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October 20, 2010

Elizabeth M. Murphy
Secretary
U.S. Securities and Exchange Commission
100 F Street N.E.
Washington, DC 20549-1090

**Re: Concept Release on the U.S. Proxy System
File Number S7-14-10**

Dear Ms. Murphy:

Institutional Shareholder Services Inc. (ISS) appreciates the opportunity to submit our comments on the Securities and Exchange Commission's (SEC or Commission) Concept Release (Release) on the U.S. Proxy System. This statement represents our views in our capacity as a proxy advisor and thought leader in the area of corporate governance, and not necessarily those of our clients. Where we believe it would be illuminating, however, we have augmented our comments with the results from a recent survey of our institutional investor clients that sought input on a number of technical questions raised by the Commission in the Release. Full results of this survey may be found in Appendix A.

ISS' Role in the Proxy Voting System

ISS, an indirect, wholly-owned subsidiary of MSCI Inc., is a leading provider of corporate governance products and services to the global financial community. We have more than 25 years of experience in providing institutional investors of all types – including investment managers, pension funds, hedge funds and mutual funds – with innovative solutions for proxy voting management. More than 1,300 clients rely on ISS' expertise to help them make more informed proxy voting decisions, manage the complex process of voting their shares, and report their voting behavior to their stakeholders and regulators.

Governance Research and Recommendations

Through its governance research and proxy voting recommendations, ISS helps institutional investors understand corporate governance policies and practices at their portfolio companies and take these practices into account in their proxy voting. ISS offers a wide range of proxy voting policy options to institutional investors, including vote recommendations based on a client's specific customized voting guidelines. In addition ISS provides enhanced analysis of contentious meetings (M&A and proxy contest) as well as governance data and analytics through its Governance Risk Indicators (GRId) product.

Voting Services

ISS' ProxyExchange application and experienced account managers provide end-to-end management of the proxy voting process for our institutional investor clients. Our proxy voting solutions allow ISS' clients to control their voting policy and final vote decisions while outsourcing the processing and data management elements to an experienced service provider. To this end, ISS receives clients' proxy ballots, works with custodian banks, executes votes on clients' behalf, maintains vote records and provides comprehensive reporting. By outsourcing the



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administrative tasks associated with the voting process, our clients free themselves to spend internal resources on making informed voting decisions.

Disclosure & Related Services

ISS provides a range of services to clients beyond the proxy voting recommendations, vote processing and ratings services discussed in the Release. These services have been developed to meet the needs of ISS' client base and, in some cases, to assist clients in addressing their own regulatory requirements. For example, ISS' Vote Disclosure Service was created in 2004 to help investment companies comply with their then-new Form N-PX filing obligations.

ISS' services have also expanded to meet evolving internal and external standards that require investors to be better informed and active in corporate governance matters, especially as the scope of governance matters has increased to include considerations such as environmental and sustainability issues. In helping to fulfill these needs, we believe that ISS, along with the other proxy advisory firms, plays a critical role in the proxy voting system.

ISS has been in the corporate governance and proxy voting business for over 25 years. We believe that modernizing and improving the proxy voting system to ensure that corporate elections are fair, transparent and efficient is a worthy goal for the entire investment community. We applaud the Commission for taking on this daunting, but essential, task and welcome the opportunity to comment on the Commission's proposals to achieve that goal. Our comments on some of the specific questions raised in the Commission's release follow.

1. Vote Confirmation

Vote confirmation has long topped most large investors' wish lists for proxy voting enhancements. In our recent client survey, nearly two-thirds of the respondents strongly (37 percent) or moderately (25 percent) favored "requiring that vote confirmations be available across all steps in the (voting) process."

In practice, however, vote confirmation has proven an elusive goal. The proxy voting chain is a long one, extending through a series of intermediaries (proxy voting agent, proxy delivery agent, custodian, transfer agent, tabulator) in the path between investor and the issuer. A number of data and process issues impede the flow of confirmation information back up the voting chain to the investor; these impediments have not been addressed in the current system of ballot distribution. A complicating factor is a strong competing interest on the part of investors to maintain the privacy of their portfolio holdings. Balancing these two issues (privacy vs. confirmations) is especially difficult given the complexity of the proxy voting environment.

Data and Process Issues

In the current proxy system, proxy ballots are distributed within a highly complex set of data flows among issuers, custodians, transfer agents, proxy delivery agents, voting agents and investors. Under current practice, there is no reliable, automated mechanism by which authoritative vote confirmations can be provided to investors. Providing a vote confirmation from the issuer would require that the issuer – and every other intermediary on the chain between issuer and investor – be able to distinguish one investor's votes from another investor's votes. Currently, however, the proxy delivery agent is the last intermediary in the chain able to identify beneficial owners. By aggregating these positions into larger omnibus ballots before presenting to the tabulator, the proxy delivery agent protects the identity of OBO investors, but at the cost of confirmations.

Practically speaking, there is also no mechanism by which vote confirmations can be carried back up the custody chain from the issuer, through the chain of tabulator, proxy delivery agent and proxy voting agent, back to the



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voting investor/beneficial owner. Neither the number of shares voted nor the voting determination itself (FOR/AGAINST/ABSTAIN) is available in current data feeds – nor is there a mechanism to uniquely identify individual beneficial owners across the multiple intermediaries.

