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REMARKS TO THE SEC INVESTOR ADVISORY COMMITTEE
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EXECUTIVE DIRECTOR, COUNCIL OF INSTITUTIONAL INVESTORS
"U.S. PROXY VOTING INFRASTRUCTURE"
SEPTEMBER 13, 2018

Thank you for the opportunity to speak with you today on the proxy voting system. I represent the Council of Institutional Investors, which has core membership of more than 135 asset owners with more than $4 trillion in assets. We also have more than 60 asset manager associate members with more than $25 trillion in assets under management.

Shareholder voting at corporate annual and special meetings is a core and essential element of corporate governance, and shareholders have a keen interest in a reliable, transparent and cost-effective system for voting proxies.

As CII's asset owner members affirmed in a 2010 policy statement, investors seek a proxy voting system that is timely, accurate, transparent (including routine end-to-end vote confirmation) and efficient. Our members currently are considering further elaboration of that policy, urging best use of technology to improve the proxy voting process. The enhanced policy under consideration suggests that it is time to look seriously at use of private blockchains, system-wide, operated by trusted third parties – to promote the goals articulated earlier, while safeguarding the identities, holdings and vote decisions of individual shareholders.

The current system of proxy voting is fraught with inefficiencies and a too-large margin for error. A core challenge is that the system is based on the idea of fungible shares. Between the complexity of intermediary chains and challenges around fungible shares, many of our members have and continue to lack confidence that their shares are always fully and accurately voted. Institutional investors generally vote on electronic platforms, and should routinely and promptly see vote confirmations both on how shares in an account were voted on each voting item, and the number of shares voted.

Since 2010, market intermediaries have worked on a system to provide vote confirmation on request. But progress has been halting, and this system seems to work only when the stars are aligned (with cooperation between various intermediaries). Vote confirmation has not become routine, efficient or easy.

Technological progress since 2010 offers opportunities to build a reliable, transparent and cost-effective proxy voting system that were not available at the time the SEC did its concept release on proxy plumbing. However, systemic change, potentially including through distributed ledger technology and private blockchains, will require substantial focus and resources near-term. While the effort would be significant, we believe it is time to seriously explore this, as I will discuss.

But first, let me note that there is some low-hanging fruit – establishing universal proxies for proxy contests. The SEC's well-considered 2016 proposal for universal proxies already has set forth the best path on this.

Under the existing bona fide nominee rule, one party in a proxy contest may not include the other party's nominees for corporate director on its proxy card unless the other party's nominees consent. For a variety of reasons, consent is rarely granted. As a result, shareowners usually have no practical ability through proxy voting to "split their ticket" and vote for the combination of shareowner and management nominees that they believe best serve their economic interests.

Investors frequently have an interest in splitting their tickets, and there is no good reason they should be required to attend meetings to do so. A shareholder voting by proxy should have the same voting options as a shareholder who votes in person. Moreover, we believe a universal proxy rule as proposed by the SEC would reduce confusion among both institutional and individual investors that results from current multiple and incomplete ballots.

CII submitted extensive comments on the SEC proposal in a December 28, 2016, letter to the SEC. We have provided additional comments on several occasions since then, most recently in our July 19, 2018, letter on the SEC's 2018-2022 Strategic Plan.

Given all this, I will not elaborate further here, except on two concerns that SEC Chairman Jay Clayton has raised with CII. The chairman has raised legitimate concerns, but we believe both are easily addressed, as discussed in our July 19, 2018, letter.

Those two issues are: (1) the solicitation threshold that would trigger requirement of a universal proxy; and (2) the circumstance when the election of a dissident results in an incumbent board member refusing to serve.

- On item 1: The SEC's proposed universal proxy rule requires that a dissident solicit at least a majority of shares for the universal proxy rule to kick in. CII agreed with that threshold, but in light of the Chairman's concern, we would support moving to a higher threshold that would (1) increase minimum solicitation requirement to 75%; and (2) require that total number of persons solicited is more than 10.

- On item 2: We suggest the proposed rule be amended to require a registrant to disclose in its proxy statement: (1) if a party's nominees will not serve if elected with any of the opposing party's nominees; and (2) how the resulting vacancy will be filled under the registrant's governing documents and applicable state law.

Let's move ahead on the SEC's universal proxy proposal, and fix a major long-standing problem that affects the most consequential and contested proxy votes.

Back to the more difficult challenge of creating a more robust proxy voting system: we support the exploration of blockchain-based voting involving the following components:

1. **Construction of the Blockchain**
   An intermediary, acting as a gatekeeper, creates a blockchain for the company and its shareholders. This blockchain would be private—viewable only by the company, its shareholders, and designated proxies—and permissioned, meaning only the trusted gatekeeper can enter its content. Neither the company nor other shareholders will be able to see the identities or holdings of any individual shareholder.

   The blockchain will record each of the company's beneficial owners and their holdings as of a predetermined record date. This determines each shareholder's entitlements, for example their voting rights, right to view proxy materials, or right to submit a shareholder proposal subject to ownership thresholds.

2. **Dissemination of Proxy Materials**
   As a meeting of shareholders approaches, the gatekeeper can upload the company's proxy materials on the blockchain for shareholders to view. Due to the nature of the blockchain, once information is entered, it cannot be changed or removed—only added. This promotes transparent, far less expensive record-keeping and ensures that all eligible shareholders can access the materials instantaneously and simultaneously.

3. **Vote Allocation and Authentication**
   Based on shareholders' equity holdings as of the predetermined record date before a meeting, the gatekeeper allocates votes subject to the company's capital structure and voting rights. Shareholders will know precisely how many votes they control before casting them.

   Before the meeting, whoever plans to execute the votes—which could be an individual shareholder or a designated proxy—must authenticate his or her identity with the gatekeeper outside of the blockchain (e.g. by presenting legal identification). The gatekeeper will record proof of authentication in the blockchain and create a digital ID for each shareholder or proxy, akin to login credentials.

4. **Vote Execution and Tabulation**
   During a predetermined voting period, shareholders or their proxies will execute their instructions over the blockchain, casting their allocated votes in each proposal. The blockchain will relay the voting instructions and verification that the votes are counted back to each shareholder, providing immediate and accurate end-to-end confirmation. Neither the company nor other shareholders will be able to see how any individual shareholder voted.

   Tabulation would occur in real time. Once the voting period ends, the blockchain can immediately report the aggregate results to the company and its shareholders simultaneously. Again, due to the nature of the blockchain, once votes are entered, they cannot be removed or altered, ensuring that the final tally reflects a certain and complete result of the vote.

If deployed properly, blockchain-based proxy voting could protect investor privacy while enhancing:

- **Timeliness**—The dissemination of materials, process of voting, and reporting of results occurs immediately and simultaneously when conducted on the blockchain.
- **Accessibility**— The blockchain represents a technological advancement that improves the accessibility of the proxy voting process to all shareholders, large and small, potentially improving participation rates.
- **Accuracy**— The blockchain utilizes a gatekeeper to allocate and authenticate votes, and the technology itself immutably tabulates votes as they are cast.
- **Certainty**— Shareholders can achieve end-to-end confirmation on the blockchain since it records the executed voting instructions.
- **Cost-effectiveness**—We believe a blockchain-based system in the long run will be substantially less expensive than the current system by eliminating certain delays, frictions, and opacity.

I am happy to respond to questions and comments, and appreciate the IAC considering the issue of proxy plumbing. Thank you for your time.