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**Submitted through the U.S. Securities and Exchange Commission Internet Comment Site**  
U.S. Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549-1090

*Re: File Number S7-14-10: Concept Release on the U.S. Proxy System – Proxy Advisory Firms*

Dear United States Securities and Exchange Commission Staff:

We are submitting this letter in response to the Commission's Concept Release on the U.S. Proxy System, Release Nos. 34-62495; IA-3052; IC-29340; File No. S7-14-10 (the "Release"). Axcelis Technologies, Inc. ("Axcelis" or the "Company"), is a Delaware corporation listed on the Nasdaq Global Select Market. Axcelis manufactures capital equipment for the global semiconductor industry.

Although the Release's specified comment period end date is long past, we understand that comments are still being accepted. In the Release, the Commission sought views about "the role that proxy advisory firms play in the proxy voting process, which could, for instance, assist in determining whether additional regulatory requirements might be appropriate..." The Commission reports that (i) conflicts of interest and (ii) the lack of accuracy and transparency in formulating voting recommendations are its two principal areas of concern with respect to proxy advisory firms. Axcelis' recent interaction with Institutional Shareholder Services ("ISS") in connection with an equity plan reserve increase proposal submitted to Axcelis' Annual Meeting of Shareholders held on May 14, 2013 (the "Meeting"), as described in the Appendix to this letter, is an illustrative example of both of these concerns.

The Axcelis experience in 2013 illustrates the complete control the ISS holds over proposals presented to shareholders at some companies. The lack of transparency of ISS's voting policies with regard to equity plan proposals creates significant inefficiencies in the proxy solicitation process as well as causing issuers to incur otherwise avoidable expense. The Axcelis 2013 experience illustrates the extreme time pressure that companies are under to make decisions once ISS issues an adverse report and how difficult it is to determine whether ISS is treating an issuer fairly based on objective criteria. This time pressure makes the tack of seeking shareholder approval without ISS support a risky and daunting strategy, no matter how inappropriate the ISS position.

The Axcelis experience with ISS in 2013 also provides a concrete example of the Commission's conflict of interest concern, described in the Release as follows:

"[A] conflict of interest arises if a proxy advisory firm provides voting recommendations on matters put to a shareholder vote while also offering consulting services to the issuer or a proponent of a shareholder proposal on the very same matter. The issuer in this situation may purchase consulting services from the proxy advisory firm in an effort to garner the firm's support for the issuer when the voting recommendations are made."

The marketing phone call Axcelis received from ISS shortly after the Meeting shows how ISS tries to take advantage of the business opportunity that an adverse voting recommendation affords them. The value of this business opportunity depends, of course, on ISS's lack of transparency on voting policies. As long as ISS voting policies remain opaque, issuers may only obtain a "high degree of certainty"<sup>1</sup> that their proposals will be supported by ISS if they engage ISS in advance for consulting services.

The Commission should limit ISS's role as a de facto regulatory authority over public companies, by taking all steps within its rule-making authority to improve transparency and eliminate the conflicts arising from hidden rules. We realize that proxy advisory firms only owe a duty to their clients (the shareholders who hire these firms to provide voting advice), and that the areas of Commission regulation are those designed to protect these shareholders, not issuers like Axcelis. While the current system runs smoothly from the viewpoint of investors, it is not in reality servicing their interests. Institutional shareholders who rely on ISS also lack visibility into the standards the ISS is imposing in many areas. ISS's policies are divorced from any understanding of compensation strategies that shareholders may endorse (such as using equity rather than cash compensation to preserve cash for R&D investments, as in Axcelis' case). At the end of the day, investors are hurt because public companies end up spending unnecessary money and time on complying with secret, byzantine, rules that have no objective validity.

We ask the Commission to protect U.S. investors and public companies by increasing transparency and reducing conflicts that are enabled by the extraordinary power of proxy advisory firms. The Commission should also consider whether other federal agencies have rule-making authority that could be brought to bear, such as the Federal Trade Commission or Department of Justice, in light of the coercive power held by ISS in the current system.

If you have any questions or request additional information, please do not hesitate to contact the undersigned at 978-787-4120 or at [lynette.fallon@axcelis.com](mailto:lynette.fallon@axcelis.com). Thank you.

Very truly yours,  
  
Lynnette C. Fallon  
Executive Vice President HR/Legal, General Counsel and  
Secretary

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<sup>1</sup> Kevin Folan, ISS Corporate Programs, voicemail to Lynnette C. Fallon, Axcelis Technologies, Inc. May 21, 2013.

