given the diversity of these policies and guidelines and as already noted above, ISS may issue different recommendations on a given issue, for example, recommending voting "AGAINST" on a particular item to clients using ISS' faith-based policy guidelines, and "FOR" on that same issue to clients using ISS' "benchmark" voting policy guidelines.

ISS' fiduciary proxy research and voting advice is simply not the kind of "over-the-transom" communication that the federal proxy rules are designed to address.

Wholly apart from the question of whether the provision of proxy advice can be considered a solicitation, SLB 20 explains that Exchange Act Rule 14a-2(b)(3) exempts a proxy solicitor who renders voting advice from the information and filing provisions of the proxy rules if the solicitor:

- a. furnishes proxy voting advice in the ordinary course of business;
- b. discloses to the recipient of the advice any significant relationship with the issuer or any of its affiliates, or a security holder proponent of the matter under advisement, and discloses any material interests the solicitor has in such matter;
- c. receives no compensation for furnishing the advice from anyone other than recipients of the advice; and
- d. does not furnish the voting advice on behalf of any person soliciting proxies or on behalf of a participant in a contested election.¹²

Although ISS is confident that it is not a proxy solicitor within the meaning of Rule 14a-1(1), we have nonetheless taken steps to ensure that our proxy advisory activities would qualify for the Rule 14a-2(b)(3) exemption if such an exemption were needed. In this regard, after the publication of SLB 20, ISS enhanced our already robust suite of conflict management and disclosure policies by adopting a *Policy Regarding Disclosure of Significant Relationships*. This Policy, which is available in the Due Diligence section of our website,¹³ provides a clear explanation of how ISS assesses and discloses any significant relationships that may exist between the company and the subjects of its proxy research reports.

ISS also enhanced its client facing delivery platform, ProxyExchange, to deliver the required disclosures to clients in a way that both seamlessly integrates with their workflows and protects the critical firewall between ISS and its corporate solutions subsidiary.

Question 2 - Report Accuracy

- *“Currently there are no standards or regulations that apply to these reports prepared by proxy advisory firms...[T]here are often questions about the dependability, accuracy of factual material, and correct assumptions made for each company evaluated.”*

¹² SLB 20, Question 9. Questions 10 through 13 address how a proxy advisory firm that acts as a proxy solicitor could make the facts-and-circumstances determination of whether it had a significant relationship with an issuer or security holder proponent or a material interest in the matter under advisement, and how it should make any necessary disclosures related thereto.

¹³ <https://www.issgovernance.com/file/duediligence/significant-relationships-disclosure.pdf>. The ISS website contains a range of disclosures that satisfy ISS' regulatory requirements under the Advisers Act and assist fiduciaries who use ISS' services to satisfy their own business and regulatory obligations.

The first sentence quoted above is inaccurate. In 2010, the SEC confirmed that proxy advice is a form of investment advice subject to the Advisers Act and the rules and regulations thereunder.¹⁴ Among other things, this means that

as a fiduciary, the proxy advisory firm has a duty of care requiring it to make a reasonable investigation to determine that it is not basing its recommendations on materially inaccurate or incomplete information.¹⁵

The SEC restated this view just last month in a proposed interpretive release on investment adviser standards of conduct. In addition to confirming that the obligation to provide advice that is in the best interest of clients applies not only to advice regarding potential investments, but to all advice provided to clients, the SEC also confirmed that an adviser has a duty to conduct a reasonable investigation “sufficient to not base its advice on materially inaccurate or incomplete information.”¹⁶

As an RIA and a fiduciary, ISS has adopted a number of policies and procedures designed to ensure the integrity of our data collection and research process, upon which our reports are founded. We have robust systems and controls designed to ensure that research reports and vote recommendations include high-quality, relevant information, are accurate, correctly based on the relevant ISS or client custom policy and are reviewed by appropriate personnel prior to publication. ISS also commissions regular SSAE 16 audits, conducted by a third-party auditor to ensure compliance with our internal control processes, including our research process.