ISS has attempted to confirm final votes in the past on behalf of its clients. Our experience has been mixed, at best, in this regard. Since the proxy processing vendor (also called “delivery agent”) aggregates all voted positions and presents them to the tabulator as an omnibus ballot, it is effectively a “black box.” Individual votes cannot be determined or verified unless there is a single large position, in which case the receipt of votes can be inferred. Any further information must be requested from tabulators or directly from issuers, a heavily labor-intensive and error-prone process that does not scale to meet the needs of institutional investors and only provides limited clues as to the votes that were actually counted.

As a result, ISS is currently able only to verify (1) that the proxy delivery agent has delivered ballots that match its clients’ reported holdings, (2) that the agent has received the voting instructions sent by ISS on behalf of its clients, and finally (3) that the agent has delivered the votes (in aggregate) to the tabulator. This does not confirm that votes were received and counted.

Balancing Investors’ Competing Needs for Confirmation and Privacy

At first glance, any solution to the confirmation issue would require breaking open the OBO/NOBO process. In order to allow issuers to confirm to upstream parties that a particular investor’s votes have been cast and counted, they (or their agents) would appear to require some kind of access to beneficial owner information.

While it is clear that most beneficial owners would like to have vote confirmations, it is unclear whether they are willing to compromise their privacy with regards to their portfolio holdings in order to get them. In our client survey (and other client conversations), institutional investors appear to be roughly split down the middle on this privacy issue. Some investors would trade some degree of privacy in exchange for vote confirmation; others would not. In practice, there are a large number of our clients that wish not to disclose their ownership positions to outside parties. Many investors actively use the NOBO/OBO process to do this.

Proposed Model for Vote Confirmations

While technology and current industry practice place hurdles in front of vote confirmation, we believe that they are far from insurmountable. Given the growing importance of the proxy voting process, the process must allow proxy voting agents, third-party intermediaries and, most importantly, beneficial owners to confirm that in fact the issuer (or its agents) have received and counted their votes properly.

To alleviate privacy concerns, we envision that an impartial “owner” of vote confirmation data would sit either between the proxy delivery/voting entities and the issuers or, alternatively, alongside the proxy voting chain. This independent, trusted entity would be able to provide a true confirmation back to the beneficial owners and its agents, but still maintain privacy, if so desired by the investor. We believe that a potential paradigm for this structure exists in the Depository Trust and Clearing Corporation (DTCC).

Such vote confirmations should be provided free of charge to the actual voters (and their designated agents) and should be done 10 days, 5 days and one business day prior to the actual voting deadline so that any miscast votes, missed votes and/or missing share positions can be rectified in a timely and transparent fashion. All vote confirmations should be readily viewable through electronic means and in a standardized, human and machine-readable format.



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The creation of a unique identifier for each distinct beneficial owner has the potential to advance the vote confirmation process further. ISS invites other market participants to explore this option, cognizant of a number of issues:

- Mappings between omnibus positions and underlying beneficial data would need to be maintained in a highly secure and trusted environment in order to respect investors' desires to keep their positions private.
- Strict oversight and controls would be required, with standard inter-firm procedures across proxy delivery agents, voting agents, issuers, custodians and transfer agents.

As a voting agent for a large number of financial institutions, ISS is already required to adhere to a very strict regimen of audits and controls and meet with a large number of our clients on an annual basis for the purposes of compliance with currently existing regulations. ISS, for example, obtains an annual SAS70 type II from an audit firm of national reputation, and has many predefined and well documented audits in place to ensure that its mechanisms are working as intended. We are confident that a solution to the vote confirmation can be found that continues to respect the OBO/NOBO system. The information only needs to be unlocked from its current silos.

2. Share Lending and Share Recall

Historically in the U.S. market, in order to vote at a shareholder meeting, investors must own shares on a record date that is typically more than six weeks in advance of the actual meeting date. At the time the meeting and record date are announced, an issuer does not typically disclose the meeting agenda – which in turn is not released until after the record date has passed.

Due to these time lags, investors often do not have sufficient knowledge about the meeting to make an informed decision about recalling any shares they may have on loan. Investors are not able to weigh the true economic benefits of voting their full share position, inclusive of the shares on loan, versus the value of leaving the shares out on loan. By the time the agenda is disclosed, the record date has passed and the investor is unable to recall shares to reclaim voting rights.

ISS favors a system whereby record dates for voting entitlement fall after both (1) the announcement of the meeting date and (2) the disclosure of the meeting agendas and other relevant voting information. Moreover, ISS recommends that record dates fall approximately two weeks after the release of the detailed agendas for meetings, with even more time given to contested elections. Such an early-warning system would encourage increased participation in shareholder meetings, as stakeholders would have meaningful opportunities to make informed decisions on recalling shares based on the merits of the issues on the agenda.

Notably, 85 percent of the respondents to our client survey favored requiring issuers to release their agendas in advance of record dates; more than 57 percent favored a two-week window. Moreover, more than one-third of respondents said such a change would increase the likelihood of them recalling their shares; only 5 percent said such a change would make them less likely to recall.

Practical Challenges to Record Date Changes

We recognize that there are practical challenges to any change in the current record date system.

The record date system must provide flexibility for issuers in the case of contested meetings or meetings in which shareholder proposals are proposed for which the issuer is seeking no-action relief. In such cases, we believe that a record date “significantly closer” to—but no closer than two weeks prior to – the meeting date would be a



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reasonable solution. In order to accommodate such a system, issuers would need the ability to change record dates after the initial announcement date, particularly in the case of contested elections.

