November 11, 2015

Mr. Gary Retelny
President and Chief Executive Officer
Institutional Shareholder Services
702 King Farm Boulevard
Suite 400
Rockville, MD 20850

Re: 2016 Benchmark Policy Consultation

Dear Mr. Retelny:

The Corporate Governance Coalition for Investor Value (the "Coalition")[1] appreciates the opportunity to comment on the Institutional Shareholder Services' ("ISS") 2016 Benchmark Policy Consultation (the "Consultation"). As outlined below, the Coalition is concerned about the following proposed policies applicable solely to U.S.-based companies: (1) board actions without shareholder approval, (2) director service on more than one board, and (3) compensation practices and disclosure by externally-managed issuers.

On a broad note, the Coalition is concerned that the period of ten business days that ISS has provided to comment on the Consultation is simply unreasonable. This compressed time frame does not allow for a careful analysis and consensus-building associated with a credible notice-and-comment period.

[1] The Coalition provides a forum for the discussion of issues of common interest among its members and to advocate for strong corporate governance policies and the federal securities laws that promote long-term value creation for investors and the firms in which they invest. Coalition members represent American businesses of all sizes, from every industry sector and geographic region. These businesses produce the goods and services that drive the American economy, employing and creating opportunities for millions of Americans, and serving the countless communities nation-wide in which they operate. The Coalition believes that strong corporate governance policies are important to provide investors with return and businesses with the capital needed to grow and operate.

Board Actions without Shareholder Approval

The regulatory environment in the United States has placed U.S. capital markets at a competitive disadvantage and increasingly serves to discourage private companies from entering the U.S. public markets through an initial public offering ("IPO"). Thus, the Coalition opposes any proposed ISS policy that would serve to penalize directors of newly-public companies. Founders of public companies enact lawful defensive measures for the simple reason that they would prefer to innovate and grow the business rather than focus on defending against opportunistic tactics of shareholder activists or hostile bidders. Moreover, in an IPO, the terms of a staggered board or supermajority voting requirements are fully disclosed to shareholders at the time of their investment decision. It is not clear why directors should be penalized once, let alone at successive meetings, if investors choose to purchase shares knowing these terms. Were ISS to implement policy changes of the kind discussed in the Consultation, we believe many privately-held emerging growth companies would be discouraged from entering the US public markets.

ISS should recognize that its policies have a direct impact on the pool of investment choices available to American investors. However, any ISS policy that limits a company's access to the capital markets automatically results in a stagnant or declining pool of investment choices, to the detriment of American investors. Simply put, investors do not benefit by having fewer public companies in which to invest. We strongly urge ISS to table any proposed policy changes that seek to penalize newly public companies and their directors.

In addition, ISS guidelines should be consistent with prevailing state corporation law and, in many instances, the proposed policies in the Consultation fail this test. This is particularly true with respect to seasoned issuers. We note that boards must face difficult decisions when determining how to act in the best interests of the corporation and its stockholders, and adding an extra layer of inconsistent benchmark policies will not aid in this effort.

Director Service on More than One Board

The Coalition opposes one-size-fits-all corporate governance initiatives, including ISS's proposed policy changes on "overboarding." The number of boards on which a given director can ably serve is a highly subjective determination dependent on a number of variables, including among other things a company's particular industry, the relative complexity of its business model, its geographic footprint, the length and frequency of board and committee meetings, and the individual skills and competencies of the director. The use of the term "overboarding" reveals ISS's bias on the matter and implies that there is an ideal number for every public company, despite the fact that ISS has presented no empirical evidence demonstrating that service on multiple boards makes directors less effective. Directors who have the unique perspective of sitting on other boards may in fact be better suited to exercise their fiduciary duties and effectively oversee company management.

ISS's own survey results contradict the predisposition taken to director service in the Consultation, as those survey results reveal no clear consensus as to an optimal number. For this reason, we believe that ISS has arbitrarily chosen an ideal number, but doing so neither considers the specifics of the company or the abilities of the director. Instead, we believe ISS and the investor-clients to whom it owes fiduciary duties would be better served by considering the individual facts and circumstances of a particular company and its individual directors. Developing a simple metric, as the Consultation proposes, is no substitute for thorough and deliberate examination of a particular company. However, ISS's metric would lend itself to automated analysis and exacerbate the problem of "check-the-box" governance.

ISS should also recognize that issuers that focus in highly-specialized areas, such as cybersecurity, international operations, or biotechnology, have a strong demand for directors that come from a limited pool of individuals with the requisite knowledge and experience. Highly-qualified directors with credentials in these or other high-demand areas will necessarily be asked to serve on multiple boards. Thus, setting artificial limits on the number of boards, on which any individual director may serve, will have the effect of depriving investors of some highly-qualified directors. Moreover, whether any director has the time and resources to contribute to several boards is a highly contextual question, as a talented director can make significant

contributions to multiple boards. Conversely, setting any arbitrary limits will unnecessarily limit the pool of effective director candidates and create the potential that other boards will be forced to consider less ideal candidates.

