

**EXPOSING THE PROXY ADVISORY CARTEL:
HOW ISS & GLASS LEWIS INFLUENCE MARKETS**

HEARING
BEFORE THE
SUBCOMMITTEE ON CAPITAL MARKETS
OF THE
COMMITTEE ON FINANCIAL SERVICES
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EXPOSING THE PROXY ADVISORY CARTEL: HOW ISS & GLASS LEWIS INFLUENCE MARKETS

Tuesday, April 29, 2025

U.S. HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON CAPITAL MARKETS,
COMMITTEE ON FINANCIAL SERVICES,
Washington, DC.

The subcommittee met, pursuant to notice, at 2:32 p.m., in room 2128, Rayburn House Office Building, Hon. Ann Wagner [chairwoman of the subcommittee] presiding.

Present: Representatives Wagner, Hill, Lucas, Sessions, Davidson, Steil, Stutzman, McClain, Salazar, Downing, Haridopolos, Sherman, Waters, Vargas, Casten, and Bynum.

Chairwoman WAGNER. The Subcommittee on Capital Markets will come to order.

Without objection, the chair is authorized to declare a recess of the committee at any time but will not.

This hearing is titled, “Exposing the Proxy Advisory Cartel: How ISS & Glass Lewis Influence Markets.”

Without objection, all members will have 5 legislative days within which to submit extraneous materials to the chair for inclusion in the record.

I now recognize myself for 4 minutes for an opening statement.

OPENING STATEMENT OF HON. ANN WAGNER, CHAIRWOMAN OF THE SUBCOMMITTEE ON CAPITAL MARKETS, A U.S. REP- RESENTATIVE FROM MISSOURI

Good afternoon, everyone. I want to thank our witnesses and all those in attendance for joining us for today’s hearing on a critical yet underexamined issue in our capital markets: the outsized influence and unchecked power of proxy advisory firms, particularly Institutional Shareholder Services, ISS, and Glass Lewis.

This hearing is part of an ongoing effort by this subcommittee to shine a light on how the proxy of process is functioning and, in many ways, failing today’s markets.

The purpose of this hearing is to examine the role, practices, and market influence of proxy advisory firms on corporate governance practices, investor returns, and broader market outcomes. We will also use today’s hearing to assess transparency, accountability, potential conflicts of interest, and the overall impact of proxy advisory firms on the functioning and fairness of capital markets.

Two firms, ISS and Glass Lewis, control 97 percent of the proxy advisory market. That concentration alone would warrant scrutiny, but more troubling is how their influence goes far beyond research. They now routinely dictate outcomes of shareholder votes.

When ISS or Glass Lewis recommend voting against a director, their clients are over 30 percent more likely to follow suit than nonclients. Their platforms even prepopulate voting recommendations, contributing to what has become known as robo-voting, a troubling abdication of fiduciary responsibility.

These firms are not neutral observers. They are for-profit businesses that often sell consulting services to the very companies they evaluate, sometimes with clear conflicts of interest.

ISS, for instance, simultaneously rates and advises companies on its own environmental, social, and governance (ESG) metrics. Last year, after ExxonMobil sought judicial relief from an activist campaign that included Glass Lewis as a member, Glass Lewis then recommended that its clients vote against one of the ExxonMobil's own directors.

Let's be clear. This is not about silencing shareholders. It is about ensuring that the proxy process advances long-term investor value, not narrow political agendas.

We have seen a surge in shareholder proposals that are ideological in nature but marginal in economic relevance. Costs associated with responding to these proposals with both direct and indirect are climbing into the hundreds of millions of dollars annually and ultimately fall on ordinary investors.

The Securities Exchange Commission (SEC) must reassert its role in ensuring the system is fair, is transparent, and is accountable. That is why last month Chairman Hill, and I sent a letter to then-acting Chairman Uyeda, commending the Commission for rescinding Staff Legal Bulletin No. 14L, but also urging the SEC to go further by restoring the original intent of rule 14a-8, eliminating the significant policy exception and enhancing oversight of proxy advisory firms.

These reforms are critical to safeguarding retail investors, refocusing the proxy process on long-term value creation, and restoring trust in our capital markets. Our capital markets work best when participants are guided by economic rationale, not political pressure. I look forward to a robust and thoughtful discussion today on how we can bring greater accountability to proxy advisors and strengthen the integrity of the shareholder voting process.

The chair now recognizes the ranking member of the subcommittee, the gentleman from California, Mr. Sherman, for 4 minutes for his opening statement.

OPENING STATEMENT OF HON. BRAD SHERMAN, RANKING MEMBER OF THE SUBCOMMITTEE ON CAPITAL MARKETS, A U.S. REPRESENTATIVE FROM CALIFORNIA

Mr. SHERMAN. These firms have clients who pay them, those are the investors, the capitalists, who make our capitalism work. The question is whether we are going to deprive them of the advice that they want and that they pay for.

There is no barrier to entry to third, fourth, or fifth companies getting into this and, as a matter of fact, Vivek Ramaswamy has

entered this market, and I can be confident that when he does, he will not be providing woke advice.

The argument here is between Ronald Reagan and Leon Trotsky. There are those who think that the commanding heights of the economy should be controlled by the party line, and there are others who believe that investors, because it is their money, should actually control what the companies that they own do.

We have before us bills that would require that investment advisory firms—that proxy advisory firms only give advice on what maximizes profit and to tell the eco investors, “Go to hell.”

What does that mean? That means that if there is a proposal on the ballot that the company get involved in the pornography industry, investment advisors will be required by law passed by the Republicans to say, yes, go into that business because it is profitable. If you deny the rights of liberals to get advice on how they can invest in companies that do not engage in slave labor, in companies that do not ruin the environment, then your own voters must be deprived of investment advice on how to avoid investing in pornography.

Now, since I represent the San Fernando Valley, maybe that is a good district issue for me, but it is not for you.

Investors ought to get the advice they want from the people they select to get that advice. They should be able to invest in mutual funds that seek to maximize profit or to maximize profit but no fossil fuels, or maximize profit, no pornographic movies. Instead, the most powerful people in the country, those who control thousand or so giants on Wall Street, do not want the investors to control the company. They think the small clique of managers should control the company.

How dare anybody who is just a mere owner suggest a change in company policy, let alone demand a vote on it, let alone let people get advice on how to vote.

This is not a war on the proxy advisors. This is a war on the idea that the people whose money it is get to make the decision.

What religious tradition teaches us that anyone with money must exclusively make all their decisions on how to make more money? I think there are some religious traditions that would say, invest your money to help the poor. Invest your money to help the planet. Maybe even invest your money to promote traditional family values and to instead say, no, let management do what they want, and do not allow—this is a country of the First Amendment—do not allow anyone to advise you to do the contrary.

I do not know why we are having this hearing. I do not know why we are opposing the idea that those with the capital get to control the companies they own, and I certainly do not know why—because I know none of you represent the San Fernando Valley—why you have a pro-pornography agenda here.

I yield back.

Chairwoman WAGNER. I wish I could use the chairman’s minutes, but I shall not.

The chair recognizes the chairman of the full committee, Mr. Hill, for 1 minute.

STATEMENT OF HON. FRENCH HILL, CHAIRMAN OF THE COMMITTEE ON FINANCIAL SERVICES, A U.S. REPRESENTATIVE FROM ARKANSAS

Chairman HILL. Thank you, Chair Wagner. Thank you for our panel today. I want to—appreciate Chair Wagner’s consistent leadership over many years on examining the proxy advisory firms and their outsized influence over our public markets.

Today, ISS and Glass Lewis shape the outcomes of shareholder votes across the market, especially as large index funds often vote in lockstep with their recommendations. In my view, that is not just advice; it is intimidating de facto control.

Even more troubling, companies are frequently reporting factual errors in proxy reports and are rarely given a chance to correct them before votes are cast. We need greater transparency, due process, and oversight to ensure that proxy voting remains accountable to the shareholders, not outsourced to this largely unregulated duopoly.

I look forward to our discussion today, and I yield back.

Chairwoman WAGNER. The chairman yields back.

The chair recognizes the ranking member of the full committee, Ms. Waters, for 1 minute.

STATEMENT OF HON. MAXINE WATERS, RANKING MEMBER OF THE COMMITTEE ON FINANCIAL SERVICES, A U.S. REPRESENTATIVE FROM CALIFORNIA

Ms. WATERS. Thank you very much.

This hearing is titled, “Exposing the Proxy Advisory Cartel,” but there is a very real cartel happening right in front of our faces: Donald J. Trump and associates. The President and his family have made millions off the Trump meme coin to date, and they just even made more with his announcement of a private dinner for top owners of the coin.

That is not all. The President has pumped the stock of his media company, promoted Elon Musk’s failing car company on the White House lawn, and is providing his billionaire friends with insider tips to take advantage of the chaos he is causing in the stock market.

Our committee should be focused on this blatant financial corruption. With that, we ignore it at our peril. I yield back the balance of my time.

Chairwoman WAGNER. The gentlelady yields back.

Today we welcome the testimony of Charles Crain.

Mr. Crain is the Managing Vice President of Policy at the National Association of Manufacturers, NAM.

Elizabeth Ising: Ms. Ising is a Partner at Gibson Dunn & Crutcher LLP. She serves as the firm’s Co-Chair of Securities Regulation and Corporate Governance Practice.

Paul Rose: Professor Rose is a Dean and a Professor of Law at Case Western Reserve University School of Law.

Paul Washington: Mr. Washington is the President and CEO of the Society for Corporate Governance. He is former Deputy General Counsel and Corporate Secretary of Time Warner Inc.

Nell Minow: Ms. Minow is a Vice Chair of ValueEdge Advisors, and she is the former President of ISS.

We thank each of you for taking your time to be here today. Each of you will be recognized for 5 minutes to give an oral presentation of your testimony. Without objection, your written statements will be made part of the record.

Mr. Crain, you are now recognized for 5 minutes for your oral presentation.

STATEMENT OF CHARLES CRAIN, MANAGING VICE PRESIDENT, POLICY, NATIONAL ASSOCIATION OF MANUFACTURERS

Mr. CRAIN. Thank you, Chair Wagner, Ranking Member Sherman, as well as Chairman Hill and Ranking Member Waters.

My name is Charles Crain, as the chair said, and I am the Managing Vice President of Policy for the National Association of Manufacturers.

Proxy advisory firms have had a significant and damaging impact on manufacturers, manufacturing workers, and main street investors. These firms' outsized influence and their problematic business practices dictate corporate decisions, and they endanger shareholder returns.

First and foremost, proxy firms operate with glaring and often undisclosed conflicts of interest. For example, ISS' consulting service has been known to use the negative vote recommendations from its proxy voting service as a way to drum up business.

Proxy firms are also unwilling to allow companies to review their draft reports, and they are resistant to correcting the mistakes and misunderstandings that imbue their final recommendations. Those recommendations are often based on a one size fits all view of how public companies should be run. In other words, proxy firms' benchmark policies enforce their beliefs about corporate governance, executive compensation, and, increasingly, environmental and social topics.

Now, despite these obvious flaws, proxy firms still control a significant share of investors' proxy votes. That means they have significant sway over important corporate decisions. The SEC, under both parties, has investigated these issues over the course of more than a decade, finally adopting a proxy firm rule back in 2020.

This subcommittee has played a critical important role as well with hearings and legislation designed to shine a light and ultimately to reign in proxy firms. Despite this clear momentum for reform from both Congress and the SEC, proxy firms remain stubbornly unregulated to the detriment of public companies and their investors.

The SEC's 2020 rule has spent 5 years hung up in court. The NAM has had to defend that rule across three separate court cases, one of which, in fact, has oral arguments scheduled for this coming Friday.

This delay is despite the fact that the 2020 rule was a significant compromise as compared to the SEC's 2019 proposal. In fact, manufacturers continue to believe that critical provisions from that 2019 proposal, such as draft review, would be important reforms to adopt today.

Proxy firms, of course, would prefer zero SEC or congressional oversight. ISS is now claiming in court that the SEC lacks a statutory authority to regulate proxy voting advice at all.

Now, the Exchange Act is actually quite clear that the SEC does have the authority to regulate proxy voting advice, but there may come a time for Congress to reiterate that directive, either to remind the court of Congress' unambiguous statutory intent or to reverse an errant court decision.

Even assuming, though, that the NAM is successful in defending the SEC's authority, there is more work still to be done. That is why we appreciate that Congress and members of this committee have offered commonsense reforms that would institute much needed guardrails for the proxy firms. These six bills would prioritize main street investors' retirement security over the proxy firms' agendas.

First, Congressman Steil's bill, which would create a comprehensive registration regime for proxy firms. It would increase SEC oversight, company engagement and transparency, while minimizing conflicts of interest and errors.

Mr. Steil also has a separate bill that would ensure that the proxy firms remain subject to any fraud liability.

Congressman Fitzgerald has introduced legislation to ban certain conflicts of interest.

Congressman Nunn has a bill that would target robo-voting, which is a common practice that disenfranchises Main Street investors as well as institutional investors.

Congressman Loudermilk has a bill that would focus on the fiduciary duties of those institutional investors.

Finally, Chair Wagner's legislation would direct the SEC to conduct a comprehensive study of the proxy process, including the damaging role that proxy firms can play.

The time to act on these bills is now. Awareness of the risks that proxy firms pose is far more widespread than it was back in 2010 when the SEC started looking into this issue, and both Congress and the SEC now have a clear understanding of what must be done. Policymakers must preserve the SEC's existing authority over proxy firms while also instituting further guardrails that address the firms' conflicts, their errors, their robo-voting, their one size fits all standards, their ESG agendas, and more. Manufacturers and Main Street investors are counting on it.

Thank you.

[The prepared statement of Mr. Crain follows:]



Testimony of

Charles Crain
Managing Vice President, Policy
National Association of Manufacturers

Before the

U.S. House of Representatives
Committee on Financial Services
Subcommittee on Capital Markets

Hearing on

“Exposing the Proxy Advisory Cartel: How ISS & Glass Lewis Influence Markets”

April 29, 2025

Good afternoon Chair Wagner, Ranking Member Sherman, and members of the Subcommittee on Capital Markets. My name is Charles Crain, and I am the Managing Vice President of Policy at the National Association of Manufacturers. On behalf of the NAM's 14,000 members and the 13 million people who make things in America, I appreciate the opportunity to testify before you today to illustrate the impact that the entrenched proxy firm duopoly has on manufacturers of all sizes—and to make the case for urgent action by Congress and the Securities and Exchange Commission to rein in these powerful market actors.

Proxy firms set corporate governance standards for publicly traded companies, and they provide voting recommendations based on those standards to institutional investors who vote at public companies' annual meetings. Proxy firms have substantive beliefs and normative agendas about how public companies should be run. In other words, they are not disinterested third parties; rather, they seek to guide corporate behavior to align with their own interests. Further, proxy firms do not have a fiduciary duty to the underlying investors in America's public companies—teachers, firefighters, and manufacturing workers saving for a secure retirement—so they are free to exert their outsized influence as they see fit. They do so by recommending that institutional investors vote in accordance with their pre-set, one-size-fits-all voting guidelines.

Proxy firm “recommendations” are no mere suggestions, however. Rather, institutional investors—who do have a fiduciary duty to the Main Street investors whose assets they manage—generally vote in lockstep with the proxy firms' recommendations, and in many cases the proxy firms actually cast votes on institutions' behalf via their automated “robo-voting” services. This degree of influence over companies' proxy voting results means that ISS and Glass Lewis—the two major proxy firms, which together control over 97% of the U.S. proxy advice market—effectively dictate corporate governance policies for America's capital markets.

This is because proxy firms directly control a significant percentage of the shareholder vote. ISS, for instance, can affect support for a dissident slate of board nominees by 73% and support for an

uncontested director by 18%.¹ A study conducted during the SEC's consideration of proxy reforms found that 175 institutions, with more than \$5 trillion in assets under management, vote in lock step with proxy firms more than 95% of the time.² Companies are thus forced to treat proxy firms as quasi-regulators, adjusting company policies and making disclosures to satisfy the firms in order to avoid negative recommendations on critical corporate matters—and, increasingly, on environmental and social topics outside the realm of traditional corporate governance.

Indeed, proxy firms have policies and provide recommendations on a wide range of ESG topics, which may or may not be relevant to an individual company's growth and the value it creates for shareholders. Studies have shown that proxy firms are overwhelmingly supportive of activists' ESG proposals; for example, ISS recommended in favor of nearly 80% of environmental and social proposals during the 2023 proxy season.³ A 2022 NAM survey found that nearly 78% of publicly traded manufacturers were concerned that this increased pressure on ESG topics from proxy firms and other third parties will "increase costs for public companies, divert management and board time and resources, and endanger long-term value creation."⁴

Powerful market actors with this degree of influence should clearly be subject to appropriate government oversight. But in the case of proxy firms, the case for regulatory guardrails is even stronger. Their consulting services present an obvious conflict of interest. Their inflexible policies do not account for the individual circumstances of disparate companies and their investors, and they are developed with minimal transparency or stakeholder input. And proxy firms have been unwilling to engage with companies to correct errors, reconsider misleading assumptions, or re-examine how their recommendations might impact the business in question. Yet, despite years of effort by both Congress and the SEC, proxy firms remain stubbornly unregulated.

I. The combination of proxy firms' outsized influence and the risks to investors endemic to their business model presents a clear case for robust oversight of these powerful actors.

Conflicts of Interest

First and foremost, ISS operates a consulting service through which it offers guidance to companies on the very topics that will be the subject of ISS's voting recommendations. This consulting service advises companies on how to structure their equity plans and corporate governance policies in alignment with ISS's preferred view of how public companies should be run. The main benefit of this "advice" for public companies is that it helps them avoid adverse vote recommendations—from ISS's *proxy voting business*. The conflicts endemic to these related business offerings are clear: if companies pay ISS's fee, they can feel confident in avoiding negative ISS recommendations; if they choose not to pay the fee, then they can expect ISS's voting recommendations to enforce ISS's preferred policies at the company's expense. Indeed, ISS's consulting service has been known to point to negative recommendations and/or shareholder votes against a board-endorsed position (often driven by a negative recommendation) on a previous year's proxy ballot as evidence that its

¹ Larcker, David F., Brian Tayan and James R. Copland, *The Big Thumb on the Scale: An Overview of the Proxy Advisory Industry* (14 June 2018). Harvard Law School Forum on Corporate Governance. Available at <https://corpgov.law.harvard.edu/2018/06/14/the-big-thumb-on-the-scale-an-overview-of-the-proxy-advisory-industry/>.

² Doyle, Timothy M., *The Realities of Robo-Voting* (9 November 2018). American Council for Capital Formation. Available at https://accfcorpgov.org/wp-content/uploads/ACCF-RoboVoting-Report_11_8_FINAL.pdf.

³ *Voting Matters 2023* (11 January 2024). ShareAction. Available at https://cdn2.assets-servd.host/shareaction-api/production/resources/reports/ShareAction_Voting-Matters_2023_2024-06-25-145106_jwpq.pdf.

⁴ NAM Manufacturers' Outlook Survey, Fourth Quarter 2022 (4 January 2023). Available at https://www.nam.org/wp-content/uploads/2023/01/Manufacturers_Fourth_Quarter_Outlook_Survey_December_2022.pdf.

services are needed. Thus, companies are effectively forced to pay into this broken system to understand ISS's models and methodologies (about which the firm is persistently opaque) and to avoid negative recommendations that will distract time, effort, and capital from more productive uses.

Glass Lewis is not immune from its own conflicts of interest. Though it does not operate a consulting service for companies, it recently established a Stewardship Solutions program that provides engagement advice to activists who are trying to influence corporate practices via shareholder proposals and other campaigns—each of which, of course, will ultimately be subject to a vote recommendation from Glass Lewis's proxy voting service. Glass Lewis's participation in these efforts gives it an incentive to recommend in favor of its investor-clients' preferred policies or proposals—irrespective of their potential impact on companies or shareholders.

Policy Development and Issuer Engagement

Proxy firms insist upon a one-size-fits-all approach to corporate governance that does not take into account differences in companies' business models and the flexibility allowed under securities law. Take, for example, proxy firms' insistence that companies hold say-on-pay votes on executive compensation every year. The Dodd-Frank Act explicitly allows company shareholders to choose to hold such votes every one, two, or three years—but the proxy firms have chosen to override Congress and will only recommend in favor of annual votes. The firms' beliefs on the “right” way to govern a public company, which in recent years increasingly includes a normative ESG agenda, are embedded in the firms' benchmark voting guidelines, which are used to build voting recommendations for every proxy vote at every public company. These benchmark policies guarantee that the firms' policy preferences are carried out via the voting power of the trillions of dollars of investor shares held by the institutions that follow ISS and Glass Lewis.

Though the firms do offer minor modifications to their benchmark policies—such as a “socially responsible” framework or a Taft-Hartley-focused framework—these additional models are highly aligned with the benchmark model, even if not marketed as such. For example, ISS in 2023 began offering a so-called “board-aligned” policy following investigations into its voting power by Republican attorneys general from across the country. Based on its name, one would have expected the policy to vote in line with recommendations made by corporate boards—a theoretically valuable framework for investors that trust the duly nominated and elected board members of a company to live up to their fiduciary duty to act in shareholders' best interests. ISS's “board-aligned” policy, however, only aligns with boards of directors on certain environmental and social shareholder proposals. Otherwise, it duplicates the recommendations made by ISS's benchmark policy—very often in *opposition* to the boards with which it is allegedly “aligned.” This dynamic is replicated across many of the custom policies that the firms offer. In other words, the firms' benchmark policies—which reflect their idiosyncratic preferences with respect to corporate governance, ESG issues, and more—carry tremendous weight for governance decisions made by businesses and their shareholders throughout the economy.

In addition to enforcing strict preferences about public company governance, proxy firm reports and recommendations often feature errors and misleading statements, ranging from specific incorrect facts to disingenuous assumptions about, for instance, a company's peer group or compensation practices. Worse, proxy firms have been steadfastly resistant to allowing companies to review their draft recommendations in order to flag mistakes, and they historically have been reluctant to engage in a productive dialogue with companies to correct any errors, misunderstandings, or misrepresentations.

Prior to 2021, ISS did offer limited issuer engagement opportunities: it allowed companies in the S&P 500 to review and provide some feedback on its draft voting recommendations. It offered this service

“to help check the factual accuracy of the data underpinning [its] research”⁵—a laudable goal, and one which clearly was undermined by ISS’s decision to rescind the program following the finalization of the SEC’s 2020 proxy firm rule. Glass Lewis, on the other hand, did not offer issuer review prior to the 2020 rule, but after the rule’s finalization Glass Lewis launched its Report Feedback Statement program, which allows companies to respond to a Glass Lewis recommendation—if they have paid a fee to access the recommendation in the first place.