ISS is committed to having the most complete and accurate information upon which to base our research and recommendations to our clients. As described in more detail below, ISS’ approach is to use and rely only upon publicly available information in the preparation of our proxy research reports and vote recommendations, the primary source of which is the public filings of the companies that we cover. Within the parameters of that approach, ISS regularly undertakes dialogue and interacts with company representatives, institutional shareholders, shareholder proponents and other relevant stakeholders, both during and outside of “proxy season” to (1) gain the greatest possible insight for our clients and (2) maintain the overall quality of the research by ensuring full information and deeper insight into key issues. ISS’ dialogue with issuers is transparent and disclosed to clients.

With respect to factual errors, ISS’ research team does, infrequently, identify or receive notice of material factual errors in research reports that have already been published to our clients. These errors include those relating to agenda changes, material data or research/policy application. ISS tracks such occurrences, which are rare. For example, in 2017, ISS covered over 6,400 meetings in the United States and the error rate was approximately 0.76% as measured by post-publication “Proxy Alerts” to clients notifying them of a material error within our benchmark proxy research that resulted in a change of a vote recommendation.

We reiterate the findings of the 2007 GAO Report which concluded that our clients trust us to provide “reliable, efficient services.”¹⁷ The GAO’s follow-up report in 2016 addressed this further, stating “Both corporate issuers and institutional investors [the GAO] interviewed said that the data errors they found in the proxy reports were mostly minor...”¹⁸

¹⁴ Concept Release on the U.S. Proxy System, IA Release No. 3052 (July 14, 2010) (“Proxy Concept Release”) at 110.

¹⁵ *Id.*, at 119.

¹⁶ Proposed SEC Interpretation Regarding Standard of Conduct for Investment Advisers, IA Release No. 4889 (April 18, 2018) (“IA Interpretive Release”), at 13, *quoting* the Proxy Concept Release.

¹⁷ 2007 GAO Report *supra*, note 1 at 13.

¹⁸ Clements, M. (2016). *Proxy Advisory Firms’ Role in Voting and Corporate Governance Practices*. (GAO-17-47). Washington, DC: Government Accountability Office at 29.

However, we want to underscore that there is a fundamental and important difference between factual errors and disagreements over interpretive judgment and methodology. Although the latter are often referred to as “errors,” they do not entail any mistake, omission or misrepresentation. What is often portrayed as an “error” by the management and/or the board of a company may be a disagreement about the vote recommendation itself or about the underlying corporate governance guidelines applied.¹⁹ For example, ISS was recently accused by a company of selecting inappropriate company peers for the purpose of manipulating the assessment of the issuer’s executive compensation program in the context of a “say-on-pay” agenda item. However, ISS had, as always, followed its consistent and publicly-disclosed methodology for ISS peer group determinations and had also, in fact, already considered new information provided by the issuer and adjusted our initial determination to remove one peer and add a different one in line with the company’s representations. In presenting the information to our clients in our report and consistent with our normal approach, we outlined in side-by-side fashion the peers selected by the issuer and the ISS-selected peers. In this particular case, there was overlap of 12 of the 16 peer companies and the variance was not an error but rather reflected ISS’ thoughtful and independent assessment of the matter, precisely what our clients expect of us.

We acknowledge that policy differences on important issues such as executive compensation, overboarding (i.e. how many boards an individual can serve on effectively), and whether the CEO and Chairman of the Board should be different individuals, can sometimes generate tension between shareholders (and by extension ISS) and the companies in which they invest. However, it is the policies selected by our clients that dictate our vote recommendations and the application of those policies does not equate to our work product being erroneous or manipulative.

➤ *“We understand that your company and other proxy advisory firms hire more staff to meet the demands of proxy season by hiring temporary workers and outsourcing a significant amount of research and analytical work.”*

To help meet our clients’ needs during proxy season, ISS does indeed hire “temporary” employees. Temporary employees are subject to the same employment onboarding procedures that apply to “permanent” hires, including training regarding ISS’ compliance program and subject matter training with respect to the tasks and issues that will fall within an employee’s work responsibilities. Temporary employees do not undertake work beyond their training and experience and these employees are generally focused on data collection and capture. It is also not uncommon for some “temporary” employees to return to ISS on a recurring basis.

ISS does not outsource any of its research and analytical work.