As record dates for voting entitlement would occur after the release of the meeting date and agenda details, additional checks and balances need to be established to protect against possible proxy mechanics mistakes. Specifically, given that the share positions eligible to vote proxies at the initial time of the announcement of the meeting will certainly change by the record date, tools must be implemented to ensure that the final eligible voter lists are reconciled at the time of the record date.

Without proper controls, risks could be introduced into the process that increase the likelihood of stakeholders eligible to vote being disenfranchised or stakeholders ineligible to vote being allowed to cast ballots. If unchecked, such flaws could exacerbate overvoting and undervoting. We believe, however, that proper controls are feasible.

We do not believe that a change to the record date system would materially impact loan stability or result in adverse effects on capital markets. Shareholders will continue to look at recalling shares vis-à-vis the proxy process based on the economic merits of doing so. The benefit derived from the change will principally be that shareholders will be able to make informed decisions to recall shares in a timely manner as opposed to the current arrangement, which often forces shareholders to take a naïve “all or nothing” approach to pulling back shares.

The keys to an advance notice requirement will be consistency and simplicity. Rules should be applicable to all issuers in terms of the level of material disclosure and timing. Significant variance among issuers would lead to confusion in the marketplace and increased risk.

Optimally, advanced notice would be implemented through both filings with the Commission and Web site postings. Using these two media would satisfy the dual requirements of transparency and sustainability in an increasingly electronic age.

3. Expanded Vote Disclosure

The Concept Release addresses two potential expansions to proxy voting disclosure by funds, beyond the disclosures currently required for N-PX filings: disclosure of actual share positions voted by the fund, and disclosure of share positions not voted because shares were out on loan and the fund did not have a voting entitlement. Respondents to ISS’ client survey opposed, by more than a two-to-one margin, disclosing either share positions or shares-on-loan information as part of N-PX filings.

Each of the two proposed disclosure expansions raises its own distinct issue, however. Disclosure of vote positions raises competitive and privacy considerations, while disclosure of shares not voted due to lending raises a series of difficult technical and data challenges. ISS’ view is that any additional value from these disclosures is likely to be outweighed by the cost of surmounting these challenges.

Disclosure of Vote Positions

From a purely technology perspective, disclosing share positions voted would be straightforward. However, from our discussions with clients, it is clear that many investors fear that this disclosure could allow competitors and other parties to get a greater level of insight into their trading and investment strategies. It is unclear that the disclosure of share position data would serve the core purpose of N-PX filings –transparency of fund proxy voting practices– any more effectively than the current practice of disclosing votes does.



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Disclosure of Share Lending

As voting agent, ISS currently assists many mutual fund clients to prepare their N-PX filings. Any ballots received on behalf of mutual funds are included in these filings, whether they have been voted or not. We provide our clients with the facility to add explanatory notes to the filings indicating the reasons ballots were not voted. Accordingly, our mutual fund clients typically already disclose voted and unvoted ballots.

Disclosure of shares not voted because they are out on loan and do not have a voting entitlement, however, brings a significant additional layer of complexity. In many cases, an investor would not receive a ballot or meeting information for the position on loan. Identifying these meetings would require both an additional data source – meeting information for all positions on loan – that would then need to be linked to the shares-on-loan position through a new data processing step. These additional data requirements would impose real costs on investors. While we agree that the disclosure of the impact of share lending on a fund’s proxy voting activity aligns to the goals of the N-PX, we also believe it provides an incomplete picture of the impact of lending. Disclosure of summary information on lending activity may provide (at far lower cost) sufficient visibility into a share lending programs’ costs and benefits to the fund.

4. Data-Tagging (XBRL)

ISS favors mechanisms and standards that enhance transparency to investors and financial markets. As a result, ISS supports the development of industry standards that would encourage issuers to adopt standardized data formats when submitting filings to the SEC and making data available to investors and the market via their own Web sites.

Tagging proxy data and providing it in a standardized, machine-readable “interactive” format would enhance transparency by allowing investors and other market stakeholders to build structured datasets from the otherwise unstructured textual data in SEC filings. Reducing the time and expense of access to this information should allow investors to make more informed voting decisions.

In pursuing an industry standard, ISS recommends the following basic principles:

- (1) A uniform data tagging standard is preferable. While ISS believes that market-based approaches best support innovation, the experience of XBRL indicates that a regulatory mandate of a single standard is required to achieve the critical mass needed for widespread adoption by investors. We believe innovation efforts should be focused on the use and interpretation of the data, not the mechanics of its tagging.
- (2) A broad range of information should be tagged. Investor data needs are diverse and proxy disclosures are extensive. Providing tagged data for only a limited subset of information within the proxy would disadvantage many members of the financial community. That being said, ISS does support a phased approach to implementing data tagging within the proxy so as to begin delivering value as soon as practicable.
- (3) A single repository is vital to enabling the entire financial community to access and extract the data they require. While we would encourage individual companies to provide feeds of tagged data on their own investor-relations Web sites, a single authoritative source is essential. The SEC’s EDGAR Web site would be an appropriate repository for this information.

Compensation Data Should Lead a Phased Approach

We recommend a phased approach, in order to ensure that the SEC builds a proxy tagging taxonomy that is useful for investors and feasible for issuers to implement in a reasonable amount of time.

Given the recent Federal mandate for advisory votes on executive compensation, ISS believes that swift access to pay-related data should have the highest priority. Our view is that the SEC should mandate the tagging of all executive compensation data, regardless of the location and presentation of the data.

