



January 31, 2023

Hon. Sean D. Reyes, Utah Attorney General
Hon. Ken Paxton, Texas Attorney General
The Attorneys General of Alabama, Alaska, Arkansas, Georgia, Idaho,
Indiana, Iowa, Kansas, Kentucky, Louisiana, Mississippi, Missouri, Montana,
Nebraska, New Hampshire, Ohio, South Carolina, Virginia, and West Virginia.

Dear Sirs and Mesdames:

Institutional Shareholder Services Inc. (ISS) respectfully submits this response to your letter dated January 17, 2023 to address the issues you have raised and to explain how we satisfy our legal and contractual obligations to, and serve the needs of, our diverse clients, including those doing business in your respective states (collectively, the States).

ISS takes seriously and is extremely proud of the fiduciary bond we have forged with our investor clients over the years. As you know, ISS is registered as an investment adviser with the U.S. Securities and Exchange Commission (SEC) under the Investment Advisers Act of 1940 (Advisers Act). In this capacity, the company is subject to the Advisers Act's extensive fiduciary regulatory regime. Where ISS renders advice to clients who are subject to the Employee Retirement Income Security Act of 1974 (ERISA), ISS has additional fiduciary obligations to discharge its duties solely in the interests of the ERISA plans' participants and their beneficiaries, and to act with care, skill, prudence, and diligence. In addition to these pre-emptive federal laws, ISS also acknowledges and affirms our obligations under applicable state pension and anti-fraud laws, as well as our client contracts.

As an independent research and data provider, ISS helps our institutional investor clients exercise *their* shareholder rights in accordance with *their* own investment parameters and proxy voting selections. ISS' job is to understand our clients' needs and provide them with the tools and policy options necessary for them to make their own informed proxy voting decisions and vote their shares in accordance with their respective investment and fiduciary responsibilities. While the evolving importance to investors of environmental, social, and governance (ESG) considerations may have given the false impression that ISS has altered our fundamental operating approach, let me make clear that fulfilling our fiduciary and contractual responsibilities to our clients remains the foundation of our business.

In the attached supplement, we explain ISS' regulatory duties in more detail, as well as the role ISS plays in the proxy voting process and the range of proxy voting guidelines the company provides. We also clarify our approach to environmental, social, and governance considerations in the formulation of our proxy voting research and advice.

Respectfully,

Gary Retelny
President and CEO



SUPPLEMENTAL RESPONSE

ISS' research and proxy advisory business is governed by robust regulatory regimes.

The Advisers Act

A proxy vote is an asset that must be managed according to the same standards that apply to the securities to which the vote pertains.¹ That being the case, advice about how to vote a proxy is a form of investment advice, and a party who provides such advice for compensation is an investment adviser subject to regulation under the Advisers Act. In the SEC's words, proxy advisory firms

provide analyses of shareholder proposals, director candidacies, or corporate actions and provide advice concerning votes in a manner designed to assist their institutional clients to achieve their investment goals with respect to the voting of securities they hold. In other words, [such advisers], for compensation, engage in the business of issuing reports or analyses concerning securities and providing advice to others as to the value of securities and would therefore meet the definition of an investment adviser unless an exclusion applies.²

Over the years, some have questioned whether proxy advisers might qualify for a statutory exclusion for "the publisher of any bona fide newspaper, news magazine or business or financial publication of general and regular circulation" (publisher's exclusion).³ The U.S. Supreme Court has interpreted the publisher's exclusion to be limited to publications of general and regular circulation, that render impersonal advice, meaning advice that is not tailored to the objectives or needs of any particular client.⁴ Judged by this standard, proxy advisers who furnish analyses and vote recommendations based on investors' customized, proprietary voting guidelines — which ISS does, as explained below — do not qualify as "publishers" under the Advisers Act. Custom vote recommendations, by their very nature, are "tailored to the objectives or needs" of particular clients. Furthermore, because a custom vote recommendation is given only to the client who owns the policy on which the recommendation is based, such a recommendation fails to satisfy the publisher's exclusion requirement that advice be of "general and regular circulation."