Robo-Voting

Proxy firms’ robo-voting services allow them to automatically cast votes on their clients’ behalf—in line with the proxy firm’s recommendations and without any review by either the investment manager or the underlying beneficiary. As former SEC Commissioner Elad Roisman has noted, these “set-it-and-forget-it” mechanisms are generally not well understood by the investors whose shares are being voted, nor are they always consistent with an investment adviser’s fiduciary duties.⁶ Indeed, robo-voting translates proxy firms’ policy beliefs directly into greater voting power, completely cutting investment advisers and their clients out of the process. This automated voting also deprives companies of a chance to correct mistakes or provide investors with additional information before votes are cast.

While proxy firms’ voting infrastructure can be useful to large institutions charged with voting proxies at hundreds of companies, the firms’ ability to cast votes on those investors’ behalf illustrates both their unchecked power in the market and the risks they pose to investment managers’ fiduciary duty. Indeed, in guidance issued by the SEC under former Chairman Jay Clayton, the Commission encouraged investment advisers to take specific steps to ensure that proxy votes are cast in investors’ best interests—including by affirmatively reviewing proxy ballots pre-populated by a proxy firm rather than allowing them to be automatically cast and by considering all relevant information that could impact a vote, even if it becomes available after votes are cast.⁷ Both of these guidelines are inconsistent with how robo-voting is generally practiced and likely would necessitate additional due diligence on asset managers’ part to mitigate the risks posed by robo-voting—though, unfortunately, the SEC under then-Chairman Gary Gensler rescinded the Clayton-era robo-voting guidance.

II. The SEC has taken steps to institute commonsense guardrails for proxy advisory firms—though the Commission’s defense of its authority was undermined during the previous Administration and is being challenged by ISS.

In 2020, the SEC finalized a long-awaited rule to provide appropriate oversight of proxy advisory firms.⁸ The 2020 rule, developed over the course of a decade, instituted commonsense safeguards designed to increase transparency into these powerful actors. In particular, the rule required proxy firms to provide copies of their final recommendations to companies and to have a mechanism in place by which investors could become aware if a company submitted a response to the firm’s

⁵ *Company Letter Ending U.S. Draft Reviews*. Institutional Shareholder Services (2 November 2020). Available at https://www.issgovernance.com/file/publications/202011102_Company_Letter_Ending_US_Draft_Reviews_CA_companies.pdf.

⁶ *Speech at the Council of Institutional Investors’ Conference* (10 March 2020). Commissioner Elad L. Roisman. Available at <https://www.sec.gov/news/speech/speech-roisman-cii-2020-03-10>.

⁷ *Supplement to Commission Guidance Regarding Proxy Voting Responsibilities of Investment Advisers*, 85 Fed. Reg. 55155 (3 September 2020). Release No. IA-5547; available at <https://www.govinfo.gov/content/pkg/FR-2020-09-03/pdf/2020-16338.pdf>.

⁸ *Exemptions From the Proxy Rules for Proxy Voting Advice*, 85 Fed. Reg. 55082 (3 September 2020). Release No. 34-89372; available at <https://www.govinfo.gov/content/pkg/FR-2020-09-03/pdf/2020-16337.pdf>.

recommendation. It also required proxy firms to disclose their conflicts of interest and clarified that proxy firms are subject to the proxy solicitation rules' antifraud standards. Alongside the final rule, the SEC issued guidance to asset managers outlining instances in which relying on proxy firms' robo-voting services instead of reviewing all information available to them and making an informed voting decision could implicate their fiduciary obligations to Main Street investors.⁹

Notably, the 2020 rule's issuer engagement requirements were significantly less strict than what the SEC had proposed in 2019.¹⁰ The 2019 proposal would have required proxy firms to allow companies to review and provide feedback on their *draft* reports.¹¹ Proxy firms also would have been required to disseminate company responses to their clients alongside their voting advice. The NAM strongly supported, and continues to support, the draft review and feedback provisions from the 2019 proposal. Indeed, a draft review process for all public companies would represent a significant step toward transparency and accountability for proxy firms, as the opportunity for companies to review draft reports, identify potential mistakes, and respond to any misrepresentations or disagreements before investors start voting would significantly improve the accuracy of proxy voting advice and enhance the amount of relevant information available to investors.

Despite the compromise nature of the 2020 reforms, the SEC in 2021 began to take steps to dismantle this important progress. In a series of coordinated actions in June 2021, then-Chairman Gary Gensler announced that the SEC would "revisit" the 2020 rule,¹² the Division of Corporation Finance suspended enforcement of the rule,¹³ and the SEC granted ISS "relief" from the rule's requirements.¹⁴ In a lawsuit brought by the NAM before the U.S. District Court for the Western District of Texas, the court found that, via these coordinated actions, the SEC violated the Administrative Procedure Act by suspending the rule outside the notice-and-comment process.¹⁵

In 2022, the SEC finalized a rule unlawfully rescinding critical portions of the 2020 rule—including the compromise requirement that proxy firms share their recommendations with impacted companies after they are finalized and take steps to ensure that investors have access to any company responses to those recommendations.¹⁶ At the same time, the SEC also rescinded the robo-voting guidance that had been finalized concurrent with the 2020 rule, which cautioned asset managers against outsourcing their voting authority to the firms. Manufacturers strongly opposed

⁹ See Robo-Voting Guidance, *supra* note 7.

¹⁰ See *Amendments to Exemptions From the Proxy Rules for Proxy Voting Advice*, 84 Fed. Reg. 66518 (4 December 2019). Release No. 34-87457; available at <https://www.govinfo.gov/content/pkg/FR-2019-12-04/pdf/2019-24475.pdf>.

¹¹ See *Concept Release on the U.S. Proxy System*, 75 Fed. Reg. 42982 (22 July 2010). Release Nos. 34-62495; IA-3052; IC-29340, available at <https://www.govinfo.gov/content/pkg/FR-2010-07-22/pdf/2010-17615.pdf>. For instance, the Concept Release observes that proxy firms "may be unwilling, as a matter of policy, to accept any attempted communication from the issuer or to reconsider recommendations in light of such communications" and notes that "issuers have expressed a desire to be involved in reviewing a draft of the proxy advisory firm's report, if only for the limited purpose of ensuring that the voting recommendations are based on accurate issuer data" (at 43012).

¹² *Statement on the Application of the Proxy Rules to Proxy Voting Advice*. Chairman Gary Gensler (1 June 2021). Available at <https://www.sec.gov/news/public-statement/gensler-proxy-2021-06-01>.

¹³ *Statement on Compliance with the Commission's 2019 Interpretation and Guidance Regarding the Applicability of the Proxy Rules to Proxy Voting Advice and Amended Rules 14a-1(1), 14a-2(b), 14a-9*. SEC Division of Corporation Finance (1 June 2021). Available at <https://www.sec.gov/news/public-statement/corp-fin-proxy-rules-2021-06-01>.

¹⁴ See Mtn. for Abeyance, *Institutional Shareholder Services Inc. v. SEC*, No. 19-cv-3275 (D.D.C.).

¹⁵ *Nat'l Ass'n of Mfrs. v. SEC*, 631 F.Supp.3d 423 (W.D. Tex. 2022).

¹⁶ *Proxy Voting Advice*, 87 Fed. Reg. 43168 (19 July 2022). Release Nos. 34-95266, IA-6068; available at <https://www.govinfo.gov/content/pkg/FR-2022-07-19/pdf/2022-15311.pdf>.

these rescissions.¹⁷ The SEC's actions to rescind the 2020 rule were vacated in a lawsuit brought by the NAM before the U.S. Court of Appeals for the Fifth Circuit, which held that the SEC's actions were "facially irrational" and not "reasonable or reasonably explained."¹⁸

As the Gensler SEC sought to undo the substance of the 2020 rule, the SEC was at least defending in court its authority to provide some degree of oversight of proxy firms. Shortly after the promulgation of the SEC's 2019 guidance clarifying that proxy voting advice generally constitutes a solicitation under the Exchange Act and thus that proxy firms were subject to existing antifraud standards under the proxy solicitation rules, ISS filed suit against the SEC. ISS expanded its lawsuit after the 2020 rule was finalized, seeking to nullify the rule and to undermine the SEC's ability to regulate proxy voting advice at all. During the first Trump Administration and for most of the Biden Administration, the SEC defended its authority before the U.S. District Court for the District of Columbia—and the NAM joined the Commission in that fight as an intervenor-defendant. But after a district court judge ruled in ISS's favor in 2024, the Gensler SEC abandoned its defense of the Commission's regulatory authority.¹⁹

If ISS's case is successful, it will effectively block any future attempt to regulate proxy advisory firms via the proxy solicitation rules, by any Administration. That is why the NAM, as intervenor, has appealed the District Court ruling to the U.S. Court of Appeals for the District of Columbia Circuit—and we remain committed to defending the SEC's ability to provide commonsense oversight of these powerful actors. In fact, oral argument is scheduled in *ISS v. SEC*—which is now effectively *ISS v. NAM*—for this coming Friday, May 2.

III. The NAM supports Congress's important work to protect manufacturers and manufacturing workers by reining in proxy firms' outsized influence.

The 119th Congress, as well as the SEC under the leadership of recently confirmed Chairman Paul Atkins, have the opportunity to achieve concrete, commonsense reforms that right-size the role that proxy advisory firms play in America's capital markets. The stakes could not be higher for manufacturers: after years of the SEC politicizing the proxy process and empowering proxy firms, policymakers now can—and must—take steps to limit proxy firms' outsized influence, ensure accurate and reliable information for investors, empower manufacturers to make corporate governance decisions that enhance growth, job creation, and shareholder value, and protect Main Street investors. To that end, manufacturers strongly support reforms that:

- Underscore the SEC's existing statutory authority to regulate these powerful market actors;
- Prevent conflicts of interest from clouding proxy firm recommendations, and provide increased transparency with respect to those conflicts;
- Allow companies to review draft proxy firm recommendations in order to identify errors or misrepresentations;
- Ensure investors are aware of company responses to adverse proxy firm recommendations;
- Guarantee that proxy firms remain subject to antifraud liability; and
- Limit robo-voting that disenfranchises investors and undermines investment advisers' fiduciary duty.

¹⁷ NAM Comments on File No. S7-17-21 (24 December 2021). Available at https://documents.nam.org/tax/nam_proxy_comments_2021.pdf.

¹⁸ *Nat'l Ass'n of Mfrs. v. SEC*, 105 F.4th 802 (2024).

¹⁹ *Institutional S'holder Servs. Inc. v. SEC*, No. 24-5105 (consolidated with 24-5112) (D.C. Cir.), Mot. to Voluntarily Dismiss Appeal.

SEC Authority to Regulate Proxy Voting Advice

As noted, oral argument in ISS's case to strip the SEC of its authority to regulate proxy voting advice will take place just a few days after today's hearing. In brief, the SEC's authority to regulate proxy advisory firms hinges on whether providing proxy voting advice constitutes a "solicitation" under the Securities Exchange Act of 1934.²⁰ Undoubtedly, it does. ISS has admitted as much, going as far back as a 1991 letter to the SEC explaining how the firm's recommendations were subject to the Commission's proxy solicitation rules, and seeking amendments to and exemptions from those rules to better fit its business model.²¹

Not only does the Exchange Act give the SEC the *authority* to regulate proxy firms, it provides a congressional *mandate* that the agency do so. As the Commission put it in its proposed proxy firm rule in 2019, "an overarching purpose of Section 14(a) [of the Exchange Act] is to ensure that communications to shareholders about their proxy voting decisions contain materially complete and accurate information. It would be inconsistent with that goal if persons whose business is to offer and sell voting advice broadly to large numbers of shareholders, with the expectation that their advice will factor into shareholders' voting decisions, were beyond the reach of Section 14(a)."²² Indeed, it has long been clear that "the federal proxy rules apply to any person seeking to influence the voting of proxies by shareholders"—including proxy advisory firms.²³

This foundational truth underpins the SEC's work in recent decades to establish an appropriate regulatory regime for proxy voting advice²⁴—which is why the NAM will continue to offer a robust defense of the SEC's authority in court. Congress can play a role in that defense by continuing to make clear that proxy firms' provision of proxy voting advice *is* solicitation under Exchange Act Section 14(a). Such a clarification should not be necessary: as the NAM will argue before the D.C. Circuit on Friday, the text of the Exchange Act, contemporaneous dictionary definitions of the word "solicitation," the congressional intent of the 73rd Congress, and decades of practice by the SEC and other market actors (including proxy firms) should be sufficient to put the question to rest. But ISS's self-serving reinterpretation of unambiguous statutory text presents an opportunity for Congress to assert its own authority—which it exercised, via the Exchange Act, by directing the SEC to regulate shareholder communications such as proxy voting advice. Reminding the federal courts and the proxy firms of that fact can only serve to help preserve the 2020 rule and clear a path for a future SEC to work productively to rein in these unregulated actors.

²⁰ See 15 U.S.C. Sec. 78n(a)(1) ("It shall be unlawful for any person...in contravention of such rules and regulations as the [Securities and Exchange] Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors, to solicit or to permit the use of his name to solicit any proxy...").

²¹ Letter from Nell Minnow, President, ISS to Jonathan G. Katz, Secretary, SEC (1 August 1991). Available at <https://documents.nam.org/TAX/Letter-from-ISS-to-SEC-re-Exchange-Act-Release-No.-29315.pdf>.

²² 2019 Proposed Rule, *supra* note 10, at 66523.

²³ *Commission Interpretation and Guidance Regarding the Applicability of the Proxy Rules to Proxy Voting Advice*, 84 Fed. Reg. 47416 (10 September 2019). Release No. 34-86721; available at <https://www.govinfo.gov/content/pkg/FR-2019-09-10/pdf/2019-18355.pdf>.

²⁴ See, e.g., *Concept Release on the U.S. Proxy System*, 75 Fed. Reg. 42982 (22 July 2010). Release Nos. 34-62495, IA-3052, IC-29340; available at <https://www.govinfo.gov/content/pkg/FR-2010-07-22/pdf/2010-17615.pdf> ("As a general matter, the furnishing of proxy voting advice constitutes a 'solicitation' subject to the information and filing requirements in the proxy rules."); see also 2019 Proxy Advice Guidance, *supra* note 23 ("[P]roxy voting advice provided by a proxy advisory firm [generally] constitute[s] a solicitation under the federal proxy rules.").

Legislative Proposals to Rein in Proxy Firms

In addition to protecting the SEC's statutory authority, more must be done to provide appropriate regulatory oversight of proxy firms. Manufacturers commend members of the Financial Services Committee for their work on legislation to require proxy firms to register with the SEC, ensure they remain subject to antifraud liability, prevent asset managers from undermining their fiduciary duties by over-relying on the firms, limit robo-voting, prohibit conflicts of interest based on corporate consulting services, and require the SEC to study the firms' influence on the market.

Proxy Firm Registration (Rep. Steil)

The NAM supports draft legislation, sponsored by Rep. Bryan Steil (R-WI), that would require proxy firms to register with the SEC. As a condition of registration, proxy firms would be required to:

- Provide companies with the data and information underpinning their recommendations, and grant companies an opportunity to share feedback to correct errors and misrepresentations;
- Employ an ombudsman charged with engaging with companies and resolving issues identified by impacted businesses;
- Include any company statements responding to the firm's recommendations in its final report to clients;
- Certify that the firm has sufficient staff and resources to provide voting advice based on accurate information and in the economic best interests of shareholders;
- Provide disclosures on the firm's procedures, methodologies, organizational structure, professional qualifications, and code of ethics; and
- Adopt policies to identify, disclose, and manage any conflicts of interest.

Additionally, proxy firms would be prohibited from providing advisory or consulting services that present a conflict of interest with respect to their proxy vote recommendations.

These reforms will improve the quality, accuracy, and reliability of proxy voting advice, and they are essential to countering the threat that proxy firms' outsized influence poses to everyday Americans' retirement savings. The NAM applauds Rep. Steil for his years of leadership on this critical issue, and manufacturers strongly support his draft legislation to bring appropriate oversight to the proxy advice industry.

Proxy Firm Antifraud Liability (Rep. Steil)

The 2020 proxy firm rule clarified that proxy voting advice constitutes a solicitation under the Exchange Act—and, in so doing, clarified that proxy firms are subject to the proxy solicitation rules, including those rules' antifraud standards. Specifically, the 2020 rule noted that proxy firms may need to provide appropriate disclosures with respect to their methodologies, sources of information, and conflicts of interest in order to ensure that their advice is not false or misleading.

In rescinding much of the 2020 rule, the SEC in 2022 removed the language that had been added to the antifraud standards about proxy firms' methodologies, sources of information, and conflicts of interest. While proxy firms are still subject to antifraud liability under the rescission (a standard that would fall if ISS's lawsuit is successful), the standards under which that liability may apply have been significantly weakened.

The NAM supports draft legislation, sponsored by Rep. Steil, that would clarify that the failure to disclose material information associated with proxy voting advice, such as information about a proxy firm's methodologies, sources of information, and conflicts of interest, would render the advice false or misleading. This clarification is critical to ensuring that proxy firm clients have access to the material information they need to make fully informed voting decisions.

Asset Manager Reliance on Proxy Firm Recommendations (Rep. Loudermilk)

Despite their fiduciary duty to Main Street investors and retirees, some asset managers are over-relying on the ratings and recommendations of proxy firms and may be making proxy voting decisions based on criteria divorced from shareholders' financial best interests.

The NAM supports draft legislation, sponsored by Rep. Barry Loudermilk (R-GA), that would require investment advisers, asset managers, and pension funds relying on the services of a proxy firm to explain how the firm's recommendations impacted their proxy votes, analyze their voting decisions based on investors' economic best interests and the institution's fiduciary duty, and disclose the degree to which the institution voted in line with the firm's recommendations. These institutions would also be required to certify that their voting decisions were made based solely on the economic best interests of their customers and beneficiaries. For larger institutions, the bill would also require them to disclose the economic analysis underpinning any voting decisions that diverged from the recommendation of a company's board of directors.

These safeguards would ensure that the institutions charged with protecting Main Street investors' retirement security are acting in those investors' best interests. They would also give everyday Americans the information they need to make decisions about how their investments are managed.

Robo-Voting (Rep. Nunn)

Robo-voting enhances proxy firms' power and influence by enabling them to automatically cast investors' proxy votes in line with the firm's preferred policies. It also has the potential to significantly undermine institutional investors' fiduciary duty to their Main Street investor clients.

The NAM supports draft legislation, sponsored by Rep. Zach Nunn (R-IA), that would prevent institutional investors from outsourcing proxy voting decisions to proxy advisory firms via the firms' robo-voting services. It would also direct the SEC to promulgate a new rule limiting robo-voting. These reforms would ensure that asset managers actually review the information available to them before casting proxy votes that could impact the direction of a business and the performance of everyday Americans' investments.

Proxy Firm Conflicts of Interest (Rep. Fitzgerald)

Conflicts of interest remain the clearest threat to Main Street investors posed by the proxy firms. In particular, ISS's business consulting service benefits directly from negative recommendations made by the firm's proxy voting service—incentivizing recommendations that drive businesses to purchase consulting services rather than ones that drive shareholder value creation. The NAM has long supported efforts to prohibit, or at a minimum require disclosure of, proxy firm conflicts of interest in order to protect companies from the firms and to enhance transparency and objectivity for investors.

The NAM supports the Stopping Proxy Advisor Racketeering Act, sponsored by Rep. Scott Fitzgerald (R-WI), which would prevent proxy firms from offering proxy voting advice that is poisoned by a conflict of interest resulting from their consulting services. This prohibition would ensure that the proxy voting advice on which investors rely remains objective, and that companies are no longer forced to pay for consulting services in order to avoid the costs of overcoming negative proxy firm recommendations.

Corporate Governance Examination (Rep. Wagner)

The politicization of the proxy process and the outsized influence of proxy firms impact companies of all sizes, including small businesses. Smaller companies in particular often lack the resources to

Chairwoman Wagner. Thank you, Mr. Crain.

Ms. Ising, you are now recognized for 5 minutes for your oral presentation.

STATEMENT OF ELIZABETH ISING, PARTNER, GIBSON DUNN

Ms. ISING. Thank you for the invitation to testify today. I appreciate the opportunity to share with you my observations on the significant influence of proxy advisory firms and the need to regulate them. My observations are based on 25 years of practicing as a Securities and Corporate Governance Lawyer.

Proxy advisors play an important role and have considerable influence in the U.S. proxy system. Shareholders rely on the U.S. proxy system to exercise their corporate voting rights, and public companies rely on it to obtain approval of important corporate governance matters, many of which facilitate capital formation and foster long-term shareholder value.

The U.S. proxy system and many of its participants are regulated. The key exception is proxy advisory firms. Yet Institutional Shareholder Services and Glass Lewis, the two major firms, exercise significant influence over voting on thousands of proxy proposals every year and lack fiduciary duties to consider what is in the best interest of companies and their shareholders. I want to highlight several concerns that demonstrate the need to subject proxy advisors to reasonable, commonsense regulation.

First, the consulting services offered by the proxy advisory firms call into question the objectivity and reliability of their recommendations. ISS and Glass Lewis sell advisory service to public companies regarding the very same matters in which they make voting recommendations, using opaque voting policies and analytical tools that are available only to their consultants. Notably, before it even began offering consulting services to companies, even Glass Lewis publicly stated that these services create conflicts. Proxy advisors also benefit from other conflicts. The number of proxy proposals has increased approximately 730 percent at Russell 3000 companies since 2000.

More proposals mean that investors with large portfolios need more support from proxy advisors. Yet it is these firms that are encouraging additional proposals for, by example, encouraging annual say-on-pay votes even though the Dodd-Frank Act requires those votes only every 3 years.

Next, there are significant concerns about errors in proxy advisory reports, and often the burden is on public companies to scramble to correct the records since they cannot preview these firms' analyses.

For example, one company's Glass Lewis report stated that the board did not oversee cyber security risk. The company pointed Glass Lewis to their SEC filing with the section titled "Oversight of Cyber Security," but Glass Lewis did not revise its report. For these reasons, proxy advisors should face potential liability for making materially false or misleading statements.

Proxy advisory firms also encourage robo-voting, which is when an investor follows a firm's voting recommendations without independently assessing it. Proxy advisors may say that they are just implementing their client's voting guidelines, but that does not ex-

plain certain investors repeatedly voting lockstep with the firms or saying that they cannot override those firms' recommendations.

In addition, the firms' voting guidelines include numerous case-by-case policies where voting recommendations are not based on objective standards, making it important for the firms' clients to understand the underlying rationale of those recommendations. Yet, there is often a flood of votes that mirror each firms' recommendations that come in almost immediately after their release.