Cc:

Mary G. Puma, Chairman of the Board of Directors, Axcelis

Keith Higgins, Director of the Division of Corporation Finance, SEC

Raymond A. Be , Division of Corporation Finance, SEC

Lawrence A. Hamermesh, Division of Corporation Finance, SEC

**Appendix – Interaction between Institutional Shareholder Services and  
Axcelis Technologies, Inc. in connection with  
its 2013 Annual Meeting of Shareholders**

***The 2013 Axcelis Equity Plan Proposal.*** One of the agenda items for Axcelis' Annual Meeting of Shareholders held May 14, 2013 (the "Meeting") was a proposed increase in the shares reserved for issuance under the Company's 2012 Equity Incentive Plan, a shareholder-approved plan for equity grants to employees, directors and consultants. ISS analyzes shareholder meeting proposals relating to equity plans and advises its clients on whether ISS recommends a favorable vote or not on the proposal. Knowing a number of our more significant shareholders are either directed or influenced by ISS's voting recommendations, Axcelis set out to limit its proposed equity plan reserve increase to a level that would be supported by ISS. We engaged an independent consultant to model our program against the ISS published voting policies.

ISS determines a "Company-Specific Allowable Cap" ("CSAC") for the "Shareholder Value Transfer" that will occur through grants under companies' equity plans. ISS maintains that the calculation of the CSAC is proprietary to ISS, and accordingly does not disclose the formula used for establishing the standard. In its 2013 U.S. Proxy Voting Summary Guidelines, ISS provides this information on the calculation of a CSAC:

"The allowable cap is determined as follows: The top quartile performers in each industry group (using the Global Industry Classification Standard: GICS) are identified. Benchmark SVT levels for each industry are established based on these top performers' historic SVT. Regression analyses are run on each industry group to identify the variables most strongly correlated to SVT. The benchmark industry SVT level is then adjusted upwards or downwards for the specific company by plugging the company-specific performance measures, size and cash compensation into the industry cap equations to arrive at the company's allowable cap."

The ISS does not disclose:

- How they determine the top quartile performers in each GICS group.
- How they determine the "benchmark SVT level" for the industry, or what those benchmark SVTs are by industry.
- What variables are most strongly correlated to SVT, or how they are determined.
- What company-specific performance measures are used to arrive at the company's allowable cap, and how such measures vary the benchmark industry SVT.

Without any way to estimate the CSAC that the ISS would use for Axcelis in 2013, for the purposes of determining the number of shares Axcelis would seek to add to the 2012 Equity Incentive Plan, Axcelis referred to the 19% CSAC assigned to Axcelis by ISS in 2012. To be conservative, the Axcelis Board approved an increase to the share reserve for the 2012 Equity Incentive Plan that resulted in only a 16% Shareholder Value Transfer. This proposal was included in the Company's proxy statement for the Meeting.

***The ISS Initial Recommendation on the 2013 Axcelis Equity Plan Proposal.*** In its report issued May 1, 2012 (only 9 business days before the 2013 Annual Meeting), ISS recommended against Axcelis' proposed equity plan increase because ISS had set the Axcelis 2013 CSAC at 14%. Axcelis immediately



sought a dialogue with ISS, assuming initially that the 14% CSAC must be a mistake. In response to our inquiry, an ISS representative initially stated that for Axcelis' "industry/market size group, the average allowable cap is around 15% - 17%." Referring to the 2012 CSAC, the ISS representative wrote that the "19% allowable cap is more common for much smaller companies/micro-caps," but acknowledged that the "definition of micro-cap cut is 200 million dollars." Axcelis' market cap, as cited in ISS's 2013 report at March 18, 2013, was \$138.5M, less than our 2012 market cap of \$185M, when our CSAC was 19%. This \$138.5M market cap was well below the micro-cap cut of \$200M. When questioned, the ISS representative elaborated:

"[N]ot all companies with market cap < 200M will have a similar allowable cap level. Extensive empirical/academic studies have shown that executive pay depends on a company's size (including ISS' own data) – this means that even for all companies with market cap < 200M, their allowable cap will not be created equal but will still depend on their market value. The 15%-17% average allowable cap is quoted based on the peers whose market cap is within 2.0 to 0.5 ratio of [Axcelis'] market cap. Only for companies in the same micro-bucket but with market value significantly smaller than [Axcelis'] market value will likely have an average allowable cap of 19%."