¹ This well-understood principle was first articulated thirty-five years ago by the U.S. Department of Labor. Letter from Alan D. Lebowitz, Deputy Assistant Secretary, U.S. Department of Labor to Mr. Helmuth Fandl, Chairman of the Retirement Board, Avon Products, Inc. (Feb. 23, 1988), 1988 ERISA LEXIS 19, *5-7.*

² SEC Rel. No. 34-89372 (Jul. 20, 2020) at 16, 85 Fed. Reg. 55082, 55086 (Sep. 3, 2020) citing SEC Rel. No. IA-3052 (Jul. 14, 2010) at 109-110, 75 Fed. Reg. 42982, 43010 (Jul. 22, 2010).

³ Advisers Act, § 202(a)(11)(D), 15 U.S.C. 80b-2(a)(11)(D)

⁴ *Lowe v. SEC*, 472 U.S. 181 (1985).



In the absence of a statutory exclusion, proxy advisers — especially those whose clients include pension plans⁵ — are generally obliged to register with the SEC as investment advisers. ISS has been registered under the Advisers Act for more than twenty-five years.

The Advisers Act establishes a federal fiduciary standard of conduct that imposes duties of care and loyalty on investment advisers — both those who register and those who should register but choose not to.⁶

The duty of care obliges an adviser to provide advice that is in clients' best interests. The duty of loyalty obliges the adviser not to subordinate clients' interests to its own. This entails an obligation to eliminate, or at least manage and disclose, all conflicts of interest that might incline the adviser to render advice that is not disinterested.⁷ Advisers Act Rule 206(4)-6 applies these traditional fiduciary concepts by requiring investment advisers to adopt written policies and procedures reasonably designed to ensure that the adviser monitors corporate actions and votes client proxies in clients' best interests. Because investors are such a diverse lot, acting in their clients' best interests may require an adviser to adopt more than one set of proxy voting policies.⁸ An adviser's proxy voting policies and procedures must also address how the adviser manages material conflicts that may arise between its interests and those of its clients. Finally, the adviser must describe the policies and procedures to clients and must furnish those policies and procedures to clients upon request.

By virtue of the National Securities Markets Improvement Act of 1996 (NSMIA),⁹ an investment adviser that is registered under the Advisers Act is, with limited exception, not subject to State investment adviser regulation.¹⁰

ERISA

Advisers to private-sector retirement and employee benefit plans are also subject to ERISA, another

⁵ Advisers Act §203A-2(a). "Pension plans" include private-sector plans, government plans and church plans.

⁶ SEC Rel. No. IA-5653 (Dec. 22, 2020) at n. 327, 86 Fed. Reg. 13024 (Mar. 5, 2021) ("If a person meets the definition of 'investment adviser,' as defined under section 202(a)(11) of the Advisers Act, such person has a fiduciary duty to clients, regardless of whether the adviser is registered or required to be registered, and thus is liable under the anti-fraud provisions of the Advisers Act . . . for failure to disclose conflicts of interest."). See also *SEC v. Saltzman*, 127 F. Supp. 2d 660, 668 (E.D. Pa. 2000).

⁷ SEC Rel. No. IA-5248 (Jun. 5, 2019) at 23, 84 Fed. Reg. 33669, 33676 (Jul. 12, 2019), citing *SEC v. Capital Gains Research Bureau, Inc.*, 375 U.S. 180, 191 (1963).

⁸ See *In the Matter of INTECH Investment Management LLC and David E. Hurley*, SEC Rel. No. IA-2872 (May 7, 2009).

⁹ Pub. L. No. 104-290, 110 Stat. 3416 (1996).

¹⁰ Advisers Act, §203A(b). Notwithstanding this general pre-emption, the States retain their authority to enforce their laws against fraud or deceit.

statute that generally pre-empts state law.¹¹ ERISA imposes two overarching fiduciary responsibilities on covered advisers. First, the adviser must discharge its duties solely in the interests of the plan’s participants and beneficiaries and for the exclusive purpose of providing benefits to participants and beneficiaries and defraying reasonable expenses of plan administration. Second, the adviser must discharge its duties with respect to the plan with the care, skill, prudence and diligence under the prevailing circumstances that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character with like aims.

The application of these fiduciary duties in the proxy voting context is governed by ERISA Rule 404a-1, the Investment Duties Regulation. Under this rule, a fiduciary must base its proxy voting determinations on “factors that the fiduciary reasonably determines are relevant to a risk and return analysis, using appropriate investment horizons consistent with the plan’s investment objectives” and taking the plan’s funding policy into account.¹² This rule expressly acknowledges that ESG factors may, depending on facts and circumstances, be relevant to a fiduciary’s risk-return analysis.