Another concern is that proxy advisory firms' voting policies are based on unfounded biases and presumptions. For example, both proxy advisors generally oppose supermajority voting requirements because, in the words of Glass Lewis, they, quote, can enable a small group of shareholders to overrule the will of majority shareholders. Yet, each proxy advisory firm has so-called board accountability policies that expect companies to achieve supermajority approval on say-on-pay proposals. Glass Lewis expects board responsiveness unless a company receives a supermajority vote against the shareholder proposal.

These policies enable small groups of shareholders to drive major changes at public companies even though a majority of shares voted in support of existing practices. As a result, ISS and Glass Lewis push public companies to expend resources to support actions not supported by the majority.

ISS and Glass Lewis also essentially act as regulators. By way of example, unlike the New York Stock Exchange and National Association of Securities Dealers Automated Quotations (NASDAQ), who have developed director independent standards, ISS considers a director to not be independent if a director of an employee—is an employee of an organization that provides the company with just over \$10,000 in consulting services. Interestingly, ISS would fail its very own independence test at companies where it provides both consulting services and issues voting recommendations.

Finally, proxy advisors make materiality determinations without a cost-benefit analysis and often without considering the company's circumstances. For example, Glass Lewis recently stated that measures related to human capital management are financially material for all companies. Under the SEC's well-developed legal standards for materiality, that is not accurate.

In conclusion, proxy advisory firms directly impact proxy voting decisions and voting outcomes, and thus, Congress and the SEC should adopt commonsense regulation of these firms to protect the integrity of U.S. proxy systems and capital markets.

Thank you for inviting me to testify.

[The prepared statement of Ms. Ising follows:]

Testimony of Elizabeth Ising

**Partner and Co-Chair, Securities Regulation and Corporate Governance Practice Group
Gibson, Dunn & Crutcher LLP**

Before the U.S. House Committee on Financial Services, Subcommittee on Capital Markets

**Hearing on “Exposing the Proxy Advisory Cartel:
How ISS & Glass Lewis Influence Markets”**

April 29, 2025

Chairman Wagner, Ranking Member Sherman and members of the Subcommittee, thank you for the invitation to testify today. I appreciate the opportunity to share with you my observations on the significant influence of proxy advisory firms in corporate elections and the need to regulate these firms. These observations are based on my 25 years of practicing as a securities and corporate governance lawyer, including as a partner at Gibson, Dunn & Crutcher and as co-chair of the firm’s Securities Regulation and Corporate Governance practice group.¹

Proxy advisory firms play an important role, and have considerable influence, in the U.S. proxy system. That proxy system is relied on by public company shareholders and public companies alike. Shareholders rely on the proxy system to enable them to exercise their corporate voting rights, given that few shareholders actually vote during shareholder meetings. Instead, their views are represented at these meetings via the proxies they submit articulating how they would like their shares voted. Public companies rely on the proxy system to facilitate communications with shareholders and receive shareholder feedback on, and approval of, proposals addressing important governance and corporate matters. Moreover, shareholder approval of many of these matters is necessary to facilitate capital formation and foster long-term shareholder value, including electing directors who play an important role in overseeing implementation of corporate strategy, approving mergers and share issuances to fuel expansion and growth, and approving equity compensation plans that reward employees for positive corporate performance.

The U.S. proxy system is regulated by the U.S. Securities and Exchange Commission (SEC), as are many of its key players—the key exception being proxy advisory firms. Proxy advisory firms assist shareholders (primarily institutional investors) by providing research, data, and voting recommendations on matters shareholders are asked to vote on, as well as providing ancillary services such as actually submitting proxy voting instructions on behalf of their clients.

This role has become increasingly important during the past few decades as the number of proposals voted on by shareholders has dramatically increased. For example, the number of items voted on increased approximately 730% between 2000 and 2024 at Russell 3000

¹ My comments and the views that I express are my own and not those of Gibson Dunn or attributable to any client or any association of which I am a member.

companies.² The increase is due to a variety of factors, including the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act)³ mandating periodic votes on executive compensation programs (and the proxy advisory firms' view that such votes should be held annually) and the dramatic increase in shareholder proposals (which reflects the need to meaningfully revise the SEC's shareholder proposal rule). The increase in the number of proxy proposals is all the more notable in light of the dramatic decrease in the number of public companies relying on the proxy system during approximately the same time period—from over 8,000 public companies in 1996 to approximately 4,600 public companies in 2022.⁴ Indeed, the burden created by the proxy system may be one factor contributing to the decline in the number of public companies.

Against this background, the two major proxy advisory firms, Institutional Shareholder Services, Inc. (ISS) and Glass, Lewis & Co. (Glass Lewis), exercise significant influence over the voting outcomes on these thousands of proxy proposals. For example, a recent study found that the average support for non-binding shareholder votes on executive compensation ("say-on-pay") was 28% less at S&P 500 companies where ISS recommended votes "against" the proposals.⁵ There also are numerous anecdotes on the dramatic swing in voting results that can occur when a proxy advisory firm, for one reason or another, reverses its voting recommendation. And, whenever ISS or Glass Lewis recommends votes for one side or the other in a proxy contest, the side they support invariably issues a press release touting the recommendation. The significant influence of these two firms has a dramatic impact on the governance and resource allocation at public companies.

Directors have fiduciary duties to act in the best interest of their company and its shareholders, which include maximizing long-term shareholder value. However, the voting recommendations issued by proxy advisory firms (which have no fiduciary duties to companies or their shareholders) often materially deviate from the well-informed determinations of boards of directors who are bound by such fiduciary duties. These voting recommendations, which are issued with no regulatory oversight and little accountability, also can reflect a failure of reasonable diligence and lack good faith given the presence of conflicts of interest—each of which would be inconsistent with a director's fiduciary duties.

Thus, the lack of regulation and accountability of proxy advisory firms, their conflicts of interest, ongoing objective errors in their reports, as well as unfounded biases and presumptions

² Derived from Institutional Shareholder Services data reporting proxy proposals during calendar year 2000 and calendar year 2024.

³ Pub. L. No. 111-203, § 951, 124 Stat. 1376, 1899 (2010).

⁴ See *Listed Domestic Companies, Total – United States* (2022), World Bank, <https://data.worldbank.org/indicator/CM.MKT.LDOM.NO?locations=US>.

⁵ See *2024 Say On Pay and Proxy Vote Results*, Semler Brossy (January 16, 2025) at page 2, <https://semlebrossy.com/insights/2024-say-on-pay-reports/>.

underlying their proxy voting positions, demonstrate the need for these participants in the U.S. proxy system to be subject to reasonable, common-sense regulation.

Consulting Services Create Significant Conflicts of Interest for Proxy Advisory Firms

The consulting services offered by proxy advisory firms call into question the quality, objectivity and reliability of their proxy voting recommendations. Specifically, the two major proxy advisory firms both sell advisory services to public companies on the very same matters on which they make voting recommendations.

For example, ISS markets consulting services to companies to assist them in enhancing ISS's own rating of their governance practices and in preparing matters to be submitted for shareholder approval, such as equity compensation plans. In my experience, public companies seeking shareholder approval of equity compensation plans that will be used to grant incentive awards to employees must carefully balance their strategic needs, legal considerations, communications strategy and the best interests of the company and its shareholders when preparing the plans—but also then pay a consulting fee to ISS to determine whether ISS will recommend votes “for” the plans under ISS's formulaic standards. While some supporters of proxy advisory firms have noted that ISS maintains informational barriers between its consulting group and its research team making voting recommendations, that does not alter the fact that purchasing ISS's consulting services gives companies access to more detailed information and the analytical tools applied by the research team.

Glass Lewis previously touted that it did not provide “consulting services” to public companies, even going so far as to say that doing so creates problematic conflicts of interest.⁶ But today it markets certain consulting services to companies to help them, for example, understand how their compensation programs will be evaluated and rated by Glass Lewis (and by extension, voted on by many Glass Lewis clients).⁷ As a result, companies seeking shareholder approval of important matters are pressured to include the time and cost of subscribing to these firms' consulting services as part of their annual meeting planning process, or risk needing to devote

⁶ See, e.g., Letter on SEC Roundtable on the Proxy Process (November 14, 2018), *available at* <https://resources.glasslewis.com/hubfs/Compliance/2018%20SEC%20Roundtable%20Statement.pdf> (“Indeed, Glass Lewis does not offer consulting services to corporate issuers, directors, dissident shareholders or shareholder proposal proponents[.]”); *id.* (“For instance, Glass Lewis strongly believes that the provision of consulting services to corporate issuers, directors, dissident shareholders and/or shareholder proposal proponents, creates a problematic conflict of interest that goes against the very governance principles for which we advocate. As a result, Glass Lewis does not have a consulting business. This helps ensure that our voting recommendations and analysis are disinterested.”).

⁷ See, e.g., “Equity Plan Advisory Services,” <https://www.glasslewis.com/corporate-solutions/equity-compensation-plan-advisory> (explaining that Glass Lewis can help companies “[e]nsure equity plans align with key investor priorities using the Glass Lewis model relied upon by institutional investors” and “[a]nticipate how institutional investors and Glass Lewis may assess your plan and increase your chances of shareholder approval.”).

time and money to proactively campaign against a negative ISS or Glass Lewis voting recommendation.

The proxy advisory firms also benefit from other conflicts of interest. The dramatic increase in the number of proxy proposals fuels their businesses; the more proposals to be voted on, the more that investors with large portfolios need their support in analyzing those proposals. The proxy advisors contribute to this increase in the number of proposals through their own proxy voting policies. For example, the Dodd-Frank Act only requires public companies to hold say-on-pay votes at least once every three years. However, both ISS and Glass Lewis support annual say-on-pay votes,⁸ despite the fact that over 97% of say-on-pay proposals have passed every year since 2011, including 98.7% in 2024.⁹

Widespread support by ISS and Glass Lewis for shareholder proposals also contributes to more shareholder proposals for the proxy advisory firms to assess. Proxy advisory firm recommendations “for” shareholder proposals enable proponents to achieve sufficient votes for their proposals that, even though representing only minority support, allow resubmitted proposals to avoid future exclusion under the SEC’s shareholder proposal rule¹⁰ and, in some instances, trigger a proxy advisory firm’s “board accountability” voting policies. As discussed later, these “board accountability” policies further empower the proxy advisory firms by converting votes on non-binding proposals into a possible basis for threatening negative voting recommendations against directors.

⁸ See ISS, United States Proxy Voting Guidelines, Benchmark Policy Recommendations (published January 9, 2025; updated February 25, 2025) at page 50, <https://www.issgovernance.com/file/policy/active/americas/US-Voting-Guidelines.pdf?v=2025.2> (“ISS Proxy Voting Guidelines”) (ISS will “[v]ote for annual advisory votes on compensation, which provide the most consistent and clear communication channel for shareholder concerns about companies’ executive pay programs”); Glass Lewis, 2025 Benchmark Policy Guidelines, United States at pages 62-63, <https://resources.glasslewis.com/hubfs/2025%20Guidelines/2025%20US%20Benchmark%20Policy%20Guidelines.pdf> (“Glass Lewis Proxy Voting Guidelines”) (“We believe companies should submit say-on-pay votes to shareholders every year. We believe that the time and financial burdens to a company with regard to an annual vote are relatively small and incremental and are outweighed by the benefits to shareholders through more frequent accountability. Implementing biannual or triennial votes on executive compensation limits shareholders’ ability to hold the board accountable for its compensation practices through means other than voting against the compensation committee. Unless a company provides a compelling rationale or unique circumstances for say-on-pay votes less frequent than annually, we will generally recommend that shareholders support annual votes on compensation.”).

⁹ See *2024 Say On Pay and Proxy Vote Results*, Semler Brossy (January 16, 2025) at page 1, <https://semlebrossy.com/insights/2024-say-on-pay-reports/>.

¹⁰ See SEC Rule 14a-8(i)(12) (permitting the exclusion of a shareholder proposal if it “addresses substantially the same subject matter as a proposal, or proposals, previously included in the company’s proxy materials within the preceding five calendar years if the most recent vote occurred within the preceding three calendar years and the most recent vote was: (i) Less than 5 percent of the votes cast if previously voted on once; (ii) Less than 15 percent of the votes cast if previously voted on twice; or (iii) Less than 25 percent of the votes cast if previously voted on three or more times”).

Proxy Advisory Firms Continue to Include Errors in Their Voting Reports

In my 25 years advising public companies, I have repeatedly seen the turmoil, both at public companies and among investors, that can follow the publication of an ISS or Glass Lewis report. This is especially the case since the proxy advisory firms' recommendations typically are released shortly before the shareholders' meeting, without any opportunity for companies to preview and comment on or correct the analyses.

While these firms market themselves based on their insights and expertise, they sometimes make mistakes and then put the burden on public companies to provide shareholders with accurate information.

Examples of recent errors include:

- Multiple instances where ISS recommended votes "against" a proposed equity compensation plan because it viewed the cost as "excessive" where its analysis essentially mistakenly included shares authorized under a former or expiring plan that would no longer be available for grant.
- ISS issued a report for a company that incorrectly stated the ownership and control of company shares by the chief executive officer, who was up for election as a director. Even after ISS was directed to an SEC filing containing the accurate share information, ISS refused to correct its report because its data came from a third party it hired to provide the data for its reports.
- A company's Glass Lewis report indicated that its board does not oversee cybersecurity risk. Despite the company pointing Glass Lewis to various disclosures about the board's cyber oversight role—including a section in one of their SEC filings titled "Oversight of Cybersecurity"—Glass Lewis failed to correct this error.

When a company discovers an error in its ISS or Glass Lewis report, and that firm refuses to correct the report, the burden lies with the *company* to inform its shareholders that the proxy advisor published false or misleading statements, typically by spending resources to draft and file additional information with the SEC and leading a campaign of engagement calls with key shareholders. Glass Lewis does offer companies the ability to issue "Report Feedback Statements" directly to Glass Lewis's subscribers—but only if a company purchases the report directly from Glass Lewis.¹¹ This means that if, for example, a company's shareholder informs the company of statements in a Glass Lewis report that are inaccurate, and Glass Lewis refuses to correct the error, then the only means for the company to communicate its views directly to Glass Lewis clients is for the company to first purchase the Glass Lewis report for several

¹¹ See <https://www.glasslewis.com/issuer-relations/report-feedback-statement-rfs> (explaining that to be "eligible to submit" a Report Feedback Statement, an issuer must "have purchased the specific Proxy Paper research report directly from Glass Lewis").

thousand dollars. I have seen frustrated companies describe this approach as a “pay to play,” and it is hard to imagine how this policy benefits shareholders, our capital markets, or anyone other than Glass Lewis. However, at least Glass Lewis provides some client feedback mechanism, unlike ISS.

Unfortunately, these examples are just a small sample of the types of objective errors that occur all too frequently. It is impossible to estimate the full scope of inaccurate, false, or misleading statements introduced into ISS or Glass Lewis reports every year, given that the reports are not publicly available. And these errors are troubling given the significant influence these firms wield in our public markets. When I speak with public companies and other practitioners in this space, however, the frustration is typically not that these advisory firms made a mistake. After all, mistakes happen. Instead, it is frustration with the lack of responsiveness or accountability; these firms too often refuse to shoulder responsibility for their errors—and instead leave companies to manage the fallout. For these reasons, proxy advisors (like public companies) should face potential liability for making materially false or misleading statements, since their voting recommendations clearly and directly impact some investors’ proxy voting decisions.

The Proxy Advisory Firms Fuel “Robovoting,” Which Encourages a One-Size-Fits-All Approach to Proxy Voting

Robovoting generally refers to when an investor follows the voting recommendations of a proxy advisor when voting its proxies for shareholder meetings without engaging in an independent review of those recommendations.

I hear about and see robovoting on a regular basis. Proxy solicitors advise public companies on how they should expect their largest investors to vote on various matters. Inevitably, public companies receive three numbers: the percentage of shares that vote lockstep with ISS, the percentage of shares that vote lockstep with Glass Lewis, and the percentage of shares that may or may not consider the ISS and/or Glass Lewis voting recommendations but make their own voting decisions. Proxy advisory firms will sometimes explain in this context that they are merely implementing the proxy voting guidelines adopted by their clients. That does not explain the instances where investors time and time again vote in line with the firms’ voting recommendations and/or indicate that they are unable to override the proxy advisor’s voting recommendation, and it does not fully account for the firms’ roles in implementing the votes for some of their clients. I routinely see robovoting when a flood of votes are cast strictly in line with the advisory firm’s recommendations almost immediately after the proxy advisory firm recommendations are released.

The ISS and Glass Lewis proxy voting guidelines demonstrate why robovoting often cannot reflect a meaningful consideration of the proxy advisory firms’ analyses by their investor clients. For example, the ISS Proxy Voting Guidelines include numerous instances where ISS will recommend votes “case-by-case” on a proxy item, without any indication of the factors ISS will consider in making that recommendation, including for proposals involving corporate political

spending, director qualifications and opting into or out of state takeover statutes.¹² In addition, the Glass Lewis Proxy Voting Guidelines describe the “case-by-case” assessment it undertakes with respect to matters such as board responsiveness, evaluating “the risk management function of a public company board,” and evaluating proposals to reincorporate to a different state or country.¹³ While I am not critical of the application of a case-by-case analysis, these situations demonstrate that investors must review the voting recommendations in these instances to understand and decide whether they concur with the underlying rationale before following the advisory firm’s voting recommendations.

Moreover, while ISS offers its clients an option to always vote in line with ISS’s recommendations, ISS does not offer its clients a proxy voting policy to vote as recommended by a company’s board. Instead, ISS’s self-titled “Global Board-Aligned U.S. Proxy Voting Guidelines” are only “generally . . . in line with the board’s recommendations” on “environmental or social matters” but apply ISS’s own voting standards on “matters of corporate governance, executive compensation, and corporate structure.”¹⁴ This title is misleading as the ISS policy is not, in fact, “board aligned.”

Proxy Advisors’ Proxy Voting Positions Lack Transparency and Are Based on Unfounded Biases and Presumptions

Proxy advisory firms make proxy voting recommendations based on their publicly available proxy voting policies, which typically are updated at least annually. A review of these policies, as well as experience with their application, demonstrates that the development and application of these policies lacks transparency and that these policies often are based on unfounded biases and presumptions.

Both ISS and Glass Lewis promote their commitment to transparent and rule-based decision-making through the development and publication of their proxy voting guidelines. However, these efforts lack transparency. For example, ISS solicited public feedback during one of its recent annual policy updates, and a public company provided detailed comments to explain why a proposed one-size-fits-all ISS policy should instead apply a case-by-case approach since the justification and impact of the governance practice at issue varied depending on a company’s circumstances. The new ISS policy completely ignored the issues raised in the company’s comment letter without any explanation as to why. While ISS does provide limited information

¹² See ISS Proxy Voting Guidelines at pages 79 (political spending), 21 (director qualifications) and 34 (takeover statutes).

¹³ Glass Lewis Proxy Voting Guidelines at pages 16 (board responsiveness), 26 (risk management) and 73 (reincorporation).

¹⁴ ISS, United States Global Board-Aligned Proxy Voting Guidelines, 2025 Policy Recommendations (Published February 6, 2025), <https://www.issgovernance.com/file/policy/active/specialty/Global-Board-Aligned-US-Voting-Guidelines.pdf?v=2025.2> (“ISS’ Global Board-Aligned Policy is designed to enable subscribing investors to vote in a manner that upholds many foundational corporate governance principles as a means of protecting and maximizing their investments, whilst generally aligning with issuers’ board recommendations for voting on environmental and social matters.”).

on responses it receives to its annual request for policy comments, neither ISS nor Glass Lewis disclose information about which commenters most influenced their voting policy positions and their rationale for rejecting various alternative voting policy positions.

In addition, both firms have at times issued proxy voting recommendations reflecting new proxy voting positions that had not previously been published or deviated from their stated policies. These actions can distort shareholder decision-making and harm long-term shareholder value. Moreover, such inconsistencies create uncertainty for investors and undermine the very predictability and fairness that proxy advisory firms claim to provide investors.

Many ISS and Glass Lewis proxy voting policies also are based on the advisors' unfounded biases and presumptions and are even internally inconsistent. For example, ISS and Glass Lewis generally oppose supermajority voting requirements. As Glass Lewis notes, "we believe that a supermajority vote requirement can enable a small group of shareholders to overrule the will of the majority shareholders."¹⁵ Yet the proxy voting guidelines at ISS and Glass Lewis each impose supermajority voting requirements on public companies.

For example, ISS and Glass Lewis each have "board accountability" voting standards under which they expect companies to achieve supermajority approval on their say-on-pay proposals (70% for ISS¹⁶ and 80% for Glass Lewis¹⁷). Under these standards, each firm expects companies to change their executive compensation practices in response to a say-on-pay vote that falls below the firm's supermajority threshold, even when more than a majority of shares supported the company's executive compensation program (and one proxy advisor has recommended votes "against" compensation committee members for failure to take action even though a majority of the shares supported the company's say-on-pay vote and the company disclosed that it identified a lack of consensus among shareholders on whether and what changes would be appropriate during follow-up engagement).¹⁸ Similarly, Glass Lewis wants companies to achieve supermajority votes against shareholder proposals: if a shareholder proposal does not receive at least 70% votes "against," then Glass Lewis expects to see board "responsiveness" to the

¹⁵ Glass Lewis 2025 Proxy Voting Guidelines at page 18.

¹⁶ ISS Proxy Voting Guidelines at page 47 (explaining that ISS will "[v]ote against or withhold from the members of the Compensation Committee and potentially the full board if: . . . The board fails to respond adequately to a previous [say-on-pay] proposal that received less than 70 percent support of votes cast.").

¹⁷ Glass Lewis Proxy Voting Guidelines at page 52 ("When companies receive a significant level of shareholder opposition to a say-on-pay proposal, which occurs when more than 20% of votes on the proposal are cast as AGAINST and/or ABSTAIN, we believe the board should demonstrate a commensurate level of engagement and responsiveness to the concerns behind the disapproval, with a particular focus on responding to shareholder feedback.").

¹⁸ ISS, United States Executive Compensation Policies, Frequently Asked Questions at page 12 (updated December 13, 2024), <https://www.issgovernance.com/file/policy/active/americas/US-Compensation-Policies-FAQ.pdf> ("If the company has demonstrated poor responsiveness, ISS will generally recommend a vote against the say-on-pay proposal and incumbent compensation committee members. ISS may limit the adverse recommendation to the say-on-pay proposal if the board has demonstrated a limited degree of responsiveness, but which falls short of a robust response.").

shareholder proposal before the next annual meeting. As a result, ISS and Glass Lewis drive public companies to expend valuable board and company resources catering to small blocks of shareholders or pursuing objectives not supported by holders of a majority of outstanding shares—thereby, in the words of Glass Lewis, “overrul[ing] the will of the majority.”

