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Center for Capital Markets Competitiveness Discusses Initiatives Regarding
Proxy Advisory Firms and Proxy Voting Responsibilities

The U.S. Chamber of Commerce's Center for Capital Markets Competitiveness (CCMC) released a report today providing their perspectives on what public companies can do to assist institutional investors and proxy advisory firms in satisfying their proxy voting responsibilities. The report flows from the regulatory guidance issued by the SEC's Divisions of Investment Management and Corporation Finance (which we previously discussed) regarding the proxy voting responsibilities of investment advisers (such as fund managers), their duties to monitor proxy advisory firms to the extent such firms are utilized and the applicability of the proxy rules to such firms. That guidance also made clear that investors and advisory firms should update their proxy advisory and voting procedures to ensure compliance in time for the 2015 proxy season and fundamentally reminded investment managers that their fiduciary duties are incompatible with over-reliance on proxy advisors.

The 2015 proxy season will be a critical time for market participants to assess whether the power and influence of proxy advisory firms, of which Commissioner Daniel M. Gallagher has cogently and consistently expressed concern, can be effectively counterbalanced by investors exercising their own independent, informed judgments on voting matters, rejecting the rote application of "one-size-fits-all" criteria and engaging constructively and directly in dialogue with issuers in a pragmatic manner on a case-by-case basis. The CCMC has made sensible recommendations for companies to further that goal including, among many others, the following:

- Continue to engage in year-round, regular communications with institutional investors to develop and maintain a relationship of trust and confidence, provide an opportunity to bring concerns about the actions (or inaction) of proxy advisory firms to the attention of investors and share perspectives on the company's plans, performance and opportunities for creating long-term, sustainable value;

- Verify what proxy advisory firms are doing to identify, manage, remediate, disclose and respond to conflicts of interest and bring any deficiencies to the attention of the advisory firm, investors and, if necessary, the SEC; and

- Maintain a continuous dialogue with proxy advisory firms to correct erroneous or stale information, seek the opportunity for input both before and after recommendations are finalized and vigorously address problematic recommendations that do not advance the best interests of shareholders.

While much work remains to be done to facilitate more thoughtful and responsible use of proxy voting advice and address the conflicts of interest, lack of transparency and limited accountability of proxy advisory firms, the approaches outlined in the CCMC report deserve careful consideration by public companies.

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