Where government employee benefit plans—as opposed to private-sector plans—are involved, ISS’ proxy advisory activities are subject to the States’ respective public pension statutes. In many instances, these laws impose fiduciary duties similar to those found in ERISA.¹³ ISS acknowledges and affirms our responsibilities here, too.

Proxy advisers such as ISS play an essential *advisory* role in the proxy process. In the free market, institutional investors hire ISS because in addition to the operational and cost efficiencies we offer, ISS provides investors with objective proxy research, analysis and vote recommendations *based on the criteria and policies they select*.

Institutional investors commonly hold hundreds or thousands of different portfolio securities, and many participate in a significant number of proxy votes during a compressed time period every year. These investors often engage proxy advisory firms like ISS for independent, objective, and high-quality company-specific research and vote recommendations in accordance with their distinct investment parameters and fiduciary responsibilities. Small institutions may lack the resources or expertise to analyze each individual proposal; but even larger firms often look to proxy advisers for assistance in

¹¹ ERISA, §514(a), 29 U.S.C. §1144(a).

¹² Rule 404a-1(b)(4) and (d)(2)(ii)(A).

¹³ See Opinion of the Office of the Attorney General of the State of Alaska, 1988 Alas. AG LEXIS 64 at *4-5* (1988) (noting that state requirements for managing government employees’ retirement plans “parallel, in many respects, the standards imposed by federal legislation on private institutional retirement fund managers under the Employment Retirement Income Security Act of 1974 (ERISA). In most situations, the principles, guidelines, and body of law developed for ‘prudent’ investments under that Act can be used as guidance for the managers of state money. . .”). See also letter from Christopher J. Ailman Chief Investment Officer of California State Teachers’ Retirement System (CalSTRS) to Elizabeth M. Murphy, Secretary, SEC, Aug. 29, 2011 at 3 (“ERISA plans and governmental plans are similarly administered in accordance with a stringent fiduciary standard and for the benefit of their beneficiaries.”).

analyzing and synthesizing an enormous volume of information in a short period of time. In each case, using proxy advisers gives shareholders a meaningful voice in corporate governance while maximizing the efficient use of manager resources. Larger institutions with in-house research teams also find it efficient, cost-effective, and informative to add the views of one or more proxy advisory firms to the mix when making fiduciary proxy voting decisions.

Institutional investors have been vocal about the manner in which they utilize proxy advisory services and the benefits they derive therefrom. For example, during a 2018 SEC staff roundtable on the proxy process, the Corporate Governance Officer of the Ohio Public Employees Retirement System (OPERS) had this to say:

*It's our fiduciary responsibility to vote proxies in [Ohio public employees' and retirees'] best interests, which means increasing shareholder returns. The way that we're able to do that is by partnering with a proxy advisory firm. We have our own corporate governance policy and guidelines, and we contract with a proxy advisory firm for two services: for their voting platform. . . and then also for research. But it's our guidelines and policy that drive how our votes are cast.*¹⁴

Investors expressed similar views on this topic in connection with a 2019 SEC rule proposal and at an earlier SEC staff roundtable on proxy advisers.¹⁵