ISS and Glass Lewis also do not hesitate to essentially act as regulators. For example, the New York Stock Exchange (NYSE) and Nasdaq have established standards for director independence in order to assess whether directors can operate independently from management. Nevertheless, ISS has developed its own standards for director independence, which are stricter than those maintained by either the NYSE or Nasdaq. Among other reasons, ISS will consider a director “not independent” if the director is an *employee* of an organization (no matter its size, and no matter if there is a “firewall” separating the director from the provision of such services) that provides so-called “professional services” to the company in excess of \$10,000 per year.¹⁹ ISS itself defines these “professional services” to include (among other things) consulting services. Based on my experience, ISS typically charges well above \$10,000 to provide its consulting services to public companies on the very items that it is recommending votes on. Put differently, ISS would likely fail its own independence evaluation with respect to each public company for which it provides consulting services and then subsequently issues voting recommendations. While directors play a different role than proxy advisors, both are important actors in the U.S. proxy system, and shareholders should be able to understand and evaluate these firms’ conflicts of interest, including whether the proxy advisors are improperly motivated to recommend votes on proposals that fuel their consulting businesses.

The proxy advisory firms also are criticized for repeating false and misleading statements made by shareholder proponents without conducting any independent research or analysis. For example, when a company wrote to the SEC that a shareholder proponent’s public statements about its proposal contained verifiably false and misleading statements about the company’s business, and the shareholder filed additional materials to revise the misleading statement, the ISS report merely repeated the misleading statement, along with a note that the company objected to it. That is, rather than conduct any basic factual investigation to guide its clients on whether the statements were reliable, ISS merely repeated the offending language to its audience. At another company, Glass Lewis repeated in its proxy report the viewpoint of a shareholder organization without disclosing that Glass Lewis itself was a member of that organization. In another situation, a Glass Lewis report cited exempt solicitations filed with the SEC by various shareholder organizations critical of the company but did not cite or reference the company’s SEC filing responding to those criticisms.

Proxy advisory firms also make materiality determinations and circulate that information to their clients as fact without any evidence that they have conducted a cost/benefit analysis or possess the necessary qualifications to make such declarations. For example, in a recent report regarding shareholder proposals, Glass Lewis declared: “We view measures related to human capital

¹⁹ ISS Proxy Voting Guidelines at page 10-11.

management as *financially material for all companies*, potentially resulting in lower attrition, higher employee engagement and more access to the broadest pool of talented employees” (emphasis added).²⁰ The SEC has well-developed legal standards for materiality,²¹ under which it is clear that human capital management matters are not financially material to every single public company. Proxy advisory firms also have portrayed certain corporate actions as harming shareholder rights (without disclosing their analysis or any factual or legal basis for their conclusions) and have cited controverted studies in their proxy reports.

Conclusion

As former SEC Commissioner Daniel M. Gallagher noted in his 2018 testimony before the U.S. Senate Committee on Banking, Housing, and Urban Affairs, “SEC rules have accorded to proxy advisers a special and privileged role in our securities laws - a role similar to that of nationally recognized statistical ratings organizations (NRSROs) before the financial crisis.”²² Just as Congress and the SEC stepped into regulate NRSROs following the financial crisis, such action is necessary with respect to the proxy advisory firms.²³ I believe that proxy advisory firms clearly and directly impact investors’ proxy voting decisions and the voting outcomes at public companies. Their activities are, or should be treated as, solicitations within the meaning of

²⁰ *Dueling DEI Proposals Put Boeing Between a Rock and a Hard Place*, Glass Lewis (April 8, 2025), <https://www.glasslewis.com/article/dueling-dei-proposals-put-boeing-between-a-rock-and-a-hard-place>.

²¹ See, e.g., SEC Staff Accounting Bulletin No. 99—Materiality (using a materiality threshold based on 5% of financial statement line items); Item 601(b)(10)(ii)(C) of Regulation S-K (providing that certain contracts are not deemed material, and thus need not be filed with the SEC, if they do not involve an acquisition or sale “for a consideration that exceeds 15 percent of . . . fixed assets”).

²² *Proxy Process and Rules: Examining Current Practices and Potential Changes: Hearing Before the Senate Banking, Housing and Urban Affairs Committee*, 115th Congress (2018) (statement of Daniel M. Gallagher), <https://www.banking.senate.gov/imo/media/doc/Gallagher%20Testimony%202012-6-18.pdf>.

²³ The SEC previously did so. In 2020, pursuant to Section 14(a) of the Securities Exchange Act of 1934, as amended, the SEC promulgated a final rule regulating the business of proxy advisory firms. See *Exemptions from the Proxy Rules for Proxy Voting Advice*, 85 Fed. Reg. 55,082 (Sept. 3, 2020) (the “2020 Rule”). The 2020 Rule defined proxy solicitation to include the provision of proxy voting advice. It also required proxy firms to satisfy certain “notice-and-awareness conditions” to qualify for an exemption from the SEC’s regulation of proxy solicitation. These conditions require proxy firms to (1) share their voting advice with registrants no later than the time they share it with their clients, and (2) provide a mechanism that will reasonably be expected to make their clients aware of registrants’ written responses to proxy firms’ advice before a shareholder vote. In 2022, following a change in administrations, the SEC rescinded parts of the 2020 Rule. *Proxy Voting Advice*, 87 Fed. Reg. 43,168 (July 19, 2022) (the “2022 Rescission”). The 2022 Rescission eliminated the notice-and-awareness conditions but it did not rescind the 2020 Rule’s defining proxy solicitation to include proxy voting advice. The 2022 Rescission was challenged in two different proceedings. In June 2024, a panel of the Fifth Circuit court of appeals unanimously held that the SEC’s rescission of the notice-and-awareness conditions was arbitrary and capricious. *National Association of Manufacturers v. SEC*, 105 F.4th 802 (5th Cir. 2024) (“*NAM*”). But in September 2024, a divided panel of the Sixth Circuit court of appeals affirmed and upheld the 2022 Rescission rule. *U.S. Chamber of Commerce v. SEC*, 115 F.4th 740 (6th Cir. 2024) (“*Chamber*”). Notably, both the Fifth and Sixth Circuits did not question the SEC’s authority to regulate proxy advisory firms in their decisions reversing and upholding, respectively, the SEC’s 2022 rescission of proxy advisory firm regulations adopted in 2020. See *NAM*, 105 F.4th at 807 & n.1; *Chamber*, 115 F.4th at 747.

Section 14(a) of the Securities Exchange Act of 1934, as amended.²⁴ For these reasons, Congress and the SEC need to act to adopt and implement common-sense regulation of proxy advisory firms to protect the integrity of the U.S. proxy system and capital markets.

Thank you again for inviting me to testify, and I look forward to answering your questions.

²⁴ See 15 U.S.C. § 78n(a) (2022).

Chairwoman WAGNER. Thank you, Ms. Ising.
 Now, Mr.—Professor, I should say, Rose, you are now recognized for 5 minutes for your oral presentation.

**STATEMENT OF PAUL ROSE, DEAN, SCHOOL OF LAW, CASE
 WESTERN RESERVE UNIVERSITY**

Mr. ROSE. Thanks, Chair Wagner and members of the committee, for the opportunity to testify on an issue that I have been studying for over 20 years, the concentrated and largely unregulated power of proxy advisory firms in U.S. capital markets.

Proxy advisory recommendations can swing vote outcomes and shift corporate governance, yet they operate without fiduciary obligations, with limited transparency and minimal accountability. Today, two firms, ISS and Glass Lewis, dominate over 90 percent of the proxy advisor market.

Importantly, this dominance is not a natural result of investor demand. It is, in large part, a byproduct of regulatory design, specifically the SEC's adoption of rule 206(4)–6 under the Investment Advisers Act of 1940. This rule adopted in 2003 required investment advisors to adopt proxy voting policies and procedures and devote client securities in their best interest.

The SEC then issued no-action letters suggesting that advisors could fulfill these duties by relying on independent third-party proxy advisors. By the time the SEC withdrew these letters in 2018, the proxy advisory industry had grown significantly. Rule 206(4)–6 transformed an internal fiduciary duty into an external compliance function, fueling the growth of ISS and Glass Lewis into de facto gatekeepers.

Many institutional investors now outsource their voting decisions to these firms. Some of these investors now engage in robo-voting, mechanically following proxy advisors' recommendations without independent analysis.

In 2020, over 100 institutional investors, managing a combined 5 trillion, voted in near total alignment with ISS or Glass Lewis. Robo-voting may be attractive from a cost-efficiency standpoint, but it compromises fiduciary responsibilities. It removes independent judgment from governance decisions and reduces diversity in shareholder viewpoints.

Structural conflicts of interest further complicate the role of proxy advisors. ISS now only provides recommendations but sells governance consulting services to the very companies it evaluates. This dual role represents a fundamental conflict. How can a firm offer objective assessments while advising those same issuers? We typically do not allow such conflicts in financial services. Auditors, for example, have long been prohibited from conflicting activities under Sarbanes-Oxley.

Market concentration exacerbates the problem. With only two dominant firms, companies have little recourse if they disagree with recommendations. The market lacks meaningful competition, making transparency all the more essential.

Proxy advisors often promote uniform governance practices across industries, ignoring the unique needs of individual firms. A one size fits all approach may penalize innovative or long-term strategies, and very little evidence supports the idea that proxy ad-

visors' specific governance recommendations improve returns or help companies avoid scandal.

In 2020, the SEC adopted reforms requiring proxy advisors to disclose conflicts of interest, allowing issuers to review proxy advice before meetings, and reaffirm that proxy advice constitutes a solicitation under Federal securities laws. These reforms were carefully developed over a decade, across two administrations, to promote transparency and fairness. Yet in 2021, the SEC suspended enforcement and announced plans to revise the rule before full implementation. In my view, this regularity whiplash creates uncertainty. It signals that public input can be ignored, and it erodes trust in the commission.

Again, I wish to stress that the modern proxy advisory industry has not grown out of market innovation but instead out of regulatory incentives. Even if proxy advisors perform a useful function, why should we not hold them to fiduciary standards and protect investors against conflicts of interest as we do for other major market actors? By imposing accountability and oversight, Congress can ensure proxy advisors serve as responsible facilitators of informed shareholder participation rather than unregulated gatekeepers of corporate governance.

Thank you.

[The prepared statement of Mr. Rose follows:]

**HEARING: “EXPOSING THE PROXY ADVISORY CARTEL: HOW ISS & GLASS
LEWIS INFLUENCE MARKETS”**

before the

**SUBCOMMITTEE ON CAPITAL MARKETS OF THE COMMITTEE ON FINANCIAL
SERVICES**

Testimony of Professor Paul Rose

Mr. Chairman and members of the committee, thank you for the opportunity to offer testimony on an issue that I have been studying for over 20 years, the concentrated and largely unregulated power of proxy advisory firms in the U.S. capital markets.

Today, two firms—Institutional Shareholder Services (ISS) and Glass Lewis—dominate over 90% of the proxy advisory market. Their recommendations can swing vote outcomes and shape the governance of publicly traded companies, yet these firms operate without fiduciary obligations, limited transparency, and minimal accountability.

Importantly, this market dominance is not a natural result of investor demand. It is a byproduct of regulatory design—specifically the SEC’s adoption of Rule 206(4)-6 under the Investment Advisers Act of 1940. This rule, adopted in 2003, requires registered investment advisers to adopt proxy voting policies and procedures and to vote client securities in their best interest. Subsequently, the SEC issued no-action letters stating that investment advisers could fulfill these obligations by relying on the guidance of independent third-party proxy advisors. By the time the SEC withdrew these no-action letters in 2018, the proxy advisory industry had grown significantly. Indeed, the proxy advisory industry would not exist at its current scale without these regulatory choices. Rule 206(4)-6 effectively transformed what had been an internal fiduciary duty into an external compliance function, fueling the growth of ISS and Glass Lewis into de facto gatekeepers of corporate governance. Hundreds of institutional investors now outsource their voting decisions to these firms.

I. The Effects of Robovoting on Shareholder Democracy

The consequences of this regulatory shift have been profound. For example, many institutional investors now engage in “robovoting,” mechanically following proxy advisors’ recommendations without independent analysis. In 2020, over 100 institutional investors—managing a combined \$5 trillion in assets—voted in near-total alignment with ISS or Glass Lewis.

Robovoting may be attractive from a cost-efficiency perspective, but, as Mr. Nunn’s draft bill implicitly notes, it potentially compromises fiduciary responsibilities. Automated voting undermines the requirement that investment advisers act in their clients’ best interest by removing independent judgment from critical governance decisions. It also reduces diversity in shareholder viewpoints, leading to homogenized voting outcomes that may not reflect the full spectrum of shareholder interests.

II. Conflicts of Interest and Market Concentration

Beyond robovoting, structural conflicts of interest further complicate the role of proxy advisors. For example, ISS not only provides voting recommendations to institutional investors but also sells governance consulting services to the very companies it evaluates. This dual role presents a fundamental conflict: how can a firm offer objective assessments while simultaneously advising issuers on how to secure favorable reviews? We typically do not allow such conflicts of interest in financial services—auditors, for example, have been prohibited from engaging in potentially conflicting activities since the passage of the Sarbanes-Oxley Act. The draft bill from Mr. Fitzgerald would directly address this issue.

Market concentration exacerbates this problem. With only two firms dominating the field, companies have little recourse if they disagree with recommendations. The market lacks meaningful competition or alternative sources of advice, making oversight and transparency all the more essential. I note that Mrs. Wagner’s draft bill proposes a study that could shed light on these questions.

III. Uniform Standards vs. Company-Specific Context

Another concern is the application of standardized voting policies. Proxy advisors often promote uniform governance practices across industries, ignoring the unique needs and strategic contexts of individual firms. A rigid, one-size-fits-all approach may penalize innovative or long-term strategies that deviate from so-called “best practices.”

This discourages experimentation and diversity in corporate governance models. If there was strong evidence that the advice generated better returns or helped companies avoid scandal, perhaps such advice would be justified. Unfortunately, very little evidence exists supporting the specific governance recommendations of proxy advisors.

IV. The 2020 SEC Reforms and Their Rollback

In response to mounting concerns, the SEC adopted a set of reforms in July 2020. These included:

- Requiring proxy advisors to disclose conflicts of interest;
- Ensuring that issuers could review and respond to proxy advice before shareholder meetings;
- Mandating that institutional clients of proxy firms have access to those responses prior to voting;
- And reaffirming that proxy advice constitutes a “solicitation” under federal securities laws.

These changes came after a decade of careful work by the SEC staff, across a Democratic and a Republican presidential administration. They were designed to increase transparency, accuracy, and fairness in the proxy voting process. Yet in 2021, under Chairman Gensler, the Commission announced plans to suspend enforcement and revise the rules, before the rules were even fully implemented.

Such regulatory whiplash creates uncertainty for market participants. It signals that rules carefully developed through public input can be reversed without due consideration. This erodes

trust in the Commission and reduces the incentives for firms to invest in compliance infrastructure.

V. Policy Recommendations

To address the challenges posed by proxy advisory firms, I offer the following recommendations. Congress should:

1. Enact legislation requiring the SEC to establish rules to ensure basic fairness, transparency, and procedural accountability in proxy voting advice.
2. Discourage robovoting by requiring institutional investors to demonstrate active, independent evaluation of proxy advice.
3. Impose fiduciary-like duties on proxy advisors, consistent with their influence over corporate decision-making.
4. Commission empirical studies on the effects of proxy advice on long-term company performance and shareholder outcomes.

The draft bills proposed by Mr. Steil, Mr. Loudermilk, Mr. Nunn, Mrs. Wagner, and Mr. Fitzgerald would address these recommendations.

Conclusion

The modern proxy advisory industry was not born from market innovation but from regulatory incentives. Advocates for the proxy advisory industry maintain that proxy advisors' influence is overstated, and they perform useful function in the market. Even if we assume that is true, why should we not hold proxy advisors subject to similar fiduciary duty standards and protect investors against conflicts of interest the way that we do for other significant market actors? By imposing standards for accountability and oversight, Congress can ensure that proxy advisors serve as responsible facilitators of informed shareholder participation, not unregulated gatekeepers of corporate governance.

Thank you. I welcome your questions and continued dialogue on this important issue.

Respectfully submitted,

Paul Rose

Case Western Reserve University School of Law

Chairwoman WAGNER. Thank you, Professor Rose.

Mr. Washington, you are now recognized for 5 minutes for your oral presentation.

**STATEMENT OF PAUL WASHINGTON, PRESIDENT AND CEO,
SOCIETY FOR CORPORATE GOVERNANCE**

Mr. WASHINGTON. Good afternoon, Chair Wagner, Ranking Member Sherman, members of the subcommittee. My name is Paul Washington. I am President and CEO of the Society for Corporate Governance.

The Society is a nonpartisan, nonprofit organization of governance professionals who serve approximately 1,000 public and private companies of almost every size in industry across our country. We advocate for policies that promote effective governance, appropriate disclosure, and capital formation, and we appreciate the opportunity to present our views on proxy advisory firms today.

Proxy advisory firms play an influential role in capital markets by advising investors on how they should vote, as indicated in numerous studies submitted in our written testimony. The firms' impact is twofold. First, they can determine the outcome of votes where shareholders have decision making power. Second, even when shareholder votes are merely advisory, as is the case with companies' say-on-pay proposals or many shareholder proposals, they often affect board decision making.

In addition to providing voting recommendations to investors, the proxy advisory firms also own and control software platforms that send votes by investors to the tabulators for shareholder meetings. In some cases, the advisory firms decide how to vote and submit the balance for their clients, and they offer, as has been mentioned, other services to investors and corporate clients.

Importantly, the influence of proxy advisory firms is likely only to increase. A number of large U.S. asset managers are implementing programs that will allow their upstream clients to decide how to vote their shares rather than having the asset manager make that determination. In some cases, the voting options provided to those upstream clients are based on the proxy advisory firms' own policies or recommendations, thereby effectively increasing the influence of these firms.

The Society supports what we term the "light touch" regulation of the proxy advisory firms. Institutional investors cast votes on tens of thousands of items each year, and the Society fully supports investors' ability to enlist outside assistance in deciding how to vote and in casting votes. At the same time, we believe regulation can, first, help ensure that shareholders are provided with accurate information by the proxy advisory firms before casting votes, and second, increase transparency regarding proxy advisory firms, thereby enhancing confidence in the system.

Let me address four areas of reform.

First, as a threshold matter, legislation may be needed to address the SEC's jurisdiction. For many years, as you know, the SEC has considered the activities of proxy advisory firms to be within the scope of proxy solicitation and therefore subject to the Commission's rules. As you know, ISS has challenged the SEC's interpretation in a lawsuit in Federal district court, which is on ap-

peal to the D.C. Circuit. If ISS prevails and it is determined that the SEC lacks authority to regulate proxy advisory firms, Congress should move quickly to enact legislation to confirm the SEC's authority.

Second, and quite importantly, the Society supports requiring proxy advisory firms to provide advanced copies of their reports to companies on a complimentary basis with a reasonable amount of time for companies to identify any factual, analytical, or other errors. In addition, proxy advisors should provide clients with a hyperlink to the company's response to the advisory firm's analysis and recommendations.

Given the more than 25,000 valid items on Russell 3000 companies each year, it is inevitable that proxy advisory firms will have some factual errors. Numerous studies confirm that these errors occur.

An advance review and common process would permit a company to review and correct any factual, inaccurate information. This practice would also be consistent with ISS' prior practice in the United States, its current practice outside the United States, and the SEC's 2019 proposed rule.

Next, we support increased disclosure of the empirical basis for proxy advisory firms' voting policies. This is critical because institutional investors with fiduciary duties to their shareholder clients rely to varying degrees on proxy advisory recommendations. Second, as more retail investors participate in client-directed voting programs, in which their votes follow proxy advisor recommendations, those retail investors should know whether and to what extent the recommendations have a solid empirical foundation.

We also believe that proxy advisor firms should, at a minimum, provide increased information regarding actual or potential conflicts of interest that arise from their multiple roles.

Finally, the Society also supports the regulation of automated voting, sometimes called robo-voting. This automated voting outsourcing is of particular concern because, as noted above, the proxy advisory voting policies may not have an empirical basis.

We appreciate the legislation that the subcommittee is considering, and we stand ready to work with you as you refine the legislation.

Thank you very much for the opportunity to appear before you this afternoon.

[The prepared statement of Mr. Washington follows:]

Statement of Paul F. Washington
President & Chief Executive Officer
Society for Corporate Governance

Before the Subcommittee on Capital Markets
Committee on Financial Services
U.S. House of Representatives

Hearing on “Exposing the Proxy Advisory Cartel: How ISS & Glass Lewis Influence Markets”

April 29, 2025

Chair Wagner, Ranking Member Sherman, and Members of the Subcommittee, my name is Paul Washington, and I am the President and Chief Executive Officer of the Society for Corporate Governance (“Society”). The Society appreciates the opportunity to present its views on proxy advisory firms’ roles in, and impact on, corporate governance in the United States.

Founded in 1946, the Society is a professional membership association of more than 3,700 corporate and assistant secretaries, chief legal officers and other in-house counsel, outside counsel, and other governance professionals who serve approximately 1,700 entities, including about 1,000 public and private companies of almost every size and industry.

The Society’s members support the work of corporate boards and executive management regarding corporate governance and disclosure, compliance with corporate and securities laws and regulations, and adherence to stock exchange listing requirements.

The Society’s mission is to support corporate governance professionals through education (including programs, content, and benchmarking), peer-to-peer connections and professional development, and advocacy with federal, state, and international

policymakers, with the ultimate goal of creating long-term shareholder value through better governance.

The Society's Public Policy Goals

A fundamental goal of the Society is to support corporations, as they, under the direction of the informed and independent judgment of their boards, develop and execute their individual strategies in the context of their specific circumstances. In furtherance of that goal, the Society advocates for policies that promote effective governance, appropriate disclosure, and, as especially relevant for the Subcommittee, capital formation – including facilitating the ability of companies to become and remain public companies.

There is a wide range of forces that discourage investors and the companies they own from going and remaining public. In 1997, there were approximately 7,100 public companies in the United States. Now there are fewer than 3,600.

The decline in public ownership of corporations should concern every American. Growing wealth inequality has many drivers, but fewer public companies means fewer investment opportunities for average American investors.