The Coalition also has similar concerns with respect to the number of boards on which chief executive officers ("CEOs") may serve. Similarly, investors should not be deprived of the knowledge and viewpoint a sitting CEO can bring to other public company boards. Board service can also add to the experience and professional network of a CEO, making the CEO a better leader of his or her own company.

The Coalition thus rejects any effort to set a default number of boards on which a particular director can or should serve. Instead, we urge ISS to do the work its investor-clients expect of it by considering each company and each director individually in light of the demands placed on them by board service at multiple companies. It should not be overly burdensome for ISS to make a case-by-case assessment of company performance, develop a view on a director's board commitments, and consider the number of meetings the director attends at other public companies because this information is readily available in each company's proxy statement. This analysis will help to determine when some directors should focus their attention on fewer boards. At the same time, other directors will excel while serving multiple boards. ISS should not make that determination for companies by adopting its proposed policy changes.

Compensation Disclosure by Externally-Managed Issuers

The Coalition believes that externally-managed issuers ("EMIs") would be unduly burdened by the policies proposed by the Consultation with little to no benefit to stockholders. Moreover, the Coalition believes that ISS has critically underestimated the value of a manager hired by an EMI and has chosen to instead center on perceived financial or governance challenges. On the contrary, in many sectors, such managers provide significant financial and governance benefits, including (1) the fact that an external manager has a larger scale and can typically provide services at a more economical cost; (2) the ability to broaden the skills and experiences available to the issuer by being able to select from a broad pool of

qualified managers with the requisite experience in the field; and (3) the ability to directly oversee a manager's performance when service agreements are in place.

Importantly, the manager is usually an asset management firm that provides management services to multiple clients and remains subject to the oversight of the EMI's board. Under the management contract, the manager typically provides executive officers to the EMI. Ultimate discretion as to the terms of employment of executive officers (including compensation) is left to the manager.

It's also important to note the structural and legal barriers between the EMI and a manager. For example, managers are typically private entities that are not subject to the disclosure requirements of the Securities and Exchange Commission ("SEC"). The EMI has no control and often has no information on how a manager compensates its employees. These employees typically also perform services for the manager's other clients, with no specific allocation of their total compensation for services performed to each client. If an EMI does pay compensation or reimburses the manager for an employee's compensation, such information is disclosed in the EMI's proxy statement pursuant to SEC rules.

The Coalition also notes that, to the extent that the manager is not performing satisfactory services or the board of the EMI determines that the management fee is not fair, the board typically can terminate the management agreement with the manager, often subject to paying a termination fee unless the agreement is terminated for cause (as defined in such agreement), or renegotiate the management fee. Consequently, an EMI is already fully required to disclose the fees and compensation it pays for third-party management services provided by the manager and its employees without the proposal described in the Consultation.

For these reasons, the policies described in the Consultation create a serious risk of liability for the EMI and could even result in stockholder action being taken against it as a result of a failure to disclose such information. At the crux of our concern is the requirement that an EMI require disclosure of information that it neither in fact nor in law has access to—compensation paid by third-party private companies to their employees. Failure to disclose such information could even result in an "against" vote on the say-on-pay vote under the Consultation.

ISS should also be evaluating its policies on whether the information disclosed to stockholders would provide useful information and whether any issues identified in such disclosure would be actionable by an EMI. The proposal contained in the Consultation fails on both counts. For example, an EMI has no ability to change the compensation paid by the manager to its personnel and would still be required to pay the contractual management fee due to the manager. Disclosure of fees paid by a manager to its personnel who serve as officers can also be misleading, since such fees may include compensation for services performed by such employees for other clients of the manager which may have nothing to do with the EMI. The Coalition also notes that the SEC does not require the type of disclosure called for in the Consultation, pointing to the inherent practical issues associated with requiring EMIs to obtain such information and whether such information would in fact be useful, or potentially misleading, to investors.

In sum, the Coalition believes that adopting the proposal in the Consultation with respect to EMIs:

(i) would not provide additional detail on the amount of compensation paid by the EMI,

(ii) could create liability for EMIs for information provided by third-party managers,

(iii) could result in an "against" vote recommendation on a say-on-pay vote if an EMI cannot force a third-party manager to provide information on the compensation of its employees,

(iv) could expose the third-party manager to potential exposure for disclosing information in the EMI's proxy statement although the manager is not subject to the SEC's disclosure obligations,

(v) would create unnecessary and burdensome record-keeping and compensation allocation for third-party managers with the board of the EMI having no ability to direct or change the compensation of the manager's employees, and

(vi) could make it more difficult to attract directors to serve on the board of an EMI.

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On behalf of the Coalition, thank you for your consideration of these comments. We welcome the opportunity to further to discuss these issues with you or your staff.

Sincerely,

Biotechnology Industry Organization
National Association of Manufacturers
National Association of Real Estate Investment Trusts
U.S. Chamber of Commerce