¹⁴ Remarks of Patti Brammer, Transcript of the Roundtable on the Proxy Process at 187, (Nov. 15, 2018) [available at https://www.sec.gov/files/proxy-round-table-transcript-111518.pdf](https://www.sec.gov/files/proxy-round-table-transcript-111518.pdf), ("2018 Roundtable Transcript"). See also remarks of Jonathan Bailey, Managing Director and Head of ESG Investing, Neuberger Berman, LLC, *id.* at 184 (noting that his firm relies on proxy advisers to "execute the work for our management around how those proxies are voted" and for data aggregation. "A standardized form of pulling data together around certain elements of the proxy [is] very helpful for us in executing our own independent policy."); remarks of Scott Draeger, Vice President, Director of Wealth Management, General Counsel and Chief Compliance Officer, R.M. Davis Private Wealth Management, *id.* at 194 (noting that small investment management firms rely on proxy advisory firms for more extensive research reports than in-house analysts can produce). See also the following public comments submitted to the SEC in connection with the 2018 Roundtable, [available at https://www.sec.gov/comments/4-725/4-725.htm](https://www.sec.gov/comments/4-725/4-725.htm): letter from Kurt N. Schacht, Managing Director, CFA Institute (Oct. 4, 2019) at 2 (institutional investors "hire proxy advisers to act as consultants and analysts with regard to sorting through hundreds or thousands of company proxy statements. This relationship is critical to a) the proper functioning of the corporate governance system, b) the integrity of the proxy-voting process, and c) the quality of stewardship and fiduciary accountability for asset owners....Investors know not to rely solely on a single analyst's recommendation when buying or selling a security. In a similar manner, they employ multiple inputs into investment and proxy decision-making."); letter from Gail C. Bernstein, General Counsel, Investment Adviser Association (Dec. 31, 2018) at 2 ("...investment advisers of all sizes would face extreme logistical difficulty if they were unable to use [proxy advisers'] services to assist in the mechanics of voting proxies and for research."); letter from Ron Baker, Executive Director, Colorado Public Employees' Retirement Association (COPERA) (Oct. 30, 2019) at 1 ("Although we incorporate third party research into our analysis, we ultimately vote according to [our] own guidelines and policies, which we believe are in the best interest of our plan beneficiaries.").

¹⁵ See e.g., the following public comments submitted in response to SEC Rel. No. 34-87457 (Nov. 5, 2019), Fed. Reg. 66518 (Dec. 4, 2019), [available at https://www.sec.gov/comments/s7-22-19/s72219.htm](https://www.sec.gov/comments/s7-22-19/s72219.htm), ("2019 Proposing Release"): letter from Robert Arnold, Trustee, and Matthew Aquiline, Trustee, Bricklayers & Trowel Trades International Pension Fund (Jan. 31, 2020) at 3 ("Proxy advisors make it possible for fiduciaries...to fulfill their fiduciary obligations under ERISA and similar statutes to vote proxies in a value-maximizing way....They supplement clients' internal capacity, both in terms of expertise and workload. Proxy advisors provide a perspective that is independent of company management, directors and dissident shareholders/shareholder



Institutional investors have also been vocal about sufficiency of the conflicts of interest disclosure they receive from their proxy advisers.¹⁶

ISS' clients, including those in the States, are not monolithic but pursue a range of different investment approaches as dictated by their own fiduciary duties and investment guidelines.

ISS' clients, including those in your States, are institutional investors — including investment managers, private-sector and public employee benefit plans, and mutual funds — but the similarity ends there. Some clients may pursue aggressive, short-term investment strategies, while others are risk-averse buy-

proposal proponents, all of whom have concrete, and often financial, interests in the outcomes of votes....[P]roxy advisors play a key role in the corporate governance ecosystem, enabling shareholders to use their voting rights to hold management accountable and improve corporate governance.”); letter from Ken A. Bertsch, Executive Director, and Jeff Mahoney, General Counsel, Council of Institutional Investors (Jan. 30, 2020) at 7 (“...there is clear market demand for proxy advisory services even beyond vote execution, as the cost of proxy voting analysis would be vastly more expensive if done from scratch by each investor individually.”); letter from Hank Kim, Executive Director and Counsel, National Conference on Public Employee Retirement Systems (Feb. 3, 2020) at 2 (“To meet their fiduciary duty, fund administrators rely on the expert advice of investment advisers and proxy advice firms to provide timely analysis to inform proxy voting policies.”); letter from Lisa A. Smith, Vice President, Advocacy and Public Policy, Catholic Health Association of the United States (Feb. 3, 2020) at 2 (“Proxy advisory firms are a cost-effective part of the shareholder voting process....Proxy firms merely offer advisory recommendations, no institutional investor is required to follow them.”); letter from John Starcher, President and CEO, Bon Secours Mercy Health (Feb. 3, 2020) at 2 (“Proxy advisory firms help investors meet their fiduciary responsibilities by providing independent, efficient and cost-effective research services to inform their proxy voting decisions.”); letter from Paul Schott Stevens, President and CEO, Investment Company Institute (Feb. 3, 2020) at 3 (“[F]und advisers that consult [proxy advisors’] research and recommendations may consider this information to varying degrees, along with views of companies, other investors, and shareholder proponents. Given the complexity and range of fund proxy voting responsibilities, many fund complexes value [proxy advisors’] services.”).