The Subcommittee is rightly examining the role of proxy advisory firms in the U.S. corporate governance ecosystem, including their impact on corporation decision-making, shareholder voting, and, more broadly, the environment for public ownership of corporate shares.

Background on Proxy Advisory Firms

The proxy advisory market essentially consists of two firms—Institutional Shareholder Services, or ISS, and Glass Lewis. Proxy advisory firms play an important role in capital markets by advising investors how they should vote at companies’ annual and special shareholder meetings. This involves preparing recommendations for institutional investors in companies about how they should vote with respect to, for example, particular board members, equity plans, company “say-on-pay” proposals, significant corporate transactions, and shareholder proposals.

The proxy advisory firms’ recommendations have a significant impact on shareholder votes. Numerous studies have documented the significant influence of these firms in corporate governance and the proxy voting process:

- A 2015 study found that 25 percent of institutional investors vote “indiscriminately” with ISS.¹
- In 2016, a study estimated that a negative recommendation from ISS leads to a 25-percentage point reduction in voting support for say-on-pay proposals.²
- A 2018 study demonstrated that a negative recommendation from ISS was associated with a reduction in support of 17 percentage points for equity-plan proposals, 18 points for uncontested director elections, and 27 points for say-on-pay.³
- In 2021, a study examining “robo-voting”—the practice of fund managers voting in lockstep with the recommendations of ISS—identified 114 financial institutions managing \$5 trillion in assets that automated their votes in a manner aligned with ISS recommendations 99.5% of the time.⁴

¹ Peter Iliev and Michelle Lowry, “Are Mutual Funds Active Voters?” *Review of Financial Studies* (2015).

² Nadya Malenko and Yao Shen, “The Role of Proxy-Advisory Firms: Evidence from a Regression-Discontinuity Design,” *Review of Financial Studies* (2016).

³ James R. Copland, David F. Larcker, and Brian Tayan, “The Big Thumb on the Scale,” *Stanford Closer Look Series* (May 30, 2018).

⁴ Paul Rose, “Proxy Advisors and Market Power: A Review of Institutional Investor Robovoting,” *Social Science Research Network* (April 2021).

- A 2022 study provided further evidence that institutional investors are highly sensitive to an opposing recommendation from a proxy advisory firm. Opposition from ISS was associated with a 51 percent difference in institutional voting support compared with only a 2 percent difference among retail investors.⁵
- During the 12 months ending June 30, 2024, negative recommendations from the two proxy advisory firms were associated with (1) a 17-percentage point difference in support for directors in uncontested elections at the S&P 500 (96.9% with the firms' support vs. 79.7% without); (2) a 35-percentage point gap for say-on-pay proposals (92.8% vs. 58.0%); and (3) a 36-percentage point difference for shareholder proposals (42.4% vs. 6.6%).⁶

The proxy advisory firms' impact is two-fold. First, it can determine the outcome of votes where shareholders have decision-making power, such as in the election of directors or approval of significant corporate transactions. Second, even when a shareholder vote is merely precatory – as is the case with say-on-pay proposals or many shareholder proposals – it often affects board decision-making. This is because proxy advisory firms will recommend votes against board members based on the company's response to prior precatory shareholder votes. For example, if a company's say-on-pay proposal passes but receives less than 70% support, ISS may recommend that shareholders vote against the re-election of the company's compensation committee members at the next annual meeting unless the company is, in ISS's view, sufficiently responsive to the shareholder vote. Similarly, Glass Lewis may recommend votes against directors if a say-on-pay proposal receives less than 80% support. This places a board in the position of choosing between (1) standing by its prior decision on executive

⁵ Alon Brav, Matthew Cain, and Jonathan Zytznick, "Retail Shareholder Participation in the Proxy Process: Monitoring, Engagement, and Voting," *Journal of Financial Economics* (2022). See also David F. Larcker and Brian Tayan, "Seven Questions About Proxy Advisors," *Stanford Closer Look Series* (April 29, 2024).

⁶ Society for Corporate Governance, based on data provided by Proxy Analytics (April 2025). Similar gaps were observed in shareholder votes for Russell 3000 companies (96.8% vs. 77.6% for directors; 94.8% vs. 67.5% for say-on-pay; and 42.2% vs. 6.7% for shareholder proposals).

compensation that it believed was in the best interests of shareholders, which received super-majority support from its shareholders, or (2) taking potentially suboptimal actions to accommodate the proxy advisory firm's views that are inconsistent with the views of investors holding a majority of the company's shares.

In addition to providing voting recommendations to investors, the proxy advisory firms also own and control the software platforms that send votes by investors to the tabulators for a shareholder meeting. In some cases, the proxy advisory firms, and not the investors, actually decide how to vote and submit the ballot for their clients. And, as discussed below, the proxy advisory firms offer other services to investors and corporate clients.

The influence of proxy advisory firms is only likely to increase. A number of large U.S. asset managers are implementing programs that will allow their clients to decide how to vote their shares rather than having the asset manager make that determination. This "client-directed" or "pass-through" voting has attractive features for asset managers and their clients, but in some cases the voting options provided to clients are based on the proxy advisory firms' policies or recommendations, thereby effectively increasing the influence of the proxy advisory firms.⁷

The influence, impact, and multiple roles played by proxy advisory firms are why it is so important not only for these firms to "get it right," but also for those who rely on, and are affected by, proxy firm recommendations to have appropriate insight in the

⁷ Moreover, the labeling of such voting options can be misleading. ISS's "board-aligned policy," is not, in fact, consistently aligned with the board's recommendations. See <https://www.issgovernance.com/file/policy/active/specialty/Global-Board-Aligned-US-Voting-Guidelines.pdf?v=1>

processes that these firms use in developing their positions and in potential conflicts of interest.

The Need for Common-Sense Regulation of Proxy Advisory Firms

The Society supports what we term “light touch” regulation of the proxy advisory firms designed to (1) help ensure that shareholders are provided with accurate information before casting votes, and (2) increase transparency regarding proxy advisory firms, thereby enhancing confidence in the proxy voting system.

In supporting common sense regulation, the Society is mindful of the legitimate and important role that proxy advisors play. Institutional investors cast votes on tens of thousands of items each year and thousands of shareholder meetings, and the Society supports their ability to enlist outside assistance in deciding how to vote and in casting their votes. At the same time, proxy advisors comprise the one component of the proxy voting system that is currently unregulated. Given the longstanding and continuing concerns described herein, we believe that light-touch regulation is appropriate.

SEC Jurisdiction

As a threshold matter, we believe that the Securities and Exchange Commission currently has authority to regulate proxy advisory firms. But as discussed below, it would be helpful – and may indeed become necessary – for Congress to confirm that authority.

The largest proxy advisory firm, ISS, has chosen to register under the Investment Advisers Act of 1940. However, the SEC’s rules for investment advisers do not reflect the unique role that proxy advisory firms perform in the proxy voting process. Proxy advisory firms do not select securities for their clients, nor provide investment advice in

the way a typical asset manager does. Instead, these firms recommend how to vote at shareholder meetings and facilitate the voting process for their clients.

The other major proxy advisory firm, Glass Lewis, is not registered under the Investment Advisers Act (or under any other securities statute). As a non-registered entity, Glass Lewis is not subject to the provisions of the Investment Advisers Act, or any other SEC regulation.

For many years, the SEC has considered the activities of proxy advisory firms to be within the scope of a proxy solicitation, and, therefore, subject to the Commission's rules under Section 14(a) of the Securities Exchange Act of 1934.⁸ In 2020, the SEC promulgated a final rule to codify this long-standing interpretation.⁹ This 2020 SEC Final Rule also amended the exemptions to the proxy solicitation rules in order to provide SEC oversight of certain proxy advisory firm activities and practices.¹⁰

The 2020 SEC Final Rule was largely vacated by new leadership at the SEC in 2022.¹¹ Additionally, ISS challenged the SEC's interpretation of its solicitation rules in a lawsuit brought in the U.S. District Court for the District of Columbia.¹²

The District Court's decision in this ISS lawsuit is on appeal to the U.S. Court of Appeals for the District of Columbia Circuit.¹³ The Society and the National Investor Relations Institute ("NIRI") filed an amicus brief explaining how the District Court erred in its analysis. If ISS nonetheless prevails—and it is determined that the SEC lacks

⁸ See, e.g., *Commission Interpretation and Guidance Regarding the Applicability of the Proxy Rules to Proxy Voting Advice*, 84 Fed. Reg. 47,416 (Sept. 10, 2019).

⁹ *Exemptions From the Proxy Rules for Proxy Voting Advice*, 85 Fed. Reg. 55,082, at 55,091 (Sept. 3, 2020) (hereinafter "2020 SEC Final Rule").

¹⁰ *Id.*

¹¹ *Proxy Voting Advice*, 87 Fed. Reg. 43,168 (July 19, 2022).

¹² *Institutional Shareholder Services v. Securities and Exchange Commission*, No. 19-3275 (D.D.C. filed Oct. 31, 2019) (hereinafter "ISS v. SEC").

¹³ *ISS v. SEC*, 718 F. Supp. 3d 7 (D.D.C. 2024), *appeal docketed*, No. 24-5105 (D.C. Cir. Apr. 23, 2024).

authority to regulate proxy advisory firms under its solicitation rules—Congress should enact legislation to confirm the SEC’s authority to provide oversight of these firms and their activities.

The Need for Pre-Publication Review of Proxy Advisory Firm Reports

The Society supports requiring proxy advisory firms to provide advance copies of their reports to the companies that are the subject of the report, on a complimentary basis, with a reasonable amount of time for companies to identify any factual, analytical, or other errors. In addition, in its relevant report, the proxy advisory firms should provide clients with a hyperlink to the company’s response to the proxy advisory firm’s analysis and recommendations.

Proxy advisory firms make proxy recommendations on thousands of public companies in the United States and thousands of public companies in Europe and Asia. Reading, digesting, and analyzing thousands of proxy statements, annual reports, and other corporate publications, and then preparing written analyses, is a large and labor-intensive task. The challenge is compounded by the compressed meeting schedule during the spring U.S. proxy season, the limited number of full-time research analysts at the two major proxy advisory firms, the breadth of industries represented by the companies subject to the proxy advisors’ recommendations, and the complexity of issues being addressed at shareholder meetings such as executive compensation programs.

Given the more than 25,000 ballot items at companies in the Russell 3000 Index that proxy advisory firms opine on each year, it is inevitable that proxy reports will have some factual errors or misunderstandings about corporate disclosures.

Factual errors, incorrect methodologies, and other problems with proxy advisory firm reports have been well-documented over the years. For example, a 2020 comment letter to the SEC by the Society included the results from a December 2019 Society member survey, in which 42 percent of respondents answered affirmatively when asked if they were “aware of any factual errors, omissions of material facts, or errors in analysis in the last three years.”¹⁴ This Society comment letter also included a lengthy list of examples of errors, analytical flaws, and omissions reported by our members.¹⁵

A November 2024 survey of Society members confirmed that these problems still exist. Of the 52 respondents in this later survey: (1) 26.92% reported that they had to ask ISS to make a correction or clarification after a proxy research report was published; (2) 11.54% had to make a supplemental SEC filing to alert their investors about flaws in an ISS report; and (3) 19.23% had to engage directly with their investors to alert them about flaws in an ISS report. In addition, Society members often report that (1) the proxy advisory firms do not consistently issue corrections, and (2) even if they do, it is difficult for companies to correct misconceptions among their shareholders after the proxy advisory firm’s erroneous report has been issued and, in some cases, shareholder votes have already been cast.

The Society’s survey results are supported by American Council for Capital Formation’s (“ACCF”) examination of public filings in at least three recent proxy seasons. In 2020, the ACCF found a total of 42 supplemental filings by public companies in the SEC’s EDGAR database attempting to correct the record regarding a

¹⁴ Letter from Darla Stuckey, President and CEO, Society for Corporate Governance, to Vanessa A. Countryman, Secretary, U.S. Securities and Exchange Commission, at 4-5 (Feb. 3, 2020), available at <https://www.sec.gov/comments/s7-22-19/s72219-6743687-207853.pdf>.

¹⁵ *Id.* at 5-7.

vote recommendation by a proxy advisory firm.¹⁶ In the 2021 proxy season, the ACCF found 50 examples of supplemental filings to correct the record regarding inaccurate voting recommendations by proxy advisory firms, a 21% increase.¹⁷ And, in a study conducted during the 2023 proxy season, the ACCF found 64 instances where proxy advisors formulated recommendations based on data or analysis disputed by the companies themselves, a 28% increase from the 2021 results.¹⁸

For many years, the Society and others within the public company community have advocated for a requirement that proxy advisory firms provide each public company with a copy of its draft report in advance of dissemination to their clients. This “advance review and comment” process would permit a company to review and correct any inaccurate factual information and remark on any other flaws contained in these reports. Indeed, for several years, ISS did provide draft reports (albeit on a very brief turnaround basis) to public companies that are members of the S&P 500 Index. While it discontinued this practice for U.S. companies after the promulgation of the 2020 SEC Final Rule, ISS still offers an advance review and comment process to companies in various markets abroad:

- In Canada, drafts are provided to Canadian companies in the S&P/TSX Composite Index for the purpose of reviewing the factual accuracy of the data in ISS’s draft proxy analyses.¹⁹

¹⁶ American Council for Capital Formation, “Proxy Advisors Are Still a Problem,” at 9 (December 2021), available at https://accf.org/wp-content/uploads/2021/12/ACCF_proxy_advisor_rule_report_2021-FINAL.pdf.

¹⁷ *Id.* at 10.

¹⁸ American Council for Capital Formation, “Proxy Advisors Remain a Problem,” at 2 (November 2023), available at <https://accf.org/wp-content/uploads/2023/11/ACCF-2023-Supplemental-Filings-Report-FINAL.pdf>.

¹⁹ Institutional Shareholder Services, <https://www.issgovernance.com/iss-draft-review-process-canadian-issuers/> (last visited Apr. 22, 2025).

- In France, ISS provides corporate issuers with an opportunity to review the factual accuracy of the data included in ISS's draft proxy analyses.²⁰
- In other markets, ISS permits companies to make individual requests for a review of draft reports. The requests are typically made by the earlier of the filing of their shareholder meeting materials, or 30 days prior to the meeting. The request needs to be made annually and may be accommodated at ISS' sole discretion.²¹

In addition, the SEC previously recognized the appropriateness of providing pre-publication review. In a 2019 Proposed Rule, the SEC would have required proxy advisory firms to provide each company with a copy of its draft report—in advance of dissemination to their clients—to permit a company to review and inform the proxy advisory firm about any inaccurate factual information and comment on any other flaws in a report.²²

This advance review and comment process can operate very efficiently and does not impact the independence of a proxy advisory firm, as each firm retains its exclusive right to determine whether to make any changes to a company report before disseminating it to its investor clients. Moreover, because these reports are distributed electronically, it would be a simple additional step to add a hyperlink on the front page of a report, permitting investors with easy access—if they so choose—to any comment letter submitted by a company that is the subject of the report.

²⁰ Institutional Shareholder Services, <https://www.issgovernance.com/policy-gateway/french-market-engagement-disclosure> (last visited Apr. 22, 2025) (“ISS believes that this review process helps improving the accuracy and quality of its analyses, an outcome that is in the best interests of both the institutional investors for whom the analyses are prepared, as well for the issuers that are the subject of these reports.”).

²¹ Institutional Shareholder Services, <https://www.issgovernance.com/contact/faqs-engagement-on-proxy-research/#1574276867038-b204d1c3-a920> (last visited Apr. 22, 2025).

²² Amendments to Exemptions From the Proxy Rules for Proxy Voting Advice, 84 Fed. Reg. 66,518 (Dec. 4, 2019) (hereinafter “2019 SEC Proposed Rule”). In its 2020 Final Rule, the SEC also provided an option for proxy advisory firms to engage in a “concurrent review” process, whereby final versions of their reports would be sent to public companies at the same time the reports are distributed to their clients. Companies would then have the opportunity to provide any comments on the report; and each proxy advisory firm would notify its clients about such comments. See 2020 SEC Final Rule at 55,110-55,114.

The Benefits of Increased Disclosure

The Society also supports increased disclosure of proxy advisory firms' processes and assumptions for developing their voting policies. The proxy advisory firms engage in multi-stage processes in preparing their voting policies. This includes soliciting input from several constituencies, including public companies, and the Society has regularly participated in the firms' policy development surveys. As the Society has highlighted in its responses to these surveys, however, the survey questions and response choices are often worded in a biased manner and, of even greater concern, the policies adopted by the proxy advisory firms are often not grounded in empirical evidence supporting the connection between their policies and shareholder value, or even to prevailing industry practice. For example, ISS once told a large-cap Society member its proxy access bylaw that was the subject of a shareholder proposal did not comport with "best practices" and that it would recommend its clients vote against management, even though over 90% of such bylaws have the same provisions as the one on the ballot. When pressed why ISS refused to identify this bylaw amendment as a best practice, the ISS corporate sales team member said that "for ISS, best practice is the preferred practice by ISS."

The Society believes that proxy advisors should disclose the empirical basis for their voting policies. This is critical because (1) *institutional* investors with fiduciary duties to their shareholder clients rely (to varying degrees) on proxy advisor recommendations, and (2) as more *retail* investors participate in client-directed voting programs, in which their votes follow proxy advisor recommendations, those investors should know whether, and to what extent, those recommendations have a solid empirical basis.

The Society also believes that proxy advisory firms should, at a minimum, provide increased information regarding actual or potential conflicts of interest that arise from the multiple roles performed by the proxy advisory firms. As an example, ISS provides corporate governance and executive compensation consulting services to public companies, in addition to providing voting recommendations to its institutional clients on the *same* companies and with respect to the same proxy items. A common experience is for a company to get a sales call from the ISS corporate consulting team with a pitch that ISS can help the company address low or lower than desired shareholder support associated with a previous vote without acknowledging that the proxy advisor's recommendation likely influenced (in some cases, significantly) the voting outcome. Indeed, for an even higher price, a company can get even more service, including language explaining the elements of an annual bonus plan in the Compensation Discussion and Analysis section of the company's proxy statement. More recently, ISS introduced an environmental and social scorecard it pitches to companies showing negative results, and, when asked what forms the basis of the score, companies are told they can learn about it if they pay a significant consulting fee to ISS.

Another apparent conflict that exists is proxy advisory firms providing voting recommendations on shareholder proposals submitted to companies by the proxy advisory firms' institutional investor clients. This should be specifically and prominently disclosed to clients of proxy advisory firms so that they may evaluate this information in the context of a firm's voting recommendations.

Automated Voting

The Society also supports the regulation of automated voting, sometimes called “robo-voting.”

Society research indicates that many mid-size and smaller investment advisers have chosen to outsource their voting decisions to ISS and Glass Lewis.²³ This delegation of voting authority permits ISS and Glass Lewis to vote their clients’ shares as recommended in their individual company reports. This outsourcing of the shareholder voting process to a non-fiduciary is well-documented in public disclosures made by these mid-size and smaller investment advisers.²⁴ This automated outsourcing is of particular concern because, as noted above, the proxy advisors’ voting policies may not have an empirical basis and may conflict with the views of the board of directors which, unlike the proxy advisory firm, has a fiduciary duty to make decisions in the best interest of the corporation and its shareholders.

The ISS and Glass Lewis voting systems are completely automated, with an electronic ballot that is pre-populated with voting instructions based on: (1) a client’s general voting guidelines; and/or (2) ISS and Glass Lewis voting recommendations. The ballot for each shareholder meeting is then automatically submitted by ISS or Glass Lewis to the relevant tabulators, without any requirement that the client review and approve the ballot being submitted.

The SEC has acknowledged that ISS and Glass Lewis offer these automated voting services:

²³ See, e.g., Letter from Niels Holch, Executive Director, Shareholder Communications Coalition, to Vanessa A. Countryman, Secretary, Securities and Exchange Commission (Feb. 3, 2020), available at <https://www.sec.gov/comments/s7-22-19/s72219-6744360-207909.pdf>.

²⁴ *Id.*

One way a proxy voting advice business may assist clients with voting execution is through an electronic vote management system that allows the proxy voting advice business to (1) populate each client's ballot with recommendations based on that client's voting instructions to the business ("pre-population"); and (2) submit the client's ballots to be counted.²⁵

The Commission also confirmed that "[c]lients utilizing such [voting] services may choose to review the proxy voting advice business's pre-populated ballots before they are submitted or have them submitted automatically, without further client review ('automatic submission')."²⁶

The Society believes that a proxy advisory firm should not be permitted to offer an automated voting service that allows the proxy advisory firms to make and execute voting decisions on behalf of investment advisers without any ongoing oversight by these clients, aside from the approval of general guidelines and policies before proxy season begins.

In advancing this position, the Society does not oppose the use of technology to pre-populate individual ballots for ISS and Glass Lewis clients based on a client's general guidelines or policies. However, each investment adviser client should be required to review every pre-populated ballot and provide affirmative consent by expressly authorizing and directing its voting decisions for each individual ballot prepared by the proxy advisory firm.

Investment advisers that do not review and specifically approve (or modify) each ballot cast on their behalf are not fulfilling the fiduciary responsibilities they owe to their clients, investors, and beneficiaries.

²⁵ 2019 SEC Proposed Rule at 66,519-66,520.

²⁶ *Id.* at 66,520.

Legislation to Address Proxy Advisory Firm Issues

The Society is supportive of the goals of the legislation being considered by the Subcommittee at today's hearing. These bills address many of the concerns raised by public companies and other participants in the U.S. proxy system. Among other things, the proposed legislation would:

- Require proxy advisory firms to register with the SEC;
- Require these firms to be more transparent about their internal standards, procedures, and methodologies;
- Provide public companies with a mechanism to review and comment on draft reports before they are issued;
- Authorize the SEC to regulate and/or prohibit proxy advisory firm conflicts of interest; and
- Prohibit automated or "robo-voting" by these firms.

As noted above, the Society understands the need of institutional investors to have summaries and analyses of their proxy materials, particularly for those who hold many U.S. equities and vote thousands of meetings each year. The Society is also mindful of compliance cost concerns and is more than willing to work with the Subcommittee on Capital Markets and others on the proposed legislation to ensure reasonable and cost-effective regulation of these firms and their business practices.

Conclusion

Thank you for the opportunity to present the views of the Society on the role and impact of proxy advisory firms in the United States and the areas in which appropriate federal legislation and regulation can help promote effective governance, transparent markets, informed investor decision-making, and capital formation. I am happy to answer any questions you may have about these issues.

Chairwoman WAGNER. Thank you, Mr. Washington.

Ms. Minow, you are now recognized for 5 minutes for your oral presentation.

**STATEMENT OF NELL MINOW, VICE CHAIR, VALUEEDGE
ADVISORS**

Ms. MINOW. Thank you, Madam Chairman and members of the committee.

