ACCF
AMERICAN COUNCIL FOR CAPITAL FORMATION

# New Report Highlights Impact & Extent of Flawed Proxy Advisor Recommendations

***ACCF commissioned research confirms alarming practice of robo-voting is real and quantifies scale of proxy advisor errors***

**Oct. 29, 2018 – Washington, D.C**. The role and influence of proxy advisory firms is under a microscope as the Securities and Exchange Commission prepares to examine the proxy process next month, with numerous voices from academia and business highlighting the failings of proxy advisory firms. New research launched today underscores these concerns, demonstrating how advisors' reports are often factually or analytically flawed and provide limited time for companies to respond to errors – leaving thousands of votes to be influenced by inaccurate recommendations.

These failings are magnified by the fact that many votes are also cast through a concerning practice known as 'robo-voting', where investors automatically follow proxy advisors' recommendations, without conducting their due diligence. Commissioned by the American Council for Capital Formation, the new paper, '*Are Proxy Advisers Really a Problem?*' explores the ramifications of this trend and raises questions over whether asset managers are meeting their fiduciary responsibility to shareholders.

**Frank Placenti, lead author of the report and chair of the Squire Patton Boggs' Corporate Governance & Securities Regulation Practice**, commented: *"Our research shows that not only are proxy advisory firms regularly issuing inaccurate guidance, but the business community rarely has sufficient time to correct the data when they do.  Plus, many institutional shareholders are not taking time to critically assess that guidance, and are instead allowing their shares to be electronically and by default. Taken together, it's hard to avoid the conclusion that there is a major point of failure in our current proxy voting system, with serious ramifications for America's public companies and the retail investors who are the beneficial owners of their stock."*

Led by Squire Patton Boggs, four major U.S. law firms collaborated on a survey of 100 companies' experiences in the 2016 and 2017 proxy seasons, in order to quantify corporate concerns around the proxy process. Significantly, the survey found that robo-voting is real, with respondents reporting that almost 20% of votes are cast within three days of an adverse recommendation, suggesting that many asset managers automatically follow proxy advisory firms.

The report also includes an assessment of supplemental proxy filings, an issuer's main recourse to a faulty recommendation. Based on a review of filings from 94 different companies from 2016 through September 30, 2018, the paper identifies 139 significant problems, including 49 that were classified as 'serious disputes.' The research notes that these issues likely represent only a limited sample of the total number of objections, since companies typically have a brief window to respond.

**Timothy Doyle, Vice President and General Counsel of the American Council for Capital Formation**, commented: *"These results point to two startling conclusions: A meaningful number of public companies have been willing to go on the record identifying real problems in their proxy advisory reports, in the process risking adverse recommendations in the future, and thousands of votes have automatically, without thought or due diligence, been cast in line with erroneous guidance. The unchecked power of proxy firms has a real impact on corporate governance and the fiduciary duty of many asset managers."*

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Read the full report, "Are Proxy Advisors Really A Problem? Recent Data Analysis and Survey Results Demonstrate the Validity of Common Concerns."

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**Additional Report Details**

The review of the 2016 and 2017 Proxy Seasons was led by Squire Patton Boggs, surveying 100 companies about their experiences. 35 companies spread across eleven industries reported an adverse proxy advisor recommendation during that period, representing 93 separate instances in total.

When asked to quantify the amount of advance notice they received from the relevant proxy advisor regarding adverse recommendations, almost 37% reported that ISS did not provide them the opportunity to respond at all.

Nearly 85% of companies that were given notice from ISS indicated they received less than 72 hours to respond to the adverse recommendation, with roughly 36% indicating they received less than 12 hours-notice from ISS. 84% of respondents indicated they did not receive any notice from Glass Lewis before an adverse recommendation.

100% of companies stated they require at least three business days to respond, while 68% stated they would need at least five business days to do so.

For the 2017 proxy season, participating companies reported an average of 19.3% of the total vote is voted consistent with the adverse recommendations within three business days of an adverse ISS recommendation. For the 2016 proxy season, the companies reported an average 15.3% of the total vote being consistent with the adverse recommendations during the same three-day period.

An additional review of 107 supplemental proxy filings from 94 different companies during 2016, 2017 and a partial 2018 proxy seasons (through September 30, 2018) finds 139 significant errors.

39 supplemental filings claim that proxy advisors' reports contained factual errors, while 51 filings cite analytical errors of varying kinds. Serious disputes were expressed in 49 filings. Some filings expressed concerns in more than one category, with several expressing objections in all three.