

Chamber of Commerce Issues Principles for Companies, Proxy Advisors and the Investors that Hire Them

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As proxy season gets under way and the usual agitation over the influence of the proxy advisory firms begins, the Chamber of Commerce is trying to set some ground rules for the three main parties involved in annual meetings: companies, investors and the advisors that issue voting recommendations.

According to the [“Best Practices and Core Principles for the Development, Dispensation and Receipt of Proxy Advice”](#) published by the Chamber’s Center for Capital Markets Competitiveness, ISS and Glass Lewis constitute 97% of the proxy advisory business, and one employs 180 analysts to evaluate 250,000 issues at thousands of public companies over a 6-month period. The report is concerned that, through their recommendations on voting matters, the advisors “have become de facto corporate governance standard setters for public companies.”

The principles suggested for the proxy advisory firms include permitting companies to view drafts, ensuring adequate resources and appropriate diligence, disclosing interactions with those who may have interests in the advice such as proponents of shareholder proposals, giving their investor clients both the advantages and disadvantages of any voting advice, and providing all interested persons with detailed information about their methodologies and modeling. For public companies, the report addresses both their purchase of services (presumably from ISS) and engagement with proxy advisory firms. The report urges companies to gain a thorough understanding of the advisory firms’ positions on issues, disclose publicly any changes made as a result of interactions with the advisory firms, and consider whether independent directors should be consulted before engaging with advisory firms.

But the most interesting aspect of these principles may be those targeted at the institutional investors that hire and use the proxy advisory firms. The Chamber exhort these investors to exercise independent judgment and recognize that their responsibilities extend not only to investment, but also to voting, decisions. Investors should retain proxy advisors only after being comfortable that they have sufficient experience and controls to render accurate advice. In addition, the policies and practices for selecting those advisors should be developed or approved by an independent authority within the investment organization.

Reuters has [reported](#) that some fund managers are skeptical of the Chamber’s ability to convince investors to adopt these guidelines, from concerns related to costs and efficiencies, and more recently [also reported](#) that the Investment Company Institute has issued a statement in response regarding fund managers’ fiduciary duties to vote.

If you have any questions regarding the matters covered in this publication, please reach out to any of the lawyers listed below or your usual Davis Polk contact.

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