I am a graduate of the University of Chicago which taught me a lot about free markets, and I am the Founder or Co-Founder of five startups, three which have been sold, and we have created hundreds of jobs. I am here on behalf of the people capitalism is named after, the capitalists, the providers of capital, and on behalf of the shareholders.

I worked in the Antitrust Division of the Justice Department during the Reagan Administration, so I am aware that the elements of a cartel are collusion on pricing and imposing barriers to entry on the market for competitors. Neither of those are present here, and that is why I am using the word “cartel” in quote marks because it just does not apply at all.

As for entering the market, there have been some that have tried and failed. There was a really good one started by a former SEC commissioner, but nobody bought the product because it was funded by the business roundtable, and they were suspicious of it.

There have been a couple in the last couple of years, as Mr. Sherman said, that sell themselves as the anti-woke. There are also proxy advisors outside the United States that cover U.S. companies and make their services available.

I could start a new one tomorrow but if you impose new rules, if you impose new restrictions, you are making it harder for new people to enter this business and compete with ISS and Glass Lewis.

Proxy advisory services are purchased exclusively and voluntarily by the most sophisticated financial professionals in the world, almost all of them also fiduciaries and subject to the strictest legal standard that has ever been developed. No one has to purchase their services, and no one has to follow their advice.

If indeed they are as influential as the snowflakes over here are saying, then they should be popping champagne corks, because over 90 percent of the recommendations of the proxy advisor services are to vote as management recommends. I do not know anybody who understands voting better than the members of this committee and the members of this House. You would be overjoyed to get 96 percent of the vote, which is what the unopposed directors get when ISS recommends a vote in favor.

On the 4 percent where ISS parts from the recommendations of management, the data shows very clearly that the fiduciary financial professionals read the analysis and make their own decisions. In my opinion, the single most outrageous item that has ever been on a proxy is the \$58 billion pay package for Elon Musk at Tesla. ISS recommended a vote against. It got a strong majority vote in favor.

I have a lot of data in my submission about the number of votes that go contrary—cast by clients of the proxy advisors that go con-

trary to their recommendations, as well as data about the different recommendations that ISS and Glass Lewis have, showing, again, that there is no collusion, and many people do subscribe to both.

Despite proxy advisory firm recommendations, the clients often vote in favor or vote against. The shareholders of Tesla also voted in favor of the move from Delaware to Texas, which I thought was wrong. ISS supported it, and it got enormous majority.

This is a kill the messenger approach. You have the absolute ultimate example of the free market here. The reason the proxy advisory services started—and I was there when they did, and I helped to start one—is that there was documentation that investment managers were voting incorrectly when it came to shareholder votes. They were voting “yes” when they should have voted “no” because the companies were clients or were prospective clients. Jack Bogle, the founder of Vanguard, wrote several books about that subject. The independent proxy advisors were invented, were asked for, and became a part of the market, to avoid those inherent conflicts of interest.

I am sure that advocates who are paid by corporate insiders have valuable comments, but I think it would be useful for this committee to hear from the institutional investors that use these services so that you can understand why they buy them, how they use them, and when they vote with and against them.

[The prepared statement of Ms. Minow follows:]



Subcommittee on Capital Markets of the Committee on Financial Services

Exposing the Proxy Advisory “Cartel:” How ISS & Glass Lewis Influence Markets

April 29, 2025

Testimony of Nell Minow Vice-Chair, ValueEdge Advisorsⁱ

I am very grateful for the opportunity to share my thoughts on proxy advisory firms. I welcome your questions and will submit supplemental materials as necessary following this session.

My connection to this field is that I was the fourth person hired at ISS when it began 40 years ago. I left as President of ISS in 1990 and remained on its board of directors until 1992. While I have stayed in the field of corporate governance ever since, always on behalf of shareholders, I have no connection to any company providing proxy advisory services, and am appearing today on my own behalf, and not representing or being paid by anyone.

I worked in the Justice Department’s Antitrust Division during the Reagan Administration, as a special assistant to now-Judge Douglas Ginsburg, long enough to know that the definition of “cartel” means either conspiring to fix prices or conspiring to keep out competition by imposing barriers to entry, or both. Neither is the case here. There are three major players in the field of proxy advisory services and they compete vigorously. Each has unique attributes that they emphasize in trying to sway clients, who I point

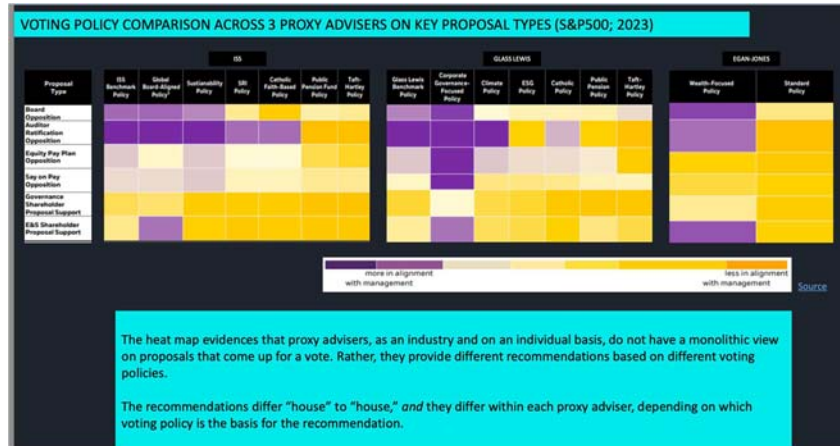
out are not retail investors but the most sophisticated financial professionals in the world, the people at gigantic money management firms and public pension funds. ISS and Glass Lewis provide consulting services for the companies they cover; Egan-Jones does not, and they are happy to explain to you why they are free from this particular conflicts of interest. ISS is registered as an investment adviser and Egan-Jones is registered as a National Recognized Statistical Rating Organization (NRSRO), both with extensive requirements and regulatory restrictions.

VOTING POLICY COMPARISON ACROSS 3 PROXY ADVISERS ON KEY PROPOSAL TYPES (S&P500; 2023)



The heat map evidences that proxy advisers, as an industry and on an individual basis, do not have a monolithic view on proposals that come up for a vote. Rather, they provide different recommendations based on different voting policies.

The recommendations differ "house" to "house," and they differ within each proxy adviser, depending on which voting policy is the basis for the recommendation.



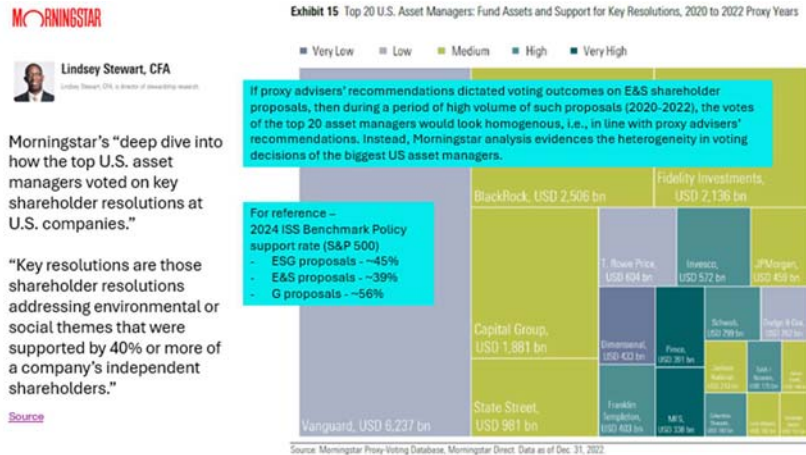
There is zero evidence of any collusion between these three companies. And, very significantly, there is plenty of evidence that there are no barriers to entry. Indeed, there are two other proxy advisory firms, both created within the past few years that I, a retail investor, use to vote my proxies. They are Iconik, which is very impressive, and the non-profit Shareholder Commons, which is free and very useful. A former SEC commissioner started a proxy advisory service called Proxy Governance that had an excellent product. But the sophisticated financial professionals I mentioned, who are all fiduciaries and thus subject to the strictest standard of care and loyalty in our legal system, declined to buy the product because the company was funded by the business community, and they believed its recommendations were biased.

Some new proxy advisory services compete with the big three by promoting their businesses as being "anti-woke." I urge the committee staff to check out Proxy Navigator and Bowyer Research, though in my opinion their credibility is in question as they both submit shareholder proposals as well as advising on how to vote on them. I could easily start my own proxy advisory service tomorrow, much easier today than it was in 1985 when ISS had to get all the company proxy statements and send all the proxy recommendations on paper. This is exactly how robust free markets work.

My fellow panelists will tell you how influential the big proxy advisory services are. What they might not mention is that if indeed they are influential, CEOs should be delighted. In 2024, ISS recommended a vote with management on 96 percent of the management proposals, which represent anywhere from 93% to 98% of the voted items. And those proposals received 96 percent of the vote. Almost all were recommendations to vote in favor of unopposed candidates for the board, approval of the auditors, and other routine matters.

ISS is not as influential in the other four percent, however, proving that fiduciary financial professionals appreciate the analysis but make their own decisions. In 2024, for Russell 3000 companies, ISS recommended voting against 12 percent of the proposals on executive pay. Fewer than one percent failed to receive a majority vote, and that number is lower than it was in 2023. The most outrageous pay plan in American history was the \$55.8 billion for Elon Musk at Telsa, approved twice by his board and thrown out twice by the Delaware Chancery court. Despite proxy advisory firm recommendations against this plan, however, it was overwhelmingly approved by more than 70 percent of the outside shareholders. ISS recommended a vote in favor of Tesla's move from Delaware to Texas, and it received 84 percent of the votes cast.

What's more, the proxy advisory firms also compete with different ways to analyze proxy proposals. These firms – whether ISS, Glass Lewis, or Egan-Jones – do not provide just one recommendation. They serve investors with differing investment theses, providing recommendations based on the investors' proxy voting criteria. The data bears out the facts.



Studies have shown that fund managers are more likely to vote contrary to shareholder interests if the portfolio company is also a client of their firm.ⁱⁱ That is a conflict of interests. In the early days of ISS, we had a different business model in mind. But our conversations with pension plan fiduciaries and investment firms included many requests for proxy recommendations, unlike the-then most successful proxy advisory firm, the non-profit IRRC, which provided both-sides-style analyses but no recommendations. Independent, third-party analyses of proxy issues were a market response to customer demand for a way to reduce fund manager conflicts of interest. And the clients of the proxy advisory firms are much more influential on the proxy advisors' policies than the proxy advisors' policies are on the clients. That is how markets work.

This is a good time to mention that even a 100 percent vote on a proxy proposal is not binding on management; they are advisory only and corporate insiders can and do ignore majority votes. So, proxy advisors recommend a vote with management more than 90 percent of the time, no one is required to purchase their services, sophisticated financial professionals who wish to get independent analysis of proxy issues have a

range of choices or proxy advisory firms but make their own decisions, and corporate insiders decide whether to abide by the shareholders' vote.

I note that the last time I testified on this subject, my fellow panelists were unable to come up with a single proxy issue that the proxy advisory services analysis was objectively wrong about the four percent where they did not agree with management. They complained about the expense of responding to proxy proposals and proxy advisory analyses. Their numbers were self-reported and failed to include the very significant benefits from the feedback they get from shareholders. If they do not understand that responding to market forces is a core element of competitive capitalism, they should be in another line of work. They're trying to kill the messenger here, restricting the sole source of thorough, quantitative analysis of the few matters that under law must be approved by shareholders.

Proxy advisory firms publish reports that financial services firms and other institutional investors can purchase if they wish. There is no requirement to subscribe. No fund manager is required to follow their advice. The proxy advisory services constantly adapt and improve their recommendations according to client preferences, like any other business.

Proxy advisors publish reports for subscribers. Unlike proxy solicitors, they are not paid advocates for any party. Unlike the ratings agencies, they are not mandatory and they are not paid by the companies they report on. The 1st Amendment requires us to be very careful about government restrictions on independently produced publications. In this case there is simply no evidence of any kind that there is anything improper in the way they do business.

I would like to note that the last time I testified, Chairman Hill asked me what I thought about pass-through voting, giving the voting power to the beneficial holders. Shortly after that hearing, Blackrock and other firms offered that as an option to customers. Blackrock has found, very few have the time, interest, or expertise to vote their proxies and prefer to let the same professionals who make the buy-sell-hold decisions vote their proxies as well. This is an economically sound conclusion from the retail

shareholder perspective, and it also prevents problems from companies' inability to obtain a quorum.

I would also like to recommend that the Subcommittee invite the proxy advisory services and, even more important, the institutional investors who subscribe to their services to testify at the next hearing. I am sure you will be reassured at the quality and variety of options offered by the proxy advisors and by the policies and procedures their clients apply in evaluating the small, advisory-only proposals, including those management does not support.

¹ ValueEdge Advisors is a small consulting firm focusing on corporate governance issues from the perspective of institutional investors. We hold a conference for public pension plans every fall. I am appearing on my own behalf, not representing any client or my partners, and we and our clients have no financial interest in these issues other than the overall impact on their rights and risks as investors.

² See for example <https://corpgov.law.harvard.edu/2017/05/02/proxy-voting-conflicts-asset-manager-conflicts-of-interest-in-the-energy-and-utility-industries/>

Chairwoman WAGNER. I thank you, Ms. Minow.

Before turning to member questions, I want to remind everyone involved in this hearing, both members and witnesses, to adhere to proper decorum in every way, shape, and manner and I will impose that.

I now recognize myself for 5 minutes for questions.

Mr. Washington, as a former corporate secretary of a public company, you played a key role in navigating the firm throughout the shareholder proposal process during proxy season. Can you discuss the impact that a proxy advisory firm's recommendations have on a shareholder's proposal?

Mr. WASHINGTON. Certainly. It has a quite significant impact. This is more recent, but the Society for Corporate Governance, as put forth in the written testimony, found that in the last proxy season, there is a 36-point difference in shareholder support for a proposal that is endorsed by ISS and Glass Lewis versus when it is not. That is 42.4 percent in favor versus 6.6 percent. So a dramatic impact when the advisory firms are in favor of a shareholder proposal.

That has a knock-on effect within the boardroom. It affects corporate decision making as to whether you will take a particular action or not because it factors into the calculus of, what would this do for the company's reputation, what might it do for the associated controversy if you did not follow the shareholder proposal?

Chairwoman WAGNER. Then you would say that the impact on these proxy advisory firms' recommendations, what, does it carry a large amount of weight?

Mr. WASHINGTON. A very significant amount of weight, yes.

Chairwoman WAGNER. Ms. Ising and Mr. Washington, how have proxy advisors materially impacted corporate behavior over the last 10 years? Please, Ms. Ising.

Ms. ISING. I think there are three key impacts that I would highlight. The first is the increase in costs, which are definitely passed on to shareholders. Companies are obviously operating, running their businesses and trying to maximize shareholder value, but they also have to spend significant resources rethinking what they have determined is in the best interests of the company and shareholders, given the proxy advisory firm's expectations and the consulting fees that need to be paid for the advisory services.

It also takes management and board time to address these issues. Frankly, the proxy advisory firms have contributed to the number of shareholder proposals that we see in proxy statements, and that—fueling that rise has also led to the use of more corporate resources to address them.

Chairwoman WAGNER. Mr. Washington, how has it impacted corporate behavior, the proxy advisors, over the last 10 years.

Mr. WASHINGTON. It affects the way it would if you had a major shareholder who actually did not actually have a stake in your company. That is essentially what we are dealing with. It is not like having an extra director in your boardroom who would have to abide by fiduciary duties, nor is it like having a regular shareholder who cares about the long-term financial well-being of the organization. It is like having a major shareholder or a couple of major shareholders who may have other interests at play here.

Chairwoman WAGNER [continuing]. and other conflicts.

Mr. WASHINGTON. Including some conflicts.

Chairwoman WAGNER. Professor Rose, there has been widespread criticism of proxy recommendations that lack a basis in fact or prioritization activist agendas over shareholders' interests. How can we ensure that proxy advisors are acting in the best interest, the best interest of shareholders.

Mr. ROSE. I think that the legislation, the draft legislation that we have seen, especially Congressman Steil's bill, would really go to the heart of that issue. It would impose greater transparency into methodologies. It would provide disclosure of conflicts of interest, and it would impose liability for misleading statements. I think all of those—

Chairwoman WAGNER. Liability. Good.

Mr. ROSE. Yes. I think all of those things could help ensure that they are acting in the best interest—

Chairwoman WAGNER. Mr. Crain, NAM challenged the Biden SEC's decision to suspend enforcement of the 2020 proxy rule—you mentioned it briefly—and its latter rescission of parts of the rule. Can you describe how the SEC, under former Chair Gensler, created more uncertainty surrounding the proxy advisory industry.

Mr. CRAIN. Absolutely. The 2020 rule, as has been mentioned, was developed over the course of a decade, and it really included many bipartisan ideas. Unfortunately, under Chairman Gensler's leadership, they suspended—unlawfully, as the court held—and then rescinded—again, unlawfully, as the court held—that rule, creating a significant pendulum effect that the market is currently feeling, and we are still litigating this issue. There are oral arguments on Friday about whether the SEC has the authority to regulate these firms at all. Manufacturers say that they do. ISS says that they do not.

Chairwoman WAGNER. Thank you very much.

The chair now recognizes the ranking member of the subcommittee, Mr. Sherman, for 5 minutes for questions.

Mr. SHERMAN. The loudest and most persuasive testimony is the testimony that has not been spoken. California Public Employees' Retirement System (CalPERS) is not here complaining. The institutional investors are not here complaining. The owners of capital in our society are not complaining. The complaints are coming from those who represent corporate America who do not want the owners of corporate America to tell the managers of corporate America what to do because they are just the owners.

Now, low-cost investing is the rage now. You want to minimize your costs, and these proxy advisors cost money. Would it be illegal, Ms. Minow, to just have a mutual fund that says, we always vote with management? Makes it simple. We spend 0.0 pennies figuring out what to do. Is that legal?

Ms. MINOW. It is legal.

Mr. SHERMAN. Or, we always vote against management. Is that legal too?

Ms. MINOW. That is also legal.

Mr. SHERMAN. Okay. You do not have to pay for this advice if you do not want it. In fact, you could offer investors a lower administrative cost if you just—or you could also—you could also have a

proxy—a mutual fund, its policy was, we just never vote, or we always just count our votes toward a quorum but otherwise do not vote.

Ms. MINOW. They would have to make a case that was consistent with their obligation as fiduciaries, but if they are small enough, I think they could do it.

Mr. SHERMAN. You would have to be small to do that, whereas always voting with management, a big one could do that?

Ms. MINOW. If they disclosed it so that people could decide—

Mr. SHERMAN. We save money by not thinking—

Ms. MINOW. Yes, that people could decide—

Mr. SHERMAN [continuing]. is the—

Ms. MINOW [continuing]. that is what they wanted.

Mr. SHERMAN. Index investing, that is the slogan: We save money by not thinking. Why not carry it one step further and apply that to this?

Ms. MINOW. Sure.

Mr. SHERMAN. I mean, if you are not going to spend a penny figuring out what stock to buy, why should you spend a penny figuring out how to vote on the damn proxy statement?

So we are being told that there are errors. Now, the SEC Investor Advisory Committee reported proxy advice contained errors at the rate of 0.3 percent of the—and none of those errors were shown to be material. Proxy advisors, of course—private companies. Their clients expect them to be accurate.

Ms. Minow, what is the argument for supporting more Federal regulation of advisors to promote accuracy when the review shows no material misstatements of fact?

Ms. MINOW. Proxy advisors are publishers of reports. Just like newspapers, they give—

Mr. SHERMAN. If I could sue my newspaper in my town for an error rate of greater than 0.3 percent, I could afford to retire from Congress.

Ms. MINOW. Absolutely. There is no possible justification for that regulation.

Mr. SHERMAN. Okay. Is there any organization that is—can we close the door back there? It is creating—and I would ask to suspend the clock.

Chairwoman WAGNER. Yes. Suspend the clock, please.

Apologies, ladies and gentlemen. It was at a minute-thirty left in his time.

Mr. SHERMAN. Thank you. Thank you.

Chairwoman WAGNER. He may resume.

Mr. SHERMAN. Let's see. If an investor wanted to invest in a mutual fund that was dedicated to moving us away from fossil fuel, how could that fund vote those values without getting any advice? Could that work?

Ms. MINOW. Exactly. As I said, the proxy advisors came of age in the 1980s to prevent the conflicts of interest that the investment managers were facing.

Mr. SHERMAN. Okay. What if you wanted a fund that invested in traditional values, now and then, as I posited the idea that there might be a question before a corporation as to whether to get involved in the pornography business, they say that you can make

money in that. If we had investment advisor—if the proxy advisors were required to give advice consistent with maximizing profits, would they then have to advise a traditional values funds to vote “yes” to pornography?

Ms. MINOW. They are happy to do it. They are in business, Ranking Member Sherman. If you come to them and say, I would like you to vote proxy voting policies or vote my proxies for me——

Mr. SHERMAN. Right.

Ms. MINOW [continuing]. according to whatever policy you want, they would provide——

Mr. SHERMAN. So, if you pay them to tell you how to vote traditional values, they will.

Ms. MINOW. Yes.

Mr. SHERMAN. Unless Congress prohibits such advice, as has been proposed by some of my Republican colleagues.

I yield back.

Chairwoman WAGNER. The chair now recognizes the gentleman from Arkansas, the Chair of the full Committee on Financial Services, Mr. Hill, for 5 minutes.

Chairman HILL. I thank the chair.

Mr. Crain, good to have you with us. I was thinking about your members and, just curious, when they designed their corporate policies and compensation programs, do the views and the policies and the likely recommendations of the proxy advisory firms influence that?

Mr. CRAIN. They absolutely do. If you are putting together one of these policies, you absolutely need to take into account the very powerful fact. If you, quote/unquote, get it wrong, then ISS and Glass Lewis might recommend against you.

The best way to avoid, quote/unquote, getting it wrong is by paying for their consulting service. They will tell you what is in the secret sauce to help you structure the policy in a way that aligns with their view of corporate governance. Then you avoid the negative vote recommendation at the end of the day. That is absolutely part of the calculus for publicly traded manufacturers.

Chairman HILL. That is amazing. Is that—that seems like that is just way outside the scope of the business judgment rule and the fact that we have all these rules and State law about having independent boards of directors that are responsible for all that, but you are saying there is—this is—would you describe this as an outsized influence over the board?

Mr. CRAIN. I absolutely would. I think——

Chairman HILL. Why is it more outsized than some successful money manager—CalPERS? Does CalPERS—it is a powerful money manager out there in California. Do they rely on ISS or somebody to tell them what to do even though they are one of the biggest in the country?