See also remarks of Anne Sheehan, Director of Corporate Governance, CalSTRS, Transcript of Proxy Advisory Firms Roundtable at 153-154 (Dec. 5, 2013), available at www.sec.gov/spotlight/proxy-advisory-services/proxy-advisory-services-transcript.txt; remarks of Lynn Turner, Managing Director, LitiNomics, Inc., discussing his experience at COPERA, *id.* at 51-52; remarks of Eric Komitee, General Counsel, Viking Global Investors LP, *id.* at 74; and remarks of Michelle Edkins, Managing Director and Global Head, Corporate Governance and Responsible Investment, Blackrock, Inc., *id.* at 45 (“BlackRock typically uses research and other data services from proxy advisory firms as one of many inputs in our proxy voting decisions. We use the firms primarily to synthesize the vast array of data that you get in proxy statements, and more than just synthesize it, to put it in a consistent format.”).

¹⁶ See remarks of Patti Brammer, OPERS, 2018 Roundtable Transcript at 213 (“I would just say that I can speak to—our experience has been that yes, the conflict disclosure is very easy to understand. It’s not boilerplate language. It does provide sufficient detail, and it is an element that we use and consider.”); remarks of Jonathan Bailey, Neuberger Berman, *id.* at 212 (“We have seen no evidence that there has been any impact from conflicts of interest on the services provided to us, and we feel comfortable with the level of disclosure that we get. And on an annual basis, we review that with our chosen service providers, and will continue to do so.”). See also the following public comment letters on the 2019 Proposing Release: Letter from Marcie Frost, Chief Executive Officer, CalPERS, to Vanessa Countryman, Secretary, U.S. Securities and Exchange Commission, Feb. 3, 2020 at 4 (“We see no evidence that conflicts of interest with proxy advisors have led to voting advice that conflicts with our voting policies.”); letter from Ron Baker, Executive Director, COPERA, to Vanessa Countryman, Secretary, U.S. Securities and Exchange Commission, Feb. 3, 2020 at 4 (“ISS does disclose the names of its advisory clients upon request, a service that PERA has utilized. In addition, we requested information from ISS regarding the separation of information and physical location between their proxy service research and advisory businesses, and received a satisfactory response.”).



and-hold investors. Some are focused solely on maximizing profit, while others seek to achieve reasonable financial returns in a way that aligns with their religious or philosophical beliefs. Some ISS clients themselves pursue divergent investment and proxy voting strategies, depending on the needs of their own clientele. As explained above, a registered investment adviser is required to vote proxies in each client's best interest, which may oblige the adviser to adopt different voting guidelines for different clients.¹⁷ Mutual fund complexes are constrained to vote proxies in the manner disclosed in their funds' respective prospectuses and statements of additional information.¹⁸

ISS has fiduciary and contractual obligations to serve each client on its own terms, and we do so.

In order to meet the needs of our diverse clientele, including in the States, ISS offers an array of proxy voting policies – the Benchmark Voting Policy and a range of Specialty Voting Policies – that respond to and reflect clients' varied investment strategies and goals. It is increasingly commonplace for ISS to help investors implement *custom* voting policies that investors develop in-house, in consultation with their governance departments, board of trustees, and portfolio managers.

Through our governance research and proxy voting recommendations, ISS today helps more than 1,600 institutional investor clients make and execute informed proxy voting decisions for approximately 44,000 shareholder meetings a year in over 110 developed and emerging markets worldwide. In so doing, ISS applies specific policy frameworks either created or selected by our clients.

In many instances, ISS prepares research and voting recommendations based on a client's own **custom voting policies** which reflect their own specific approaches to proxy voting and/or the mandates they have with the clients for whom they manage assets. ISS implements customized voting policies and issues custom policy vote recommendations for more than 400 clients, including clients in the States. These customized voting policies reflect clients' unique corporate governance and voting philosophies. Accordingly, the vote recommendations issued under these policies may – and often do – differ from those issued under the ISS Benchmark Voting Policy and Specialty Voting Policies.