Phase I of compensation data tagging could encompass the following required tabular disclosures:

- The Summary Compensation Table;
- The Grants of Plan-Based Awards Table;
- The Outstanding Equity Awards at Fiscal Year-End Table;
- The Option Exercises and Stock Vested Table;
- The Pension Benefits Table;
- The Non-Qualified Defined Contribution and Other Non-Qualified Deferred Compensation Plans Table;
- The Director Compensation Table;
- Security Ownership of Certain Beneficial Owners and Management; and
- Submission of Matters to a Vote of Security Holders (8-K)

We would also note that certain required elements of compensation disclosure are nonnumeric, yet remain amenable to a data-tagging approach. For example, descriptions of performance metrics and assessment of pay riskiness are not strictly numeric, but tagging these required elements would enable the simpler and more accurate extraction of these particular data items from the text of the proxy statement. Subsequent phases can focus on identifying these elements and standardizing their tags. It is important to note that issuers should not lose flexibility in writing these disclosures. ISS does not believe that the disclosure language itself be standardized, only the tags used to mark them for easy extraction.

Given the critical role of directors as shareholders' representatives and the close scrutiny placed on directors, investors would also benefit from having access to the fullest information possible about board nominees. Initial phase for data tagging should focus on key indicative data around directors, including age, tenure, committee membership, stock ownership, related-party transactions and qualifications as disclosed in proxies.

We do not see clear benefits of requiring non-management parties to utilize a standardized interactive data format within their proxy statements. A significant portion of data within the non-management proxy that can benefit investors can typically be found within the issuer's proxy statements (e.g. compensation, equity awards). Additionally, requiring non-management parties to incur additional costs to meet this requirement may deter some shareholders from filing non-management proxy statements.

5. The Role and Legal Status of Proxy Advisory Firms

The Release raises questions and concerns brought up by the issuer community and other market constituents about the use of proxy advisory firms by institutional investors, focusing on two broad categories of concern: (a) conflicts of interest and (b) lack of accuracy and transparency in formulating voting recommendations. The Release also discusses potential regulatory responses to these issues. We believe that many of these concerns



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arise from misconceptions about proxy advisory firms. What follows is our response to some of the specific questions raised by the Commission in the Release regarding these two areas.

Conflicts of Interest

Several questions in the Release revolve around potential conflicts of interest. ISS acknowledges that it, like many businesses, is not immune from potential conflicts of interest. Because of the breadth of our client base and the work that we do, we understand and take seriously the potential for real or perceived conflicts of interest which might impact the integrity of the research and services we provide to institutional investors and/or ISS' ability to fulfill its important role in the middle of the critical dialogue between corporations and their shareholders.

The Release discusses in particular the potential for a conflict between ISS' core business of analyzing the proxies of corporate issuers and making vote recommendations for the benefit of institutional investors, and the work of an ISS subsidiary, ISS Corporate Services, Inc. (referred to as "ICS"), which sells tools and advisory services directly to corporate issuers. We believe that ICS' work helps corporations enhance their governance practices, which ultimately benefits all shareholders. At the same time, we understand the potential for conflict that arises when ICS provides corporate governance advice to an issuer and ISS subsequently makes vote recommendations on the proposals in that same issuer's proxy statement.

As discussed in further detail below, we believe that we effectively manage potential conflicts, including the one relating to the ICS business, through a combination of the consistent and transparent application of our voting policies, a robust compliance program, implementation of a "firewall" to mitigate conflicts around the ICS business, and disclosure.

Policy-Based Approach Provides Consistency of Application

At its core, ISS is a policy-based organization and ISS' use of a series of published voting policies provides a very practical check and balance that ensures the integrity and independence of ISS' analyses and vote recommendations. ISS Research Analysts follow these comprehensive policy guidelines when writing proxy reports and making vote recommendations for the benefit of our clients.

While ISS' policies allow analysts to consider company- and market-specific factors in generating vote recommendations, the existence of a published analytical framework, along with the fact that vote recommendations are based on publicly-available information, allows ISS clients (and non-clients alike) to continually monitor and assess the integrity of ISS' reports by making sure that ISS is faithfully and thoughtfully applying its policy guidelines. Notably, each analysis includes a URL for a direct hyperlink to ISS' summary voting guidelines for easy access by users of our research.

Our policy-based approach also provides for a transparent and consistent methodology with which to evaluate shareholder proposals.

Compliance Program: Code of Ethics, Firewall and Training

While the policy framework is a practical check and balance, we have proactively developed and implemented a comprehensive compliance program that provides guidelines and specific policies and procedures that help us conduct our business with the highest degree of integrity and maintain sensitivity to the ethical aspects of our work.

As part of its compliance program (and in accordance with SEC requirements), ISS has adopted a Code of Ethics that prescribes standards of conduct that the company's employees must follow in carrying out their



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responsibilities. At its core, the Code of Ethics affirms ISS' fiduciary relationship with its clients and obligates ISS and its employees to carry out their duties solely in the best interests of clients and free from any compromising influences and loyalties. The Code also contains restrictions on personal trading designed to prevent ISS employees from improperly trading on, or benefiting from, inside information and/or ISS' voting recommendations. The Code emphasizes the requirement that all research for clients be rendered independently of the personal interests of any of ISS' employees. ISS continuously monitors and tests employee trading activity to ensure adherence to these restrictions. Annual training and a yearly affirmation of the Code of Ethics by all employees are other elements of the compliance program.