Mr. CRAIN. My understanding—I am not an expert on their specific relationships, but I do believe they rely on the proxy firms to some extent.

I think your point is well taken, though, that proxy firms uniquely are unregulated in this space. If you think about the large institutional investors, if you think about the exchanges, if you think about the publicly traded companies who are operating in Amer-

ica's capital markets, everybody is a participant in the capital markets, and they have some appropriate degree of regulation. We can all agree or disagree with exactly what that appropriate degree is but proxy firms do not. They are unregulated, and that is an issue, despite their influence.

Chairman HILL. Yes. I appreciate what my friend, Nell Minow, said about when she started her company was in the dark ages, though. Right?

Ms. MINOW. Yes, sir.

Chairman HILL. Back in 1992, you are reflecting on the 1980s LBO craze, leverage buyout craze, two classes have stopped, staggered directors——

Ms. MINOW. Greenmail.

Chairman HILL. No independent directors, no independent compensation committee, no separate chairman from a CEO. Right? Those were the top issues then. Would you agree? Among many others, but those were top issues.

Ms. MINOW. Those were definitely the top issues at that time, yes.

Chairman HILL. Okay. Since 2000, the implementation of Sarbanes-Oxley, where we have all this micromanagement of influence between investment bankers, investment research, owners, owner disclosure, it is a different world, would not you say, that today's capital markets are different than 1992s?

Ms. MINOW. I have kind of a Dickensian best of times, worst of times assessment of that. We certainly are doing much better with regard to independent directors and the number of boards that they serve on. There are a lot of big improvements, and Sarbanes-Oxley—it was a huge impact on that. However, some things are worse. To the extent that they are better, legislation played an important role, but so did the shareholder feedback.

Chairman HILL. Yes. I am for shareholder feedback. I was in 1992 when you and I met each other, and I am for it now. The problem is we have, like, fewer public companies now. Public companies are not going public because of the cost and litigation around this kind of stuff.

I credit the success of this industry to Harvey Pitt and the no-action letter in 2003. This is a self-created, self-fulfilling prophesy set of organizations due to that no-action letter, which basically said, If you use one of these folks, you are off the hook, to Brad Sherman's comments that he just made about——

Ms. MINOW. Excuse me, but that has been rescinded.

Chairman HILL. Yes, but it was still the origin of how this business grew, in my opinion. Do you agree with that?

Ms. MINOW. I would think that my origin story goes back to the Labor Department and their letter——

Chairman HILL. Right.

Ms. MINOW [continuing]. in 1988 for—for ERISA fiduciaries.

Chairman HILL. Right. Yes, I think we have taken care of that. We are doing a good job of that.

Ms. MINOW. Yes.

Chairman HILL. I want to turn and ask Ms. Ising, from your experience, how influential are the proxy advisory firms in voting outcomes?

Ms. ISING. They are very influential. It obviously depends on the specific company at issue, but we have seen studies that show, for example, on say-on-pay votes, it can be upwards of a 40 percent difference. The way we often will also see that influence show up, is not just in the vote totals but also in the dramatic impact that happens once the left hand issues the voting recommendations, and the right hand casts the votes.

Chairman HILL. Thank you.

Ms. ISING. So you can swiftly see it.

Chairman HILL. I appreciate that.

I yield back to the chair.

Chairwoman WAGNER. The gentleman yields back.

The chair recognizes the gentlewoman from California, the Ranking Member of the full Committee on Financial Services, Ms. Waters, for 5 minutes.

Ms. WATERS. Thank you very much, Madam Chair.

As I stated in my opening remarks, I firmly believe that President Trump's ongoing efforts to align his and his family and his friends' pockets is an illegal and despicable attempt to use the Office of the President for personal gain. I think it is deserving of this committee's immediate attention. Nevertheless, I will indulge the witnesses with a few questions about the proxy advisory industry.

For those listening at home, proxy advisors are independent research firms that have asset managers and ordinary investors alike to better understand the numerous proposals they must vote upon at the annual meetings of the companies they are invested in.

Critics of proxy advisors often claim they have too much power over corporate governance and often accuse them of recommending votes that are contrary to what corporate management wants.

I want to ask the question of you, Ms. Minow. As you put out in your testimony, however, ISS recommended a vote with management on a whopping 96 percent of proxy proposals in 2024, and those proposals went on to receive 90 percent—96 percent of the vote. Almost all of those proposals were recommendations to vote in favor of unopposed board candidates, auditor approvals, and other routine matters. Sounds to me like management words of an all-powerful proxy advisory cartel are overblown. Might go so far as to say that proxy advisors are too aligned with corporate management.

Can you talk a little bit more about the role of proxy advisors and whether silencing them, as some of the bills posted for this hearing would do, would benefit the advisor? I would like to hear from you.

I will tell you the truth. If you were talking about tariffs, if you were talking about Social Security, if you were talking about Medicaid, if you were talking about the issues that are really confronting us at this time with a President who is leading this country in a terrible direction, I would be more interested, but this is my duty.

I am going to sit here and listen to all about these powerful proxy advisors. Please, go right ahead.

Ms. MINOW. Thank you, Representative Waters, and I hope we can have that other conversation sometime too.

Yes. Proxy advisors, as I said, they are in business. If you come to them and say, I would like you to vote proxies for me, and here are my policies, I—for example, there are a number of extremist right-wing proposals that are appearing this year on proxies—say we are going to vote all in favor of those and against all of the ones that are coming from the nuns and the public interest groups. They will be happy to vote your proxies exactly as you say but what they do is provide a lot of research.

If you will permit me, I would like to give—to add to the record two examples of ISS proxy advisory reports, which I think should be a part of the record, because you will see, quite honestly, they go into great quantitative detail in their evaluation. They say, and this is what management says, and this is what we say, and this is what somebody else says. I think they would really enhance the record of this hearing.

Ms. WATERS. I ask permission to enter into the record a recent report from ICCR, the Sustainable Investment Forum, and the Shareholder Rights Group on shareholder proposals.

Chairwoman WAGNER. Without objection, so ordered.

[The information referred to was not submitted prior to printing.]

Ms. WATERS. Thank you. We have a little bit more time left.

You know anything about tariffs? Wall Street is telling us that there is so much uncertainty. They do not know what this President is going to do from day to day. He really does not know anything about tariffs.

Anyhow, I think he was trying to improve or—the tariffs on a little island called Lesotho in Africa. I think you have no—people on the island would have you but to tell you the truth, I just wish that this committee would take up some serious issues. We are going to have a markup on Wednesday. I want everybody to pay attention. I got something for them. Okay?

Ms. MINOW. Okay.

Ms. WATERS. You sure you do not know anything about tariffs? Oh, that is okay. These big old important proxy advisors, that is what we are here about today. They have so much power. Got to do something about them. Cannot let the—what are they doing? Telling the wrong people the right thing or the right people the wrong thing. We do not know. Frankly, I do not care but I got to do this.

Ms. WATERS. As the Ranking Member, I have to pretend, but I tell you, sit in with us tomorrow, listen to us, what is going to happen on the markup, okay?

Ms. MINOW. Yes, ma'am.

Ms. WATERS. I yield back my time, and I am glad to do it. Thank you.

Chairwoman WAGNER. The chair now recognizes the gentleman from Oklahoma, the Chair of the Task Force on Monetary Policy, Treasury Market Resilience, and Economic Prosperity, Mr. Lucas, for 5 minutes.

Mr. LUCAS. Thank you, Chair, and thank you to our witnesses for testifying today. I too look forward to hours and hours and hours and hours of good insights tomorrow.

For the moment, let us turn to the prospective. Last week, Paul Atkins was sworn in as the 34th Chairman of the SEC. This is cer-

tainly a welcome change as the previous Chairman had pursued an aggressive rulemaking agenda, undoing much of the progress made under the first Trump Administration.

For example, many of their forms implemented under Chair Clayton intended to increase transparency, and proxy advisory industry were rolled back or went unenforced under Chairman Gensler.

Ms. Ising, what would you suggest to the new chairman as the first order of business in improving the misguided regulations of the past? First order of business, what would you tell the new chairman?

Ms. ISING. I think the first order of business with respect to proxy advisories is restoring the common—well, first, making sure and continuing the grounded view that proxy supervisors are engaged in solicitations, bringing back the 2020 rules, which as Charles mentioned, are very much a reasonable approach, and continuing to focus on the need for transparency, for fairness, and predictability in how these firms operate.

Mr. LUCAS. Mr. Crain, as Ms. Ising just detailed, there are a number of positive steps that the SEC could take with its existing authority. Now turning to Congress, what statutory changes should this committee be looking at so that public companies are not burdened by regulatory whiplash that you talk about in your written testimony?

Mr. CRAIN. The first place that I would look at is the Exchange Act's clear directive that the SEC has the authority to regulate solicitation and that proxy advisors are, in fact, engaged in solicitation. Hopefully, the NAM is successful this Friday in protecting that authority in Federal court. I am going to say, unlikely event that we are not—knock on wood—it would be incredibly impactful if Congress were to weigh in and remake clear that the Exchange Act does have that authority.

Putting the authorities aside, though, there are plenty of specific reforms that Congress could institute that would ensure that there is not a pendulum swing when there is a change in administration. Things like companies' ability to review draft recommendations to identify errors, companies' ability to respond to the proxy firm's recommendations and ensure that investors have access to those responses, things like regulating conflicts of interest and increasing transparency. There is a lot of work that you all can do separately and apart from whatever happens at the SEC or in court.

Mr. LUCAS. Mr. Washington, my bill, the Public Company Advisory Committee Act, would provide public companies the opportunity to engage with the SEC on a range of regulatory issues, including the ones discussed today. Can you speak more to why the SEC would benefit from establishing a public company advisory committee?

Mr. WASHINGTON. Delighted to do so. Thank you for this palate-cleansing bipartisan moment, because we think this is an issue that both sides of the aisle can embrace.

The SEC has a number of advisory committees, including one for investors. They do not have one for issuers. We think that having a group of issuers, large comp—small and mid-cap companies who can get together and advise the SEC in advance of proposing rules

or sending rules, revising rules, will dramatically streamline the regulatory process, improve decision making, and reduce the burdens on investors, issuers, and the government alike.

So we really hope that this is a—your legislation—and we appreciate your leadership on it—is something that can be embraced on both sides of the aisle and can move forward.

Mr. LUCAS. Madam Chair, before I yield back, I would note, I am looking forward to quality bonding time with all my friends tomorrow. With that, I yield back.

Chairwoman WAGNER. It will be a spectacle, that is for sure. The gentleman yields back.

The chair now recognizes the gentleman from California, Mr. Vargas, for 5 minutes.

Mr. VARGAS. Thank you very much, Madam Chair. Thank you for holding this hearing and there is nothing like bonding. Looking forward to it. Nothing like bonding around here. Fabulous.

Now, I tried to research your backgrounds, and you have stellar backgrounds obviously, and I believe that four of the five of you are attorneys.

Mr. Crain, I do not believe you are an attorney. Is that correct?

Mr. CRAIN. That is correct, I am not.

Mr. VARGAS. I believe the four of you are. Is that correct? Or am I incorrect about that?

Mr. WASHINGTON. Guilty as charged.

Mr. VARGAS. You are?

Great. Okay. Mr. Washington, you have mentioned conflict of interest a couple times here, and I think that is very important.

So we have been reading about the President's cryptocurrency and his memes. Is there potential here for a conflict of interest, and would not an investor want to know some information?

You are an attorney first. Could you tell me, is there a possibility for a conflict of interest here?

We heard from The New York Times that in American history we have never seen so much intertwining between public policy and a President's personal fortune. Is there a potential here for conflict?

I would advise you before that, remember what Lisa Murkowski said.

Mr. WASHINGTON. Yes. No, I think—

Mr. VARGAS. She said that they fear retribution from the President if they speak freely. Go ahead.

Mr. WASHINGTON. Yes. There are different rules that apply in determining where there is a conflict of interest in the political sphere, in the legal sphere, and in the corporate sphere. I feel qualified to talk about the conflicts of interest that exist in the legal sphere and the corporate sphere but not in the political sphere, respectfully.

Mr. VARGAS. Would anyone else like to try? Ms. Minow?

Ms. MINOW. Thank you very much. Before I went into ISS, I was in the government, and for a while, I was an ethics counselor in the government, and I can tell you it is a per se conflict of interest.

Mr. VARGAS. Why is it a per se conflict of interest?

Ms. MINOW. Because the President, like the other people in government, is supposed to have one interest, and that is what he

swore to, the benefit—to uphold the Constitution and to benefit all Americans. When he sells access to have dinner with him, when he sells products and gives better attention to the people who buy those products, that is not just a perceived conflict but an actual conflict of interest.

Mr. VARGAS. Who is going to police it, then, from the Federal Government?

Ms. MINOW. I think it is probably Congress, sir—

Mr. VARGAS. Congress? Not the Consumer Financial Protection Bureau (CFPB), not any other institution that we have?

Ms. MINOW. [continuing]. and the press.

Mr. VARGAS. It would not be anybody else? I mean, do not you want—now, if you are an individual investor, retail investor or an institutional investor, would not you want information on this? Would not you want to have some advice?

Ms. MINOW. The President only once tried to have a public company with outside shareholders, and he learned very quickly that he was not happy about that. I do not know who his other shareholders are, but they are probably just members of his family.

Mr. VARGAS. I bring this up for two reasons. One, obviously you want advice. I mean, if you are going to invest in a company, you are the investor, you are the owner of that company, ultimately you want advice. That is why I think proxy advisors are so important. You want advice. Whether it is the nuns or whether it is Opus Dei, it does not matter. They have two very—I am Catholic, I can tell you they have very different views—but they want advice.

You also want to make sure there is not a conflict here, and this is where I think it gets very important that we look at this as an institution. I mean, it is fascinating that we are not talking about that today.

You see this incredible opportunity for corruption, and yet there is silence. No one's talking on the other side. The people in power do not want to talk about it. Again, I think Senator Murkowski kind of let the cat out of the bag when she said there is retaliation, there is repercussions, we fear the President because of political actions that he may take.

So, again, I thank all of you for being here. I do not see how you get over the fact that investors are the owners of the company and they can get any advice they want. Again, whether they want advice on climate or whether they want advice against pornography or whether they want any kind of advice, they should get it and they should invest the way they want.

Last, just on a personal note, if you could say hello to your sister, she was my professor at Harvard. We can say Harvard these days, we are very proud of it today. Thank you.

Ms. MINOW. Thank you, sir.

Chairwoman WAGNER. The chair now recognizes the gentleman from Ohio, the Chairman of the Subcommittee on National Security, Illicit Finance, and International Financial Institutions, Mr. Davidson, for 5 minutes.

Mr. DAVIDSON. Thank you, Madam Chairwoman. I really appreciate you having this hearing. I cannot believe it really took us this long to get this hearing. It is a commonsense solution to a problem.

There are very few things where you have 97 percent market share by two firms and there are not people that are concerned. I have people here that—at least one person here seems not concerned. We have colleagues who think that the right way to run capital markets is to just check with CalPERS, and whatever they say is probably what we should do for the agenda for the hearing.

Thankfully, Mr. Sherman is not running the agenda for the hearing, and may we never see that day.

The space that we are talking about really, Chairman Hill highlighted it, but, ISS, the incumbent in the proxy voting advisory space, was founded in 1985. ISS was a pioneer, providing proxy voting recommendations to institutional investors, and they were capitalizing on growing governance expertise. As I understand it, other firms existed, but none had ISS' early scale or influence. Then the SEC issued their 2003 rule requiring mutual funds to disclose voting policies.

Mr. Washington, do you agree with the timeline in the industry's development? Why exactly is it that a duopoly, consisting of ISS, operated 18 years before Glass Lewis existed, has now emerged?

Mr. WASHINGTON. Look, in almost any market there are different economies of scale, and so there will be markets where there will be naturally one player, two players, multiple players.

I would say, as a society we are interested in encouraging more players to enter into this market. That is why we believe in light touch regulation, because we actually want the environment to be conducive to more players coming into the market. At the same time, we want to make sure that the players who come into the market are providing accurate, reliable information to their clients. We are hopeful that legislation will proceed—that it will provide those market conditions to increase competition while ensuring accuracy.

Mr. DAVIDSON. Thank you.

Mr. Rose, what would it take to get some market share beyond the 3 percent that is not gobbled up by the two big incumbents? What would it take to get that to happen?

Mr. ROSE. I think that it is quite challenging. If you look at markets like this where you have a sort of certification function provided by market players—look at credit rating agencies, you look at auditing—they tend to be dominated by a small number of folks.

Again, I guess I would reiterate Mr. Washington's point. That is why light touch regulation would be helpful here. I do think regulation is necessary, but a light touch so that it would not create barriers.

Mr. DAVIDSON. It is safe to say that they, just the two firms, exert quite a lot of influence over our capital markets, right? Does anyone disagree with that?

Mr. ROSE. Absolutely. Absolutely.

Mr. DAVIDSON. Okay. So is it also a concern that they are both foreign-owned? I mean, my understanding is ISS is owned by Deutsche Borse, and Glass Lewis has been owned by various Canadian firms but, currently, Peloton Capital Management, a private equity firm based out of Toronto. Should we be concerned about that?

Mr. ROSE. In my view, it creates an additional layer of risk. Those firms are a little bit less, I suppose, a little bit less regulated

by either U.S. investors directly as shareholders or by U.S. regulators.

Mr. DAVIDSON. Then we have talked a little bit about it in terms of—Mr. Crain, you mentioned a potential conflict of interest inherent when proxy advisory firms are aligned there. They want to serve their clients. They want to serve people maybe better by giving favorable or unfavorable referrals on proxies.

So as the National Association for Manufacturers, NAM, notes, 59 percent of manufacturers cited unfavorable business climate as primary concern. We often hear about the Tax Code barriers. However, is any part of the unfavorable climate for manufacturers connected to corporate governance guidance?

Mr. CRAIN. I think absolutely. When you think about an unfavorable business climate, you think about burdensome regulations, you think about uncompetitive tax policies, as you mentioned, and you think about access to capital.

One way to access capital is by going public. One thing that makes going public more difficult is the influence and the power that these proxy firms have. I think it is absolutely fair.

Mr. DAVIDSON. Thank you for your testimony today. My time has expired, and I yield back.

Chairwoman WAGNER. The gentleman yields back.

The chair now recognizes the gentleman from Illinois, Mr. Casten, for 5 minutes.

Mr. CASTEN. Thank you. There is a certain irony hearing concerns about capital flying from the United States without mention of the last hundred days when it is running away from equities and treasuries, but I guess we are not going to talk about that today.

Mr. Crain, I want to just give you a hypothetical. Let's suppose that I am looking for a sole investor in my business. Setting aside what this business does, I need 250 grand from you. You are going to be my sole investor. You can ask me any question you want about cash-flow management, my compensation, hiring strategy, but I reserve the right to tell you that your questions are immaterial and not answer them.

Setting aside what my business does, are you on board?

Mr. CRAIN. I think my first question would be, why are you approaching someone who does not have 250 grand to give you?

Mr. CASTEN. Would you invest in a company on those terms, that I take your money and then I get to tell you whether your judgments are material?

Mr. CRAIN. I think certainly investors in a company, especially if I am the sole investor in your business, would certainly have some questions about what you are using that money for.

Mr. CASTEN. I say that as a—as a guy who built some companies with private equity. Never took a company public, but I always—it always struck me that there is this disconnect where, if you are starting a company and you find an investor, it is understood that as the entrepreneur, as the CEO, you are the custodian of someone else's capital and you work for them.

Yet, once you get a large, diffuse investor base, there is this idea that somehow, well, now their questions are kind of a nuisance, they are not as sophisticated as I am, they are not asking the kind of questions that I would have.

Since you—I guess since you do not have the \$250,000, let me reframe the question. I got my money. I want you to work for my company now and as a condition of working for this company, you have to join a labor union, and you have to pay dues to the labor union.

The labor union is going to negotiate for compensation and benefits and all that, but they have to present their proposals to me first as the CEO, and I will roll them back to you for consideration after I have had a chance to vet them. Would you want to work for that company?

Mr. CRAIN. I will admit to being a little lost in the hypothetical, but I think the answer you are looking for is no.

Mr. CASTEN. I ask that because, like, number one, like, we have a proposal right now that would permit companies to say that shareholders are going to actually pay for these proxy advisory services, but then the company gets to review them before the people who actually paid for it can review them. We have another bill that would allow the companies just to ignore certain proposals outright because in their judgment this is not material.

I guess, Ms. Minow, like, I am sympathetic to the argument that you cannot possibly have every investor in every company, someone who owns one share of a company with 20 million shares outstanding, to ask you every question. Is not this just a collective action problem in the same ways that we have—labor unions help negotiate so that people can speak with one voice. Are not these proxy advisory firms just providing—solving a collective action problem?

Ms. MINOW. Thank you very much. I am very, very happy with that question because that is exactly how I describe it. When you are making the buy-sell decision, that is something that—where there is a premium on exclusivity, and you just want to have information that nobody else has, as long as it is legal.

When you are talking about proxy voting, I can vote the best proxy policies in the world, but if I cannot get other people to vote with me, there is an awful economic term called rational apathy, and it means that it is more expensive for me to learn what is on the proxy than it could possibly benefit me, and that is why proxy advisors perform such an essential role.

I really appreciate that question.

Mr. CASTEN. No, and I am guilty of being in that 96 percent probably that just says, yes, just vote what they recommend. Easier, right?

Ms. MINOW. I will vote your proxies.

Mr. CASTEN. I guess I just want to leave a question for all of you. Dan Savage, the love/sex advice columnist and very funny philosopher of all things, in my view, had this great comment, and it was in the context of people saying some fairly homophobic things to him. He said, when somebody accuses you of something you have never thought of, they are telling you what they are capable of.

There is something that is very strange to me, that we are sitting here saying we should never allow outside groups to tell a management team that their wisdom, their judgment about how to run a company is sufficiently—like, we cannot—we have to challenge them because they might do something foolish otherwise. Yet,

I do not hear a peep about the State Financial Officers Foundation who is going out and telling pension funds we are going to change laws in your States because we do not want your pension fund to invest in companies that prioritize ESG, prioritize Diversity, Equity and Inclusion (DEI), prioritize climate change.

That is a real thing. That is really a group that is actually doing the thing that we are theorizing some, I do not know, some combination of George Soros and Dan Savage might be doing on the other side, but that is actually happening from the right.

I yield back.

Chairwoman WAGNER. The gentleman's time is expired.

The chair now recognizes the gentleman from Wisconsin, the Chair of the Subcommittee on Digital Assets, Financial Technology, and Artificial Intelligence, Mr. Steil, for 5 minutes.