The **ISS Benchmark Voting Policy** and **Specialty Voting Policies** are developed in a clearly defined manner that is transparent to our investor clients, market participants, and the public. ISS regularly updates its proprietary policies to reflect investor and market sentiment.

The **ISS Benchmark Voting Policy** serves as a tool to assist institutional investors in promoting long-term shareholder value, good governance, and risk mitigation. The policy, which differs market to market, is developed through a robust, inclusive, and transparent process, which is open to investors, companies, and the general public. The bottom-up policy formulation process collects feedback from a diverse group of market participants through multiple channels, including:

¹⁷ See note 8, *supra*.

¹⁸ See SEC Rel. No. IC-25922 (Jan. 31, 2003) at 51, 68 Fed. Reg. 6564, 6574 (Feb. 7, 2003).

- Ongoing dialogue with, and feedback from, investor clients, and other participants in the capital markets, including issuers.
- Periodic roundtable and other similar sessions with clients and relevant industry groups.
- An annual policy survey open to all interested parties, and designed to obtain a variety of input from institutional investors, their portfolio companies, and other stakeholder groups, to test policy development concepts and elicit feedback.

Proposed changes to the Benchmark policy are subject to public comment. Final updates to the policy are usually published in the fourth quarter of each year to apply to meetings held on or after February 1st of the following year.

In addition, and in direct response to the demands of our diverse clientele, ISS currently offers **Specialty Voting Policies** that evaluate voting matters from the following different thematic perspectives, listed alphabetically:

- **Board-Aligned Policy** voting guidelines, designed to provide analyses and recommendations that allow companies to operate within the flexible framework of the laws, regulations and exchange requirements that govern them, while maintaining proper safeguards, including governance structures and practices, that foster and protect long-term value creation for shareholders.
- **Catholic-Faith Based Policy** voting guidelines, designed to provide analyses and recommendations that are broadly consistent with the objectives of socially responsible shareholders as well as the teachings of Catholicism and Christianity as a whole.
- **Climate Policy** voting guidelines, designed to provide analyses and recommendations based on a model for assessment of a company's climate-related performance and disclosures. The model draws on widely recognized frameworks, including the Task Force on Climate-related Financial Disclosures (TCFD), and balances the need for good disclosure on climate-related-risks with a company's performance on key climate-related factors.
- **Public Fund Policy** voting guidelines, designed to provide analyses and recommendations to assist public funds, with the intent of maximizing the long-term economic benefits of plan participants, beneficiaries, and citizens of the state in which the fund resides. The guidelines are generally designed to help public funds vote their proxies in a manner consistent with widely accepted corporate governance and corporate responsibility practices that lead to increased long-term shareholder value.
- **Socially Responsible Investor (SRI) Policy** voting guidelines, designed to provide analyses and recommendations that are consistent with the financial and social objectives of socially responsible shareholders.



- **Sustainability Policy** voting guidelines, designed to provide analyses and recommendations that promote support for recognized global governing bodies that promote sustainable business practices and advocate for stewardship of the environment, fair labor practices, non-discrimination, and the protection of human rights.
- **Taft-Hartley Policy** voting guidelines, designed to provide analyses and recommendations that are based upon the AFL-CIO Proxy Voting Guidelines and with a focus on a worker-owner view of long-term shareholder value.

The Specialty Voting Policies are reviewed annually, taking into account the annual review and update of the Benchmark Voting Policy, as well as the evolving market perspectives, best practices, and related legal and market-specific developments.

We continue to consider the development of additional specialty policies in response to client demand for additional, differing points of view.

Whether offering vote recommendations under a custom policy, benchmark policy, or specialty policy, ISS supports the recommendations with extensive research and analysis and bases its research and recommendations exclusively on publicly available corporate reporting. Ultimately, it is our institutional investor clients who select or develop a proxy voting policy in alignment with their responsibility to fulfill, and faithfully execute, a fiduciary duty to vote their clients' securities in their clients' best interests.

As a disinterested fiduciary proxy advisory firm, ISS' sole objective is to help its clients make informed proxy voting decisions based on the criteria and policies they select.

As a disinterested fiduciary proxy advisory firm, ISS has no stake in the outcome of a particular vote. ISS does not choose the ballots or agenda items on which we render advice. ISS provides its services only to clients who have hired it to do so; analyzes only the companies and issues designated by its clients; and as explained above, bases its recommendations on voting criteria or policies selected, and in many cases, customized, by our clients.