➤ *“Why hasn’t ISS expanded [its] draft review process to include more companies, in order to improve the quality of the reports for issuers not listed in the S&P 500 index? Are you willing to expand the draft review process to companies listed in the S&P 1500, [sic] with a reasonable transition period?”*

As you note, the shareholder proxy season is “short.” The condensed schedule affects the process that advisors like ISS employ in producing proxy reports and formulating vote recommendations. ISS has incorporated a limited issuer review step for S&P 500 companies because these companies are the most widely held by our clients and generally have the most complex disclosures. ISS voluntarily provides most companies in this index the opportunity to review the factual accuracy of the data included in ISS’ pending proxy analyses. Because we are committed to the accuracy and quality of our reports, we consider other requests for review on a case-by-case basis.

However, given the limited time between the hard start of receiving the proxy statement and the hard stop of delivering the report to our clients with sufficient review time in advance of their having to make their voting decisions, expanding the included coverage universe would require a significant increase in resources and a concurrent increase to our clients of the costs of our services (which, of course, is ultimately borne by the underlying beneficial shareowners). Moreover, even if

¹⁹ As Anne Sheehan of CalSTERS observed at the SEC’s Proxy Adviser Roundtable, “What I have found [is] that many times the errors are really differences of opinion.” Roundtable Transcript, *supra*, note 2, at 155.

additional resources were added, the time constraints remain substantial -- we remain concerned about the value and feasibility of accommodating an expanded draft review process and still being able to meet the imperative of providing our clients with our research on a timely basis. ISS does, however, work continually to enhance the quality of all of our product/service offerings, and is open to appropriate changes that are sensible, commercially viable and which would provide additional value to our clients and other stakeholders. Expansion of the coverage universe of our current draft review process is one potential change that ISS has considered and will continue to do so.

All issuers, even if they do not receive a draft report for review, are entitled to receive a free copy of ISS' published analysis for their own shareholder meeting. This affords all issuers the opportunity to bring any factual error in the report to ISS' attention and as noted elsewhere in this response, we have a formal process to update previously issued reports where necessary and communicate those updates to our clients.

➤ *“Do you have specific policies and procedures regarding providing draft report to issuers? If so, please include a copy of those policies and procedures.”*

Yes. ISS' approach to the provision of draft reports to issuers (which is available on our website), is as follows:

There is no entitlement to review our research reports prior to publication to our clients, but draft reports are provided in certain markets as a courtesy and at the sole discretion of ISS, in order to allow an issuer to check the factual information prior to publication. For example, in the United States, companies in the S&P 500 index will generally receive a draft report for fact-checking if they have provided contact details, and for France, the process is set out in our Engagement and Draft Report Disclosure Policy for the French Market.

To ensure consideration can be given to any review responses within the often tight publication deadlines for our reports, any comments should be sent back to ISS by e-mail, although companies are welcome to provide a hard copy as well. Note that this is not an opportunity for the issuer to lobby for a particular voting recommendation, but to check the facts that are being included in our report. Procedures for providing draft reports to companies vary on a market-by-market basis, and in any case, no drafts will be provided in markets or situations where there is insufficient time to do so whilst still respecting our clients' voting deadlines.

For all markets, ISS does not normally allow pre-publication reviews of any analysis relating to any special meeting or any meeting where the agenda includes a merger or acquisition proposal, proxy fight, or any item that ISS, in its sole discretion, considers to be of a contentious or controversial nature. This policy is intended to safeguard the independence of our process and recommendations.

➤ *“When do you provide issuers draft reports and how much times do they have to provide their comments on factual issues?”*

Draft reports are generally emailed to company contacts in the two-to-four week period before an issuer's annual meeting. During the height of proxy season, the time frame may be closer to two to three weeks before the meeting. We will generally advise the company contacts beforehand when to expect the draft report for review, and the cover letter accompanying the draft report specifies the deadline for the issuer's comments, which typically provides the company with 2 business days to provide comments.

➤ *“If an issuer identifies an error in a draft report what corrective measure do you take?”*

If an issuer identifies an error in a draft report, the matter is reviewed by the relevant research analysts and any identified and agreed errors are corrected prior to the finalization of the report and its delivery to our clients.