The ISS firewall includes the physical and functional separation between ICS and the rest of the organization, with a particular focus on the separation of ICS from the ISS Global Research team. A key goal of the firewall is to protect against the ISS Global Research team learning the identity of ICS' clients. Enabling the Global Research team to work without knowing the identity of ICS' clients helps to ensure the objectivity and independence of ISS' research process and vote recommendations.

This firewall mitigates potential conflicts via several layers of separation.

- First, ICS is a separate business unit and is a wholly-owned subsidiary of ISS.
- Second, ICS is physically separated from the rest of ISS and its day-to-day operations are separately managed.
- Third, Global Research works independently of ICS.
- Fourth, ICS and ISS staffs are prohibited from discussing a variety of matters, such as the identity of ICS clients.
- Finally, ICS makes no guarantees to its corporate issuer clients (in other words, there is no "pay for play"). In fact, ICS clients are told explicitly that ISS will not give preferential treatment to, and is under no obligation to support, any proxy proposal of an ICS client and that ISS' Global Research team prepares its analyses and vote recommendations independently of, and with no involvement from, ICS.

ISS also maintains a robust training and compliance program, which includes quarterly tests of the ICS/ISS firewall, new hire orientation and review of certain marketing materials and disclosures. There is an ethics hotline available to both ICS and ISS staff for reporting potential issues of concern.

Disclosure Regarding Potential Conflicts

ISS also provides its investor clients with an extensive array of information to ensure that they are fully informed of potential conflicts and the steps that ISS has taken to address them.

ISS is transparent about its ICS business. The entire ISS business is described in great detail on its Web site and on ISS' Form ADV, Part II. ISS' standard institutional client contract contains disclosures regarding ICS and its work with corporate issuers.

Similarly, as noted in the Release, 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. Specifically, each proxy analysis discloses to investor clients that the issuer that is the subject of such analysis may be a client of ISS, ICS, or another MSCI subsidiary or the parent of, or affiliated with, a client of ISS, ICS or another MSCI subsidiary. Additionally, each analysis notes that one or more proponents of a shareholder proposal may be a client of ISS or one of its affiliates, or may be affiliated with a client of ISS or one of its affiliates.



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The legend advises ISS' institutional clients about the manner in which they can receive from ISS' Legal and Compliance department specific details about an issuer's use of ICS products and services. Thus, ISS provides institutional clients the ability to obtain information regarding ICS' dealings with corporate issuers, including the amount of compensation that the firm has received or will receive from the issuer.

We believe that using these disclosures, combined with the ability of ISS' proxy voting clients to directly receive in-depth, specific details about ICS clients, is the best way of maintaining all of the goals of the firewall as described above. In particular, this process ensures that the identity of an ICS client is not readily available to a research analyst as she prepares vote recommendations and other research. We believe that the current process for disclosure achieves that goal and is used by clients as a helpful part of their own due diligence process.

ISS' Web site includes a [comprehensive due diligence compliance package](#) to assist clients and prospective clients in fulfilling the legal and regulatory obligation to conduct due diligence regarding independent, third-party proxy voting firms. The package includes, among other things, a description of the ICS business and an overview of ISS' policies, procedures and practices relating to potential conflicts of interest.

In total, we believe that these extensive measures provide our clients with a high degree of comfort that the potential for conflict, and perceived conflict, including the conflict relating to the ICS business, are effectively managed

Conflict Mitigation to Address Public Company Status

In the Release, the Commission asks whether conflicts of interest might arise where a proxy advisory firm is itself a publicly held company. ISS has dealt with this issue since its parent company (then known as RiskMetrics Group), went public in January 2008. Since that time, we have considered this potential conflict carefully and crafted policies and procedures to mitigate any potential risk.

ISS, for example, has voluntarily refrained from providing its clients with in-house analyses and vote recommendations relating to the shareholders' meetings of its public parent company. Instead, ISS has arranged for clients entitled to vote at the meetings of ISS' parent company to receive substitute analyses prepared by one of ISS' competitors. ISS takes no steps to direct or influence this third-party research.

In addition, the Board of Directors of ISS' public company parent has adopted a *Policy on the Mitigation of Potential Conflicts of Interest* (available on ISS' website). Amongst other matters, this policy prohibits non-executive members of the Board from participating in the formulation, development or application of ISS' proxy voting policies, research reports and/or vote recommendations.

Accuracy and Transparency in Formulating Voting Recommendations

A number of questions in the Release relate to the accuracy of proxy advisory firms in developing proxy research and making voting recommendations. The Release also discusses potential concerns surrounding the accountability of proxy advisory firms and the extent to which the firms have significant influence over the shareholder voting process.

As we elaborate below, we believe that we have implemented a very thorough and inclusive process for both proxy policy development and for the generation of proxy research and voting recommendations which ensure not only that we are accurate and accountable, but also reflective of the views of our clients.



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Policy Formation Process is Extensive and Inclusive

As discussed above, ISS' research is policy-based. Our policies are formulated through an annual bottoms-up process that collects information from a diverse range of market participants through multiple channels.

Each year, this policy-setting process begins with a Policy Survey that seeks input from both institutional investors and corporate issuers. During the process, ISS solicits responses from clients' and industry constituents in an effort to identify emerging issues that merit attention prior to the upcoming proxy season. Based on this feedback, ISS convenes a series of in-depth roundtables with various industry groups and outside issue experts to gather information and to hear multiple perspectives on complex or contentious issues. As part of this process, ISS researchers examine academic literature, other empirical research and relevant commentary in an effort to uncover potential links between an issue and financial returns and/or risk.