Given the diversity of policies and guidelines adopted by our clients—including clients in the States—ISS may issue different recommendations to different clients about the same ballot measure. In some instances, ISS may even offer different recommendations about the same vote to the same client if that client has selected more than one set of voting criteria in response to the varying investment objectives of its own clients. For example, ISS may advise clients using its benchmark voting policy to vote FOR a certain proposal, while advising clients who employ sustainability-based or faith-based voting criteria to vote AGAINST that same proposal.

We are similarly indifferent as to whether clients choose to follow an ISS vote recommendation or not—or whether they choose to vote at all. *In every instance, it is the institutional investors who control both their voting policies and their voting decisions.*



ISS’ approach to incorporating ESG considerations in the proxy process is consistent with our legal and contractual obligations, including our obligations to clients in the States.

Investor interest in and focus on ESG has grown substantially in the last few years. In a 2020 report on public companies’ disclosure of ESG factors, the U.S. Government Accountability Office found that the institutional investors they interviewed generally agreed that ESG considerations can substantially influence a company’s long-term financial performance.¹⁹ Among other things, “factors like climate change impacts and workplace safety may affect a company’s expected financial performance and thereby its value to shareholders.”²⁰

Our window into the investment management industry and our long history in corporate governance research have allowed us to witness this evolution in investor sentiment first-hand. We have seen that a growing cohort of investors considers environmental and social factors as increasingly material to managing their investment assets, as an important driver of long-term investment returns, and as a critical tool in managing portfolio risk. Accordingly, these investors generally view enhanced disclosure on ESG factors as improving the mix of information they need to allocate capital and build and manage portfolios. They believe incorporating material ESG factors into fundamental investment analysis can be consistent with their duty to manage the long-term financial prospects of their investment portfolios. Because proxy voting is an ancillary investment activity, it follows that a growing number of investors also believe ESG factors are material to their proxy voting determinations.

Of course, just as our clients have different investment time horizons, risk tolerances, and investment strategies, so too, they have different ways of assessing the relevance of ESG factors to their investment goals, and by extension, their proxy voting decisions. Our job remains the same: To respect the fact that our clients — including clients in the States — have diverse, often conflicting, opinions and investment strategies and to furnish each client with high-quality, independent, and timely proxy research and advice based on the voting guidelines *they* select. To this end, ISS does not take a position on investors’ proxy voting strategies or their views regarding ESG factors.

The degree to which, if at all, or the manner in which ISS incorporates certain factors into its analysis and vote recommendations — whether an “ESG” matter or a more traditionally core governance topic — depends on the nature of the proxy ballot issue and the client’s particular voting guidelines.²¹ In all cases, however, our research is grounded in the same neutral and analytical perspective. We are

¹⁹ U.S. GOV’T ACCOUNTABILITY OFFICE, GAO-20-530, PUBLIC COMPANIES: DISCLOSURE OF ENVIRONMENTAL, SOCIAL, AND GOVERNANCE FACTORS AND OPTIONS TO ENHANCE THEM (2020), available at <https://www.gao.gov/assets/710/707949.pdf>.

²⁰ *Id.* at 5.

²¹ As explained earlier, in many instances, ISS prepares research and voting recommendations based on a client’s own custom voting policies, which may incorporate E, S, or G considerations. ISS’ Benchmark Voting Policy is updated annually after a robust public engagement process. The use of ESG factors in the Benchmark Policy reflects public sentiment and, like the treatment of ESG in ISS’ various Specialty Voting Policies, is disclosed to clients, allowing them to choose the approach that best suits their particular circumstances.



confident that this approach is consistent with our fiduciary duty to render advice that is in our clients' best interests.

This is also consistent with our specific regulatory obligations. For example, whether an ESG consideration is an appropriate risk-return factor under the ERISA Investment Duties Regulation depends on individual facts and circumstances.²² The weight a fiduciary gives to any factor should appropriately reflect a reasonable assessment of its impact on risk and return.

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ISS has worked hard for decades to earn our clients' trust. We are committed to continuing our long tradition of serving the institutional investment community in a manner consistent with our legal and contractual obligations.

²² See note 12, *supra*.