With respect to final reports that have already been published, if a material error is identified (whether by ISS, the issuer or an investor), or updated relevant information is publicly released by the issuer (for example, through supplemental proxy

material filed with the SEC), ISS promptly issues an aforementioned "Proxy Alert" to inform clients of any corrections, new information available and, if necessary, any changes in the vote recommendations as result of those corrections or updates. Alerts are distributed to ISS' clients through the same ProxyExchange platform used to distribute the regular proxy analyses. This ensures that the clients who received an original analysis and recommendations will also receive the related Alert.

➤ “Do you publicly disclose your guidelines and methodologies for preparing draft reports? If not, why not?”

Yes. All proprietary proxy analysis at ISS is undertaken in accordance with the publicly disclosed analytical framework which is comprised of the full voting policy guidelines for all policies offered by ISS. The only exception to this is for the client-specific customized policies which are each client's own proprietary information. As described above, ISS offers a wide range of proxy voting policy options, providing to our clients both a benchmark policy focused on good governance principles, shareholder protection and mitigation of governance risk, and a wide array of specialty policies that evaluate governance and other voting issues from the perspective of sustainability, socially responsible investing, public pension funds, labor unions or mission and faith-based investing. To ensure the ISS proprietary voting policies take into consideration the changing views and needs of its institutional investor clients and the perspectives of companies and the broader corporate governance community, ISS gathers input each year from institutional investors, companies, and other market constituents worldwide through a variety of channels and over many months.

Case-by-case analytical frameworks, which take into account company size, financial performance and industry practices, also drive many of ISS' vote recommendations on more complex issues, such as those pertaining to the election of corporate directors, compensation matters, and capital or shareholder rights-related proposals.

All ISS Policy Guidelines for 2018, covering the U.S., all global markets and ISS' specialty policies can be found in the “Policy Gateway” section of our website (<https://www.issgovernance.com/policy-gateway/voting-policies/>).

Question 3 - Conflicts of Interest

An obligation to either eliminate, or manage and disclose, conflicts of interest is the very essence of an investment adviser's fiduciary duty of loyalty. The SEC most recently confirmed this fact in its proposed interpretive release on investment adviser standards of conduct, saying:

In seeking to meet its duty of loyalty, an adviser must make full and fair disclosure to its clients of all material facts relating to the advisory relationship. In addition, an adviser must seek to avoid conflicts of interest with its clients, and at a minimum, make full and fair disclosure of all material conflicts of interest that could affect the advisory relationship. The disclosure should be sufficiently specific so that a client is able to decide whether to provide informed consent to the conflict of interest Because an adviser must serve the best interests of its clients, it has an obligation not to subordinate its clients' interests to its own Accordingly, the duty of loyalty includes a duty not to treat some clients favorably at the expense of other clients.²⁰

Advisers Act Rule 206(4)-6 applies this traditional fiduciary concept to proxy voting by requiring an RIA who has expressly or implicitly assumed voting authority over its clients' portfolios to adopt written policies and procedures reasonably designed to ensure that the adviser monitors corporate actions and votes proxies in the clients' best interests; supplies those policies and procedures to clients upon request; and offers clients information about specific votes cast on their behalf.

As an RIA, ISS takes this fiduciary duty of loyalty very seriously. ISS places primary importance on conducting our business in a transparent and responsible manner, and has developed a comprehensive program to manage potential conflicts of interest as required by the Advisers Act and related SEC rules. In this regard, ISS has undertaken a comprehensive risk assessment to identify specific conflicts of interest related to its operations and has adopted

²⁰ IA Interpretive Release., *supra* note 15, at 15-16 (citations omitted).

compliance controls reasonably designed to manage those risks. Moreover and as discussed above, ISS has adopted a significant relationship disclosure policy and took robust steps to enhance transparency following the promulgation of SLB 20. At the heart of ISS' regulatory compliance program is a deliberate, carefully crafted, regularly tested and periodically updated series of measures designed to eliminate, or manage and disclose conflicts of interest.

Separate and apart from our compliance protocols, ISS addresses conflicts, in part, by being a transparent, policy-based organization, with research and voting recommendations based on publicly-disclosed information available to all shareholders. We provide our clients with an extensive array of information to ensure that they are fully informed of our policies to manage conflicts of interests, and of any potential conflicts and the steps ISS has taken to address them. Among other things, ISS supplies a comprehensive due diligence compliance package, also publicly available on our website, so that our clients can confidently and fully assess the reliability and objectivity of our voting recommendations.