The ISS Global Policy Board, which is comprised of ISS' market research heads and subject matter experts, uses this input to develop its draft policy updates.

Before finalizing these updates, ISS publishes draft policy updates for an open review and comment period (modeled on the SEC's process for commenting on pending rule-making). This open comment period is designed to elicit objective, specific feedback from investors, corporate issuers and industry constituents on the practical implementation of proposed policies. Starting with the 2008 policy-setting cycle, all comments submitted in this process have been posted verbatim to the ISS Policy Gateway on our public Web site, in order to provide additional transparency into the feedback we have received.

Final policy updates are published in November, to apply to meetings held after February of the following year. In addition, the policy process informs our custom clients of upcoming trends and new issues, as these investors develop their own institutional-specific guidelines for the coming year.

To our knowledge, ISS is the only proxy advisor to gather, assess and incorporate market feedback into its institutional proxy voting policies. ISS remains committed to enhancing its policy formulation process through this interaction.

Engagement Enhances Accuracy and Transparency

ISS' outreach is not confined to just the policy-setting process. ISS' Global Research organization encourages constructive dialogue on critical issues to ensure a deeper understanding of the company-specific facts and circumstances, which in turn informs our proxy analyses and recommendations. Engagement discussions can happen at any time of the year, but they occur most frequently after a company's proxy has been filed. The purpose of the research engagement is for ISS to obtain, or communicate, clarification about governance and voting issues, in order to ensure that our research and policy-driven recommendations are based on the most comprehensive and accurate information available. Sometimes these conversations are initiated by ISS, and sometimes they are initiated by the issuer or shareholder. In contested situations, we ordinarily engage with both sides. Conversations may be held in person or via teleconference.

In order to ensure consistency, transparency, and quality in its interactions with issuers, industry groups, shareholder proponents and other financial market stakeholders, ISS has developed a set of principles ([posted on our Web site](#)) to guide its engagement on issues of concern to its institutional investor clients. In the Americas market, for example, we have instituted a formal liaison role to facilitate the engagement process. A veteran governance researcher and business leader acts as the primary liaison between ISS and market stakeholders who wish to engage on governance issues.



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Insights gleaned from these engagements are reflected in our proxy research reports when the information is deemed to be useful in helping our institutional clients make a more informed voting decision. In those instances, ISS may consider including direct quotes from statements made by participants in the meeting(s). At the discretion of the analyst, a brief "engagement summary" may be included on the front page of the analysis report.

Operational Focus on Accuracy and Completeness

ISS goes to great lengths to ensure that our reports are complete and accurate. ISS has a comprehensive set of policies and procedures to ensure the integrity of our research process. As detailed above, ISS' analyses and recommendations are driven by publicly disclosed and detailed policy guidelines in order to ensure consistency and to eliminate potential analyst implementation bias. Prior to delivery to our clients, each proxy analysis undergoes a rigorous internal review for accuracy and to ensure that the relevant voting policy has been applied.

In the United States, companies found in the Standard & Poor's 500 index generally receive an opportunity to review a draft analysis for factual accuracy prior to delivery of the analysis. ISS reviews other requests for review and comment on a case-by-case basis. All issuers may request and receive at no charge a copy of the published ISS analysis of its shareholder meeting. In the event new information becomes available or if ISS determines that a report contains a material error, ISS sends an updated version of the report to its investor clients.

ISS also conducts periodic SAS-70 audits to ensure compliance with our internal control processes. Our research process is included in these audits. We believe that these controls reduce the likelihood that an analysis will be published with material errors but also provides a correction mechanism after a report has been delivered.

We acknowledge that corporate issuers do not always agree with our vote recommendations. This is understandable given that our vote recommendations are not always aligned with those of the company's management and board. Simply put the interests of the company's owners can and do conflict with those of management and the board from time to time. ISS would not be serving its investor clients if it did not highlight these cases. We note, however, that when issuers dispute our analyses, the disputes generally relate to policy application (or the principles underlying the policies themselves), not the factual accuracy of the analysis. ISS remains committed to working with governance stakeholders to ensure that our proxy voting policies reflect the input of all parties.

It is not ISS practice to make our vote recommendations public beyond transmittal to our clients and the issuer covered by the report. We often respond to media inquiries concerning our recommendations to try to ensure that the various participants in a solicitation cannot selectively quote the contents of our report. Once released to our clients, we sometimes provide full versions of our copyrighted research reports to reporters to allow them to see if the parties involved in the matter put information in its proper context.

The Competitive Landscape and its Impact on Quality

With respect to the competitive landscape, while ISS recognizes its place as the largest proxy advisory firm, the industry has evolved significantly over the last decade so that institutional investors have multiple, meaningful choices in selecting their proxy advisory provider(s).

Unlike the world of 1985 when ISS first began to issue proxy voting research via the U.S. mail, access to proxy materials of U.S. issuers is easy and cheap. Anyone with a computer, an ISP and an e-mail account/blog/Web site can make and deliver their own vote recommendations. Competition on the vote processing/recordkeeping side of the business is fierce. Tough price competition has cut margins for market participants and brought technological advances and substantial savings to proxy voters.