Mr. STEIL. Thank you very much, Madam Chairwoman. Always good to have the last name pronounced like a true Luxembourger.

We have a huge opportunity today to talk about a duopoly that most Americans have never heard of—ISS and Glass Lewis—but two companies have a huge impact on their lives, their ability to save for retirement, and their own financial security. I think a lot of Americans would be surprised to know that both of these companies are foreign-owned.

Mr. Crain, are either ISS or Glass Lewis at least American companies if they are having such a big say on American retirement accounts?

Mr. CRAIN. I do not know the exact structure of their ownership, but, no, I do not believe so.

Mr. STEIL. Mr. Rose, do you know their ownership structure?

Mr. ROSE. I believe that they are both foreign-owned currently. I think that they are—

Mr. STEIL. Germany and Canada.

Mr. ROSE. Germany and Canada.

Mr. STEIL. They are foreign-owned enterprises—

Mr. ROSE. Yes.

Mr. STEIL [continuing]. and they are opining on U.S. retirees' accounts. This should be concerning out of the gates for people.

Then we might want to know, how do they make their money? Sure, they provide advisory services and people pay for that, but, Mr. Rose, do they make money elsewhere?

Mr. ROSE. They can make money through consulting services.

Mr. STEIL. Consulting services. Why would somebody want to pay ISS and Glass Lewis, a German company and a Canadian company, a whole bunch of money for consulting services? There is a lot of consulting companies here.

Mr. ROSE. So they could help convince your shareholders to vote for whatever proposal they want.

Mr. STEIL. Oh, so you are saying that conflict of interest might go right over the so-called Chinese wall to the other side because they are making money on this side and they are making money on this side, all on the backs of American retirees. Is that correct?

Mr. ROSE. That is the danger, yes.

Mr. STEIL. So wait a minute, we should probably disclose these conflicts of interest, do you think?

Mr. ROSE. I agree.

Mr. STEIL. Does anybody on this panel think that we should not disclose conflict of interest for proxy advisors?

The record will reflect all of our witnesses think we should disclose them.

Mr. Crain, are they, of course, then required to disclose these conflicts of interest under current securities law?

Mr. CRAIN. Unfortunately, they are not, Congressman.

Mr. STEIL. Holy cow. It sounds like Democrats and Republicans at least agree on the point that we should know if there is a conflict of interest for foreign companies that are advising a whole host of voting on American retirement accounts. This is egregious.

Of course, there was a period of time when the SEC came forward and said, maybe we should regulate these entities, and they wrote forward a law—or they wrote forward a rule and regulation.

Then what happened to that rule and regulation, Mr. Crain?

Mr. CRAIN. They suspended it, and then they rescinded it.

Mr. STEIL. Were they legally allowed to do that, Mr. Rose?

Mr. ROSE. Sorry. Repeat the question.

Mr. STEIL. They suspended the proxy advisor rule. Were they legally allowed to do that?

Mr. ROSE. They were.

Mr. STEIL. Away we go, and now we do not have any rules or requirements of substance, with meat and potatoes on the bones, protecting American retirement accounts, because Gary Gensler went and gutted a well thought-through, well-structured rule that, in my opinion, did not even go far enough, he guts it out.

What we are doing is, we are allowing these foreign-owned companies to be making money on the consulting side, not telling anyone what their conflicts of interest are, and then advising places like, I think CalPERS was referenced earlier by one of my colleagues on the other side of the aisle who receives this advice and counsel.

That seems like a heck of a problem. Do you agree, Mr. Crain?

Mr. CRAIN. I absolutely would.

Mr. STEIL. What should the SEC do? I think we should pass my legislation. We brought forward a healthy chunk of it to the House floor last Congress. We passed it across the House floor. The Senate did absolutely nothing.

I will comment on the Senate later, but I think we now have a real opportunity to bring this forward, because American retirement accounts are at stake because of this—these two companies that are making money, not sharing their conflict of interest, not letting the American people know why their shares, that are held in all sorts of retirement accounts, pension funds, how or why they are being voted on.

Let me hit another quick point with you if I can, Mr. Crain. What happens—of course it would not be the conflict of interest, I do not want to accuse anybody of any wrongdoing—but what would happen if they gave terrible advice?

Let's say there was a proxy advisor that recommended a "yes" vote in favor of a resolution that was illegal. Has that ever happened, Mr. Crain?

Mr. CRAIN. If that happened, they would probably be robo-voted in the favor of that resolution, if that is the recommendation they made.

Mr. STEIL. When we had the general counsel of ISS and the general counsel of Glass Lewis and I asked them—they sat right where you sat—and I said, Mr. General Counsels, do you review for legality? What was their answer to me? No.

In my opinion, they have advised, in a case of Travelers—and we can look it up, we can spend more time on this sometime—to actually recommend in favor of an illegal action.

Do you agree with that, Mr. Washington?

Mr. WASHINGTON. Yes, that has occurred.

Mr. STEIL. This is horrific. They are not—and are they liable for that, do you know, Mr. Washington?

Mr. WASHINGTON. Not under the current regulatory regime.

Mr. STEIL. In my bill, they would at least be liable for that. We have massive reform that needs to be done on this proxy advisor duopoly. I am excited we are here talking about it.

Thank you, Madam Chair, for holding today's hearing. I yield back.

Chairwoman WAGNER. The gentleman yields back.

The chair now recognizes the gentlewoman from Michigan, Mrs. McClain—

Mr. SHERMAN. I request 10 seconds.

Chairwoman WAGNER. No.

Mr. SHERMAN. Thank you.

Chairwoman WAGNER. The chair now recognizes the gentlewoman from Michigan, Mrs. McClain, for 5 minutes.

Mrs. MCCLAIN. Thank you, Madam Chair, and thank you, Mr. Steil, for bringing forth this wonderful piece of legislation. I think it is well noted.

I do have to take one moment and just notice the hypocrisy. We think conflict of interest is a bad thing, right? Except when it is, like, from our party's conflict of interest or it has something to do with me.

So what I would just ask all the witnesses up there is, could we just keep our context the same no matter what context it is?

I mean, I think it is very interesting that my friends across the aisle want to talk about influence peddling, and they accuse our President of having a conflict of interest and maybe having some influence peddling when we had hearing after hearing about the past President, Biden, and his son, Hunter Biden, clearly doing influence peddling, but I think they had a different view on that.

However, Madam Chair, I am extremely excited to know that this is a bipartisan piece of legislation—or a bipartisan hearing that we actually agree on, and that is, transparency is good, right?

I mean, Mr. Crain, Congress has mandated that investment firms must be fiduciaries, correct?

Mr. CRAIN. That is exactly right.

Mrs. MCCLAIN. However, the firms they are hiring, the proxy firms, do they have the same responsibilities and goals, like fiduciary, as the firms do?

Mr. CRAIN. They do not. Proxy advisory firms do not have a fiduciary duty to the ultimate Main Street investors who are investing with the asset managers—

Mrs. MCCLAIN. Is it safe to say their goals do not align?

Mr. CRAIN. Yes.

Mrs. MCCLAIN. Do you think that is a problem?

Mr. CRAIN. I do.

Mrs. MCCLAIN. I think so too. I think the American people would say that is a problem as well.

Mr. Crain, these proxy advisors are claiming that despite their tremendous influence over how investors cast their vote, they should not be subject to SEC oversight. Can you—which is very interesting to me. Can you discuss the history of the SEC's authority to regulate proxy advisors?

Mr. CRAIN. Absolutely. This goes back to 1934, the Exchange Act. Congress, in your wisdom, your predecessors, gave the SEC the authority to regulate solicitation and soliciting entities.

What the proxy firms are doing in the present day is soliciting. They are soliciting proxies and casting them on investors' behalf, and yet they are arguing in court this week that they are not soliciting, that they should not be subject to SEC regulation.

Mrs. MCCLAIN. It is different, kind of like our conflict of interest opinions, right?

Mr. Crain, can you also describe how the Biden Administration created more uncertainty surrounding this proxy advisory industry?

Mr. CRAIN. Under the first Trump Administration, the SEC, under Chairman Clayton, had finalized a commonsense compromise rule that had been in process for a decade at that point. Under Chairman Gensler, under the Biden Administration, they suspended and then ultimately rescinded that rule.

Both of those decisions were found to be unlawful in Federal court. The effect that they have on the market is that it is the pendulum effect that you just mentioned where companies do not know what the rules of the road are.

Mrs. MCCLAIN. Interesting. Maybe there is a conflict of interest there we should look at, but let us not let facts get in the way of a good story, right?

Ms. Ising, ISS described ESG policies as being no longer optional but rather a necessary part of investment and asset management. Part of this strategy involves committing to the 1.5 degrees Celsius of the Paris Agreement.

Companies have a fiduciary responsibility to their shareholders, yet, are being held hostage by the agenda of staff at foreign-owned proxy advisory firms.

Can you discuss reasonable commonsense regulation that would protect shareholders from the ideological preferences of rogue staffers?

Ms. ISING. I think the key here is that we do not have sunshine on what the proxy advisors are doing. We constantly see errors in their reports. Whether it is on pro-ESG proposals, it is counter-ESG proposals, the issue is, who are the people making the decisions, and why is it that we need to pay for consulting services to be able to have the understanding of the underpinnings and the ul-

timate decisions that ultimately dramatically impact the proxy voting decisions being made?

Mrs. MCCLAIN. Thank you. With that, I yield back, Madam Chair.

Chairwoman WAGNER. The gentlelady yields back.

The chair now recognizes the gentleman from Florida, Mr. Haridopoulos, for 5 minutes.

Mr. HARIDOPOLOS. Thank you, Madam Chair.

I also let the folks know that the Florida attorney general has actually launched an investigation of ISS and Glass Lewis and on the impacts that they have had on Florida businesses, et cetera, and I am glad to see our attorney general in Florida making that maneuver.

Mr. Crain, I want to ask you a question if I could, please. What would be the consequence for our markets if ISS prevails in its litigation against NAM, in your opinion?

Mr. CRAIN. Essentially, they would be entirely unregulated. All of the consequences that we have been talking about today—the conflicts of interest, the errors, the one-size-fits-all policies, the robo-voting—they would be left entirely unchecked from a regulatory perspective, and that is incredibly problematic for public companies and probably more importantly for their investors who are the ultimate owners of those companies.

Mr. HARIDOPOLOS. Just to kind of build on that, I really appreciate Congressman Steil's points that were made and I want to emphasize Gensler actions, the last 4 years, have been a little bit challenging for this committee on multiple fronts.

What is your—what do you think the consequence of Mr. Gensler has been in giving the SEC guidance on this issue?

Mr. CRAIN. What the Gensler SEC did is essentially rescind all the efforts previous that had been made to bring proxy firms under reasonable oversight, and then they even went further and stopped defending their authority to write any type of rule at all.

So if ISS is successful in this case, the SEC used to be in that case, and they walked back from that opinion that they even have any authority in this space at all, trying to tie the hands, not just of the Gensler SEC, but any future SEC under a different administration. It is incredibly problematic, specifically in this proxy firm space.

Mr. HARIDOPOLOS. My last question, Mr. Crain, please describe to me maybe some examples of the most egregious current conflicts of interest among proxy advisors and some of the adverse impacts it has had on investors, if you could.

Mr. CRAIN. The clearest conflict of interest is ISS' consulting service. We know, as publicly traded companies, as publicly traded manufacturers, that the business consulting service will wait for a negative recommendation from the proxy voting service. Then, as soon as that negative recommendation comes in, that is when they send out their ask for businesses to buy their services, because the best way to avoid a negative vote—a negative vote recommendation, I should say—is to just hire ISS, but it is not just ISS.

Glass Lewis has recently launched a stewardship service where they are advising activist investors and institutions on how to best pressure and influence companies, whether it is by shareholder

proposals, by vote-no campaigns, et cetera. Who is going to ultimately be recommending whether shareholders should vote for those campaigns? It is Glass Lewis.

So the conflicts are baked into their business models, and that has a real impact on the recommendations they make, and on the companies that they are making recommendations about, and ultimately on the investors who have holdings in those companies.

Mr. HARIDOPOLOS. Madam Chair, just to close, I want to applaud you for bringing this to our attention. As a new member of the committee, it is important that we understand some of these moving parts, and it is really eye-opening to say the least, some of the things that Chairman Steil, as well as Mrs. McClain and others have brought up today. We appreciate the candid information.

I am so glad that our attorney general in Florida is also looking at these type of measures because, again, this is the future of so many folks who have made investments, and to see that this type of unique behavior to be generous takes place. I am glad that we are having this public disclosure, so we can put the appropriate legislation in place to stop some of the shenanigans that have happened.

So thank you so much, Madam Chair, and I yield back.

Chairwoman WAGNER. I thank the gentleman, and he yields back.

The chair now recognizes the gentleman from Montana, Mr. Downing.

Mr. DOWNING. Thank you, Madam Chair. Before I begin, I would like to request unanimous consent to submit this comment letter from Egan-Jones Proxy Services for the record.

Chairwoman WAGNER. Without objection, so ordered.

[The information referred to can be found in the appendix.]

Mr. DOWNING. Thank you.

I am going to start out with Ms. Ising. Institutional investors are required to act in the interest of their clients to maximize their returns. Yet ISS and Glass Lewis have been criticized for routinely endorsing left-leaning proposals at shareholder meetings.

ISS and Glass Lewis control 90 percent of the proxy advisory industry and can sway up to 30 percent of votes in shareholder meetings.

Can you give some specific examples of when ISS and Glass Lewis endorsed proposals that were not focused on maximizing the returns or resulted in diminished returns for investors?

Ms. ISING. I am happy to do so. I would note that even the voting percentages that were given recently are particularly notable because last year ISS recommended for more than half of all shareholder proposals that were voted on just in 2024.

We see that, relevant to your question, of how they are not focused—they do not do a cost-benefit analysis. Our companies' boards of directors have fiduciary duties to act in the best interest of the company and the shareholders, to maximize shareholder returns. Those—they are not always—the proxy advisory firms are not taking that into account in doing their analysis.

For example, there was recently a proposal, a shareholder proposal that ISS supported on the use of pig gestation crates in a company's supply chain. The company noted that it did not breed,

process, transport, own, or raise animals, and it had already announced a move away from sourcing pork raised in gestation crates. Yet, ISS said, no, this is something this company should be spending its time on.

Mr. DOWNING. Is there any reason to believe that ESG-related proposals are generally more aligned with shareholder value than right-leaning proposals? If not, how do you explain the discrepancy in the proxy advisors' recommendations?

Ms. ISING. I cannot explain the discrepancy. What I will say is, is that this is a symptom, A, of—on a related note, there is just—there is a need for meaningful reform on shareholder proposals, right? That needs to happen. The fact that the proxy advisory firms are so focused on supporting many of these proposals, they should not even be getting to the ballot.

Mr. DOWNING. Thank you.

Let me move to Mr. Crain. Does the way the proxy advisory industry operates in the United States discourage companies from going or staying public?

Mr. CRAIN. It absolutely does. America has the deepest and most liquid capital markets in the world, and if you are a company looking to grow, then going public is a critical way to access capital, which is obviously important for that company. It is also important for everyday investors who largely cannot invest in privately held companies but when a business goes public, they have that investment opportunity, and they can take advantage of the growth opportunities as that investment grows, as that company grows.

If you are considering going public, and you are looking at burdensome costly regulations, and you are looking at having to be held accountable by these firms who are themselves unregulated, meanwhile, you are making a whole bunch of SEC disclosures, but the proxy firms are not—they are effectively unregulated—and yet they are exerting influence on the corporate decisions that you are making. That is a real disincentive from going public, and that has a significant impact on both companies and investors.

Mr. DOWNING. I appreciate that. I have had some experience that has led me to some conclusions about the weaponization of these proxy programs. I was a former securities and insurance regulator, and I had some public reinsurance companies coming to me, saying, we know we are making decisions that are not in the interest of the business.

A lot of it was about not—not putting risk money out for oil and gas because they did not want to be involved in that, and they said, but their backs were against the wall because of these proxy votes.

So I have seen that as a regulator, and it has really, really bothered me.

I am going to move on to Professor Rose. Do you have any more suggestions that have not been mentioned today to increase competition in the proxy advisory space?

Mr. ROSE. As I mentioned, I think it is a real challenge, and I am quite hopeful that maybe technological innovations can help provide some benefits here. Maybe there are ways to get around some of the work that the proxy advisors do, perform those functions but without the political leanings that might accompany that.

It is a real challenge. I do think the proposed legislation could help, again, so long as those regulations are not overly burdensome—

Mr. DOWNING. Thank you.

Mr. ROSE [continuing]. and the barriers to entry are not too significant.

Mr. DOWNING. Yes, thank you, sir.

Finally, Mr. Washington, how does your advice to members defer based on whether the proxy advisors are likely to recommend a, quote, vote for or a vote against a particular shareholder proposal?

Mr. WASHINGTON. In all cases, the board needs to consider what is in the best interest of the corporation. The issue is that the proxy advisory firms can tilt the balance of those considerations because it can increase controversy, reputation risk, and so forth, that can affect the board's decision making.

I would just—if I might, there is no doubt that our members truly value the conversations that they have with their real investors. There is no question of that. The question is here, the proxy advisory firms are not in the same position as the investors, and yet they yield greater—

Chairwoman WAGNER. The gentleman's time is expired.

Mr. DOWNING. Thank you, Madam Chair. I yield my time.

Chairwoman WAGNER. I thank all of our members for participating. I would like to thank all of our witnesses for their testimony today in this long overdue hearing on cleaning up the proxy advisory atmosphere, I will say. We have some good legislation that I think is going to do that, and I think we have grand support for.

So without objection, all members will have 5 legislative days to submit additional written questions for the witnesses to the chair. The questions will be forwarded to the witnesses for their response. Witnesses, please respond no later than June 4, 2025.

[The information referred to can be found in the appendix.]

This hearing stands adjourned.

[Whereupon, at 4:13 p.m., the subcommittee was adjourned.]

APPENDIX

MATERIALS SUBMITTED FOR THE RECORD

Egan-Jones
PROXY SERVICES

April 29, 2025

Comment Letter For

House Financial Services Committee

Hearing: Exposing the Proxy Advisory Cartel: How ISS & Glass-Lewis Influence Markets

Submitted by: Egan-Jones Proxy Services

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April 29, 2025

The Honorable Ann Wagner
Chair
Subcommittee on Capital Markets
2350 Rayburn House Office Building
Washington, DC 20515

The Honorable Brad Sherman
Ranking Member
Subcommittee on Capital Markets
2365 Rayburn House Office Building
Washington, DC 20515

Dear Chairwoman Wagner and Ranking Member Sherman,

Thank you for holding the hearing entitled, "Exposing the Proxy Advisory Cartel: How ISS & Glass-Lewis Influence Markets." We appreciate the opportunity to submit this letter for the record and look forward to continuing our engagement with the House Financial Services Committee.

I. Key Points

The committee has identified flaws in the proxy advisory industry. The proxy advisor market is concentrated in two foreign-owned firms, to the detriment of investors.

- Some proxy advisors risk a conflict of interest by selling vote recommendations to investors and governance consulting to issuers.
[FIX: Consulting and proxy advisory should be separate businesses.](#)
- One proxy advisor controls a major voting platform and prevents or limits third parties including other proxy advisors from being listed and refuses to share critical public information with those parties.
[FIX: Voting platforms and proxy advisory should be separate businesses. Voting platforms should share information neutrally across proxy advisors.](#)
- There has been massive concentration among asset managers. Beyond controlling a large share of capital, they seek to appeal to corporations to attract 401k business.
[FIX: Enable investors who use asset managers to select votes themselves through a proxy advisor.](#)
- Corporations can only respond to proxy advisors' vote recommendations after "the die is cast," meaning after the recommendations are published and votes have been executed.
[FIX: Provide corporations with advance notice and awareness of proxy advisors' vote recommendations and justification prior to report publication.](#)

II. Background of Egan-Jones

Established in 2002, Egan-Jones Proxy Services offers guidance to investors on how to vote in shareholder meetings (for proposals regarding director elections, compensation, M&A and other items). Vote guidance is customized to match investors' values.

Egan-Jones also executes votes for customers and produces annual reports for them to submit to the SEC.

III. Need for Robust Competition

Two proxy advisors control 97 percent of the proxy market according to the WSJ¹. This duopoly results in anti-competitive market behavior, whereby the interests of issuers, investors, and the country are being harmed. These two firms offer the services below:

1. Proxy advice (including research, vote execution, and annual SEC reporting)
2. Consulting services (e.g. ESG scores, compensation tools, and governance consulting)
3. (ISS only) Voting platforms whereby investors issue votes
4. Proxy material distribution

How Corporate Governance Has Evolved

Traditionally, shareholders had a responsibility to hold the management accountable via the annual proxy shareholder process.



Over time, the corporate governance system has become increasingly complex with proxy advisors filling in all the roles in **green**.



¹ "Cracking the Proxy Advisor Duopoly," Wall Street Journal Editorial Board, July 12, 2023.

How to Modernize Proxy Advisory

The existing system is riddled with conflicts of interest. The corporate governance process, including shareholders, management, and other stakeholders would be better served by separating the functions.



Congress should adopt legislative proposals that bring competition to the marketplace and level the playing field by focusing on the following recommendations:

- **Make the voting platforms neutral** – Currently one of the large proxy advisors provides the voting platform that is used by the bulk of institutional investors. For years, Egan-Jones has tried to be included widely in the platform with little success.

One of the large proxy advisors will host recommendations from Egan-Jones but only if a customer explicitly requests those recommendations. For all other potential customers, the proxy advisor hides Egan-Jones as an option.

Further, the same large proxy advisor has hidden critical public information from third-parties such as voting deadlines. It is difficult to deliver votes to the advisor as a third-party if one doesn't know when the vote is due. They have also hidden information to identify public companies, such as the exchanges on which a stock trades. It is difficult to offer vote recommendations if a third-party can't easily identify the company in question.

Competition is restricted if managers cannot access the work product of competing proxy advisors and serves to restrict competition.

- **Facilitate voting by underlying investors** – With the increased concentration in the asset manager area², a logical response is to allow the underlying investors to select among independent proxy

² <https://www.forbes.com/sites/chrisarosa/2024/04/02/index-funds-surge-in-popularity-but-pose-risks-for-the-market/>
https://www.nber.org/system/files/working_papers/w22247/w22247.pdf
<https://cepr.org/voxeu/columns/effects-concentration-asset-management-industry-stock-prices>

advisors and their policies. Some claim investment managers have conflicts if they are seeking business from the companies they are voting on (e.g., 401K or pension management business).

- **Restrict conflict-laden