We had difficulty making sense of this information. If CSACs and market caps have an indirect relationship (the lower the market cap, the higher the CSAC), then if a 19% CSAC generally starts at \$200M market cap, and Axcelis' market cap is 51% below that level, how is it that our CSAC is only 14%? Even if that analysis is somehow flawed, if the range of 15-17% CSAC represents companies that have market caps ranging from \$277M to \$69M to  $(2.0 - 0.5 * \$138.5M)$ , how is it that Axcelis has a 14% CSAC when \$227M market cap companies have CSACs of approximately 15%? Axcelis' market cap falls at the 67th percentile of that range, suggesting that our CSAC should be about 16.3%, not 14%.

Not understanding this analysis, but trying to ferret out the factors that would drive down Axcelis' CSAC and in light of ISS's voting policy disclosure that performance measures have a role in determining CSAC, I pointed out that:

- Axcelis' Total Shareholder Returns in the one year period ending December 31, 2012 was better than the GICS comparator (3.76 vs. 0.49), so our performance versus peers was improving during a challenging time in our industry, not worsening.
- Axcelis has no CEO Pay for Performance Disconnect or Poor Pay Practices (both ISS defined performance measures).

I received this reply from ISS on May 2, 2013:

"For the accounting-based performance factors that are the main drivers of the determination of the allowable cap – the trend in growth rate for revenue and EPS was good in Dec'11 but notably declined in Dec'12. This decline in performance and volatility in [Axcelis'] performance over time is the main cause for the decrease in the allowable cap. .... The ISS SVT model is not based on Dec 31 numbers, we use for our quarterly data download (QDD) a Dec 1 download date. The relevant 1 year TSR data is therefore as of 11/30/2012. Using that time frame, ACLS' 1yr TSR = -22% while the peers' median = - 4% (an under-performance of -18%) for the Dec 1 2012 QDD. And, for the Dec 1 2011 QDD (the year prior), ACLS' 1yr TSR = -49% versus peers' median of -20% (an under-performance of -29%). For both periods ACLS underperformed peers'

significantly. Although the degree of underperformance against the peers from the Dec 1 2011 QDD to the Dec 1 2012 QDD has improved slightly – nonetheless, it still underperforms peers significantly.... Overall the performance decline in accounting performance still drags its allowable cap down by a notable amount.”

So, although Axcelis’ relative performance against peers improved 37% from ISS’s 2011 to 2012 (from -29% to -18%), our CSAC declined by almost 30% (from 19% to 14%). The ISS representative quoted above seems to be saying that the decline in our absolute financial performance year over year (the “accounting performance”) was a more important factor in setting our CSAC below the norm for our market cap. We note this absolute performance factor is not disclosed in ISS’s published voting policy (which speaks only of relative peer performance) and ignores the fact that larger industry factors (such the semiconductor industry downturn in our case) could be driving an absolute performance decline year over year. Without better disclosures of the ISS CSAC methodology, we had no way of countering this analysis and illogical result. ISS’s CSAC calculation appears formulaic, but the above communications with ISS do not provide any insight into the details or objectivity of their calculations.

***Axcelis’ Decision to Revise the Equity Plan Proposal.*** Our proxy consultant advised that we did not have a strong chance of obtaining shareholder approval for the equity plan increase without ISS’s support given the likely voting behavior of our larger shareholders. At this point, having only three business days to change the proposal to shareholders and obtain a new ISS recommendation (ISS will only change their report a week or more before the meeting), we decided to amend our proposal to conform to the 14% CSAC. Our consultant calculated the share reserve increase that would keep the 2012 Equity Incentive Plan within a 14% CSAC, and we sought and obtained a Board resolution modifying the proposed amendment to the plan to reduce the number of shares by approximately 45% from the number originally requested. Axcelis then prepared and filed a Form 8-K and a Schedule 14/A disclosing this change on May 6, 2013. Later that day, ISS issued an Alert, changing their recommendation to support for the modified proposed amendment to the 2012 Equity Incentive Plan.

***ISS’s Follow-Up Marketing Call.*** On May 21, 2013, exactly one week after the Meeting, I received a voicemail from an ISS representative which stated that he was aware of the initial ISS report on the equity plan proposal for the Meeting, our filings to amend the proposal, and the Alert with a revised ISS recommendation on the proposal. The ISS representative stated that these events: “prompted me to call just for going forward....you do have the ability to work with us prior to filing a proxy so you would know to a pretty high degree of certainty what the likely vote recommendation would be .... For any type of stock option proposal...essentially, you can model out different share requests before you actually reached the point of filing a proxy.”