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The developing competitive landscape, along with the continuing demands of clients and other stakeholders, has generally caused proxy advisory firms to work hard to enhance the quality of the services being provided. The variety of viewpoints created by this competition benefits both institutional investors and the issuer community.

Given the growing importance of proxy voting in the governance of public companies, we have been surprised (and disappointed) to see some participants in the proxy advisory space seek to “dumb down” proxy voting by scaling back their deliverables to a voting platform and vote recommendations. Such recommendation-only products provide little or no context about the items on the ballot. Worse, they threaten to reduce proxy voting to a robotic, compliance exercise. We believe that the spirit of informed fiduciary voting is not met by recommendation-only research, and we urge the Commission to issue additional guidance to clarify its position with regard to such practices.

Clients’ Use, and the Influence, of Proxy Advisory Firms

The Commission seeks input on how institutional investors use the voting recommendations provided by ISS and other proxy advisory firms. While we do not formally track the extent to which our clients follow our voting recommendations, we believe that it is a misconception, albeit an often repeated one, that ISS’ clients blindly follow ISS’ recommendations.

Part of this misconception stems from a mistaken view that ISS reflects a single point of view on each proxy issue. It is our experience that investors are not of a single mind with respect to corporate governance issues.

As outlined above, ISS implements a variety of proxy voting policies reflecting the differing views of our varied client base. In addition to our benchmark policy guidelines (or “house” view), ISS offers “specialty” guidelines such as our “Socially Responsible Investment” and Catholic “faith based” policies. More significantly, ISS also manages and applies over 400 custom policies on behalf of its clients. These customized voting policies reflect clients’ unique corporate governance philosophies. The vote recommendations issued under these policies often differ from those issued under our benchmark policies. We estimate that the majority of shares that are voted by ISS clients fall under ISS’ custom or specialty recommendations.

ISS’ clients use our proxy research and vote recommendations in a variety of ways. ISS’ research and vote recommendations are just one of many resources that clients use in arriving at voting decisions. Many firms may have internal research teams that conduct proprietary research and use ISS research to supplement their own work. Some clients use ISS research as a screening tool to identify non-routine meetings or proposals. A number of our clients use the services of two or more proxy advisory services.

It is unclear to what extent investors vote consistently with the recommendations of proxy advisory firms, particularly since investors use vote recommendations differently and such use is not easily monitored or quantified. Such complexity does not stop some commentators from asserting that a fairly large percentage of votes are “controlled by ISS.” These assertions have no factual basis, but have taken on a life of their own as they are repeated by other commentators referencing the initial statement as fact.

There is, however, empirical evidence to the contrary. The August 19, 2010 comment letter on the Release sent to the Commission by University of Pennsylvania Law School Professor Jill Fisch addresses this issue through quantitative analysis. Professor Fisch cites a recent study that she conducted, along with academic colleagues from New York University. In their paper, *The Power of Proxy Advisors: Myth or Reality?*, the team analyzed the effect of proxy advisor recommendations on voting outcomes in uncontested director elections and concluded that while ISS is by far the most influential of the four major firms, media reports overstate the extent of its influence by failing to control for the underlying firm and director-specific factors that influence voting outcomes. Controlling for these factors, Professor Fisch and her colleagues estimate that an ISS recommendation shifts 6 to



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10 percent of shareholder votes. The paper suggests that a major component of this influence may stem from ISS' role as information agent and this assessment is consistent with our experience of how our clients actually use our proxy research and vote recommendations.

Potential Regulatory Responses

In terms of regulation, the Release notes that some proxy advisory firms are registered as Investment Advisers under the Investment Advisers Act of 1940 (the "Advisers Act"), while others are not. ISS is one of those registered entities. Having been subject to this regulatory framework for over twenty years, we believe that the Advisers Act provides an appropriate means for overseeing proxy advisory firms and protecting the interests of investors and other stakeholders. While we recognize that proxy advisory firms are not "typical" investment advisers, we believe that the focus of the Advisers Act and its core requirements, when applied to proxy advisory firms, impose a high standard of duty and trust to which proxy advisory firms must adhere in servicing their clients and the broader investment community and the requirement should be consistent across all industry participants.

Amongst other requirements, the Advisers Act mandates that we:

- implement a Code of Ethics;
- provide disclosures about our business in the form of ADV Parts 1 and 2;
- designate a Chief Compliance Officer; and
- maintain written policies and procedures designed to prevent, detect and correct violations of the Advisers Act (and review those procedures on a regular basis).

We also believe that the Advisers Act provides sufficient flexibility to address "atypical" investment advisers such as proxy advisory firms. For example, recognizing that each adviser's business is different, the requirement for a written compliance program allows and, in fact, requires each adviser to develop a tailored compliance program designed to address the risks and concerns unique to that adviser's business. It is this type of flexibility which allows for the Advisers Act to adequately protect investors using a "typical" investment adviser for money management services while simultaneously protecting investor clients of the proxy advisory firms. Furthermore, with an open, narrative style, the recently revised investment adviser disclosure document, Part 2 of Form ADV, is ideally suited to proxy advisory firms.

Finally, we note that many clients of proxy advisory firms are themselves registered investment advisers who look to the proxy firms for assistance in satisfying their own fiduciary obligations. We believe that investors benefit from having proxy advisors subject to the same regulatory regime (including Advisers Act Rule 206(4)-6) as their clients.