➤ *“Your company has established a consulting service that charges public companies a fee to learn how to best to comply with ISS benchmark voting policies and obtain favorable recommendations in the future.”*

To be clear, ISS Corporate Solutions, Inc. (“ICS”), a wholly-owned subsidiary of ISS, provides governance data, analytics and services to corporate issuer clients. ICS' stated mission is help companies design and manage their corporate governance and executive compensation programs to align with company goals, reduce risk, and manage the needs of a diverse shareholder base by delivering best-in-class data, tools, and advisory services. ICS does not and cannot provide any client with any assurance as to how ISS will recommend with respect to the matters that appear on any client's proxy statement.

➤ *“What types of conflicts do you disclose and how accessible are these disclosure[s] to your clients when voting decisions are being made?”*

As required by the Advisers Act's compliance program rule,²¹ ISS has implemented, maintains and periodically updates a program designed to eliminate, or manage and disclose, conflicts of interest. In addition to appointing a chief compliance officer, establishing comprehensive compliance policies and procedures, and testing the adequacy of those policies and procedures and the effectiveness of their implementation on an ongoing basis, ISS has also adopted a comprehensive Code of Ethics as the Advisers Act regulatory regime also requires.²² ISS' Regulatory Code of Ethics is available on our public website at <https://www.issgovernance.com/file/duediligence/iss-regulatory-code-and-exhibits-june-2017.pdf>. In addition to mandating disclosure regarding an RIA's Code of Ethics, the Advisers Act and related rules also dictate that we provide clients with transparency about our internal operations, including how potential conflicts of interest are addressed.

In conformance with our regulatory obligations, ISS has identified the following potential conflicts:

- Conflicts between ISS' institutional global research department and ICS
- Conflicts within the institutional advisory business
- Conflicts arising from an analyst's stock ownership
- Conflicts in connection with issuers' review of draft analyses
- Conflicts in connection with ISS' ownership structure

Conflict disclosure is addressed first and foremost in the Form ADV disclosure brochure that we must deliver to all clients at the outset of the relationship and must update periodically thereafter.²³ In addition to delivering this brochure to clients, ISS also includes the most recent version of the brochure in the due diligence compliance package available to the public

²¹ See Advisers Act Rule 206(4)-7.

²² See. Advisers Act Rule 204A-1.

²³ See. Advisers Act Rule 204-3.

on the ISS website. ISS clients can also readily identify any potential conflict of interest through ISS' primary client delivery platform, ProxyExchange, which provides information about the identity of ICS clients, as well as the types of services provided to those issuers and the revenue received from them. Similarly, each proxy analysis and research report issued by ISS contains a legend indicating that the subject of the analysis or report may be a client of ICS. This legend also advises institutional clients about the way in which they can receive additional, specific details about any issuer's use of products and services from ICS, which can be as simple as emailing our Legal/Compliance department.

➤ *“Are you willing to disclose potential and actual conflicts on the front page of company reports, as Glass Lewis does?”*

Although in our experience investment advisers typically disclose conflict-of-interest information at a macro level, ISS does more. Any institutional client that wishes to learn more about the relationship, if any, between ICS and the subject of a particular analysis or report may access this information through ProxyExchange and/or through contacting ISS' Legal/Compliance department for relevant details. This process allows ISS' proxy voting clients to receive the names of ICS clients without revealing that information to research analysts as they prepare vote recommendations and other research. Identifying an ICS relationship on the face of a proxy analysis or report would destroy the conflict-of-interest firewalls we have created in this area. While it would actually be easier for us to provide this disclosure on the report itself, we believe that eliminating such a critical conflict control would not be in our clients' best interest.