The existence of the Release itself clearly demonstrates the importance of proxy voting and, by extension, the importance of proxy advisory firms as key players in that system. Accordingly, we believe that proxy advisory firms operate the type of national business that Advisers Act Section 203(A)(c) was designed to address and we advocate an exemption clarifying and affirming the ability of all proxy advisory firms to register as investment advisers.

Although we do not see the need for additional regulation at this time, to the extent that the Commission and market constituents believe that additional regulation is required, we believe the best approach would be to make appropriate adjustment to the Advisers Act, an existing structure that (as the Commission notes in the Release) already covers half of the industry's current providers.



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On the other hand, we do not support the creation of new regulations modeled on those that apply to Nationally Recognized Statistical Rating Organizations (NRSROs). Although the NRSRO regulatory regime addresses the conflicts of interest faced by “subscriber-paid” rating agencies, the primary focus of these regulations is on the conflicts of “issuer-paid” firms. Since issuers do not pay proxy advisory firms to supply vote recommendations to investors, many NRSRO rules are inapposite to proxy advisors. The fact that proxy advisory firms or their affiliates may separately sell services to issuers does not distinguish these firms from any other type of investment adviser who serves clients with competing or conflicting interests.

Furthermore, the conflict of interest disclosures required by the new Form ADV, Part 2 are as rigorous as those required by Form NRSRO, if not more so. For example, the new Part 2 – which must be affirmatively delivered to clients -- requires an investment adviser to describe its mandatory Code of Ethics and to offer a copy to any client or prospective client upon request. By contrast, Form NRSRO – which is simply posted on a rating agency’s Web site – gives an NRSRO the option of either appending a Code of Ethics to the Form, or explaining why it does not have such a Code. Codes of Ethics are not mandatory for NRSROs.

Conclusion

We appreciate the Commission’s interest in modernizing and improving the proxy voting infrastructure. We stand ready to assist the Commission and its staff to find technological and process solutions that ensure the accuracy, timeliness and reliability of the proxy voting system.

Respectfully,

A handwritten signature in black ink, appearing to read 'S. Harvey'.

Stephen Harvey
Business Head
Institutional Shareholder Services Inc.

Appendix A. ISS Client Survey

Key Findings

- Respondents generally favor improvements to the proxy system that would increase the transparency and efficiency of the voting process, such as vote confirmations and submission of votes directly to tabulators.
- When asked to balance the competing concerns of vote confirmations vs. the privacy of beneficial owners, respondents were evenly split over which concern should take priority, with a number commenting that there should not be a conflict.
- A substantial majority of respondents who currently disclose their votes would oppose adding further disclosure of share positions and shares-on-loan positions.
- Respondents overwhelmingly supported earlier company disclosure of items for meeting agendas, though the majority indicated this would have no impact on their decisions to recall shares.
- Few respondents were opposed to the enhanced tagging of company proxy filings and N-PX filings, but a substantial share had no opinion, indicating that many investors may not perceive what value standardized data tagging may have for them.

About the survey

ISS solicited survey responses from its institutional investor clients via an online survey tool for a three-week period in August and September, 2010. A total of 80 client responses were received, representing a broad mix of client types. Approximately 75% of responses were received from investors located in the United States, with a number of clients in the United Kingdom, France, the Netherlands, France, Ireland and Canada also contributing their feedback.

Survey Results

Tell us about the firm on whose behalf you are responding:

Answer Options	Response
Asset manager (e.g., mutual fund, investment manager, hedge fund, etc.)	74%
Asset owner (e.g., pension fund)	16%
Other (please specify)	10%



To what extent would your firm favor or oppose the following suggested changes/enhancements to the proxy voting process?

	Strongly favor	Moderately favor	Neutral	Moderately oppose	Strongly oppose	No opinion
Requiring that information on the current status of individual ballots be available to investors across all steps in the process	25%	33%	19%	10%	8%	5%
Requiring that vote confirmations be available across all steps in the process	37%	25%	22%	6%	5%	5%
Allowing for votes to be cast directly to tabulators rather than through a chain of intermediaries	37%	25%	23%	5%	3%	8%

Providing vote confirmation to beneficial owners may require greater transparency about the identity of beneficial owners. Which is more important to you?

	Response
Vote Confirmation	46%
Privacy of Holdings	46%
Not Sure	8%

If you currently disclose your votes publicly, either on Form N-PX with the SEC or through other mechanisms, would you be in favor or opposed to disclosing *your share ownership position* as of the date of the vote?

	Response
Favor	20%
Oppose	46%
Do not currently disclose votes	34%

Would you be in favor or opposed to disclosing any *positions that you had out on loan* as part of your vote disclosure?

	Response
Favor	23%
Oppose	50%
Do not currently disclose votes	27%



Should issuers release their agendas for their shareholder meetings prior to the record date, in order to facilitate the recall of shares on loan?

	Response
Yes, agendas should be released at least <i>one week</i> prior to record date	28%
Yes, agendas should be released at least <i>two weeks</i> prior to record date	57%
No	5%
Other (please specify)	10%

What impact, if any, do you think this change would have on your decisions to recall shares?

	Response
We would be more likely to recall shares than currently	35%
We would be less likely to recall shares than currently	5%
No change from current practice	60%

Would you consider standardized data tagging of documents relevant to shareholder voting, to facilitate easier reporting and extraction of key information, to be beneficial to you as an investor?

	Yes	No	No opinion
Def14A/Proxy Filings	54%	5%	41%
N-PX Filings	43%	11%	46%