➤ *“Do your disclosures include, in monetary terms, the size of the client relationship involved and do you disclose conflicts involv[ing] more than one proponent or active supporter of a particular shareholder proposal?”*

Yes, ISS makes available to its institutional clients the identity of all ICS clients, the particular products/services they receive, and the fees paid to ICS. Again, this information can be readily accessed via the ProxyExchange platform or by emailing ISS' Legal/Compliance department. In addition to obtaining report-by-report conflict information, ISS clients can obtain lists of all ICS clients. Further, many clients meet with ISS staff on an annual basis to discuss conflicts and other due diligence matters.

Beyond the disclosure approach regarding the ICS clients, the *Policy Regarding Disclosure of Significant Relationships* referred to above explains ISS' approach for disclosing other types of potential conflicts, including those that might arise with respect to a proponent or active supporter of a particular shareholder resolution.

➤ *“Does ISS allow hedge fund clients to purchase Special Situations Research or other services at the same time that ISS is recommending for or against a pending merger, buyout, or proxy fight in which the hedge fund has an interest?”*

Yes.

➤ *“Please provide a record of each instance of proxy voting advice that your company or any regulatory body has determined constituted or may have constituted a conflict of interest over the last 10 years, and all related documents and communication. If no such record is maintained, please explain why.”*

ISS is not aware of any instance in which a proxy research report or a vote recommendation was compromised by a conflict of interest, nor any instance where a regulatory body has reached that conclusion. As discussed at length above, ISS has worked hard to identify potential conflicts of interest and taken concrete steps to manage and mitigate those potential conflicts so that they do not impact the efficacy or integrity of our research and recommendations. We are heartened by the fact that the most vocal critics of ISS on this point are those who speak on behalf of corporate management, and not the investors who rely on ISS' research and vote recommendations. We see this as a strong indication that we are managing this potential conflict extremely well.

➤ *“Please provide a list of all outside entities from whom you obtain information referring or relating to your proxy voting advice, and descriptions of any evaluations that are performed to ensure such information is accurate and that*

the information provider does not have a conflict of interest with the company with respect to which the information is being provided.”

As explained above, ISS’ approach is to use and rely only upon publicly available information in the preparation of our proxy research reports and vote recommendations. The primary source of that information is the public filings of the companies that we cover, meaning, for U.S. companies, the proxy statement and other reporting materials that companies are required to file with the SEC, supplemented by press releases, information from a company’s website and other generally accessible information. ISS also uses a small number of third-party vendors to provide standardized financial information and securities identifiers. ISS submits that this approach fully complies with our fiduciary duty of care described above.

- *“We are interested in whether you disclose two other types of conflict of interest. The first of these two conflicts involves cross-ownership, where owners or executives of your firm may have a significant ownership interest in, or serve on the board of directors of entities that have proposals on which the firm is offering vote recommendations. The second conflict involves other financial interests by your owner, Genstar Capital.”*
- *“Are you disclosing these financial or business relationships when they involve or include a proponent or an active supporter of matters in which you are making voting recommendations?”*

ISS’ executives, like all of our employees, are required to disclose to ISS and ISS will, in turn, disclose to our clients any significant (or material) ownership interest that an executive might have with regard to a company on which we are providing proxy research coverage.²⁴ ISS’ executives are not permitted to sit on the Board of Directors of a public company except in extremely limited circumstances and only with the approval of ISS’ General Counsel and the company’s senior management. No such exceptions are currently in effect and so no ISS employee currently serves as a director of a public company.

ISS is a privately-held company, whose ultimate owner is affiliated with Genstar Capital, a private equity firm. ISS has adopted a Policy on Potential Conflicts of Interest Related to Genstar Capital and its affiliated funds (the “Genstar Policy”). Among other things, the Genstar Policy provides that Genstar persons (defined as Genstar directors and certain others) may not participate in the formulation, development and application of ISS voting policies, and will not have access to any data relating to the portfolio, investment strategy or securities holdings of ISS clients. In addition, as a private equity firm that owns or controls a number of operating companies, some of which may become publicly traded, and may thereafter be the subject to ISS research, we recognize that actual or potential conflicts of interest, or the appearance of conflicts, could arise in the production by ISS of research with respect to coverage of such a Genstar company (what we refer to as a “Genstar Affiliated Company”). ISS therefore provides disclosure of these relationships on its website, and includes information about any such relationship in the research report for any issuer that happens to be a Genstar Affiliated Company. Currently, there are no Genstar Affiliated Companies.

Pertinent Legislation before the Senate Banking Committee

Finally, we want to reiterate our strong view that both of the pertinent legislative proposals before the Senate Banking Committee – H.R. 4015, “The Corporate Governance Reform and Transparency Act,” and Subtitle Q of Title IV under H.R.10, “The Financial CHOICE Act” (FCA) – are misguided attempts to improve corporate governance. Each of these proposals would only deepen your concerns about industry competition and conflicts of interest. Each proposal would eliminate a proxy adviser’s existing fiduciary duties of care and loyalty to investors, the owners of the companies in which they invest, and would infuse a proxy adviser’s operations with a new issuer-related conflict of interest that would be

²⁴ Note that the ISS Regulatory Code of Ethics requires all employees to provide the ISS compliance department with account statements for all securities investment accounts for the employees and members of their immediate families. Certain types of trades must be pre-cleared and ISS imposes black-out periods on trading of issuers whose proxies are currently being analyzed or acted upon by the company. This black-out period extends from the time ISS logs receipt of the subject proxy into the Global Research database of meetings, until one day after the shareholders’ meeting being covered.

difficult to manage effectively. In this way, either bill, if enacted, would harm every shareholder who relies on independent research to make informed investment decisions.

Shareholders should have the right to choose the tools, services and information they need to make informed proxy voting decisions— without it being filtered through the management of the corporation in question. This is a fundamental tenet of corporate governance and it is why this bill is opposed by a number of large public sector pension fund managers, as well as many other institutional investors, including the CII, NCPERS, AFL-CIO, AFSCME and Teamsters to name a few.

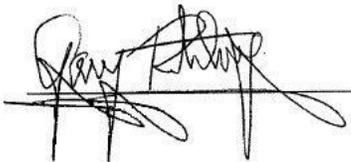
The proposed new regulatory regime under both bills will do nothing to enhance competition in the industry. Indeed, it may actually erect barriers to entry and make it more difficult for smaller industry participants to compete. The proposed regulatory regime is unnecessary, burdensome and would do nothing to enhance market competition or create market conditions conducive to new proxy advisors entering the market. CII wrote in its most recent opposition letter that the proposed regulatory regime would “**increase barriers** [emphasis supplied] to new entrants and potentially lead some current proxy advisory firms to exit the industry altogether.”²⁵

The National Conference on Public Employee Retirement Systems (NCPERS), the largest national, nonprofit public pension advocate whose members manage more than \$3 trillion in pension assets, warned that the suggested regime proposes to “bypass free-market principles by authorizing the SEC to pre-qualify industry entrants based on a set of vague and highly subjective standards.”²⁶ Such authority would likely provide the SEC – under this and future Administrations – with broad discretion to establish criteria to further restrict, not enhance, competition.

The litmus test for any federal intrusion into the free market is whether it targets a proven problem and seeks to address it cost-effectively. The proposed bill does not pass either test. As the foregoing discussion demonstrates, the investors who use proxy advisory services do not see the “problem” the proposed legislation purports to address. Furthermore, the bill’s backers fail to provide any cost-benefit analysis to support the idea of supplanting a comprehensive and mature regulatory regime with a brand new scheme that will require several years of new SEC rulemaking only to end up with something that favors entrenched corporate interests over shareholders, freedom of choice, freedom of expression and free-market capitalism.

In conclusion, ISS appreciates the opportunity to answer your questions and underscore the rigorous regulatory system and internal compliance program under which we operate. If there is any additional information I can provide, please do not hesitate to contact me.

Sincerely,



Gary Retelny, President and CEO
Institutional Shareholder Services Inc.

²⁵ Letter from the CII to Sen. Michael Crapo, Chair of the Senate Committee on Banking, Housing and Urban Affairs and Sen. Sherrod Brown, Ranking Member of the Senate Committee on Banking, Housing and Urban Affairs (February 28, 2018) at 2.

²⁶ Letter from NCPERS to Sen. Michael Crapo, Chair of the Senate Committee on Banking, Housing and Urban Affairs and Sen. Sherrod Brown, Ranking Member of the Senate Committee on Banking, Housing and Urban Affairs (February 16, 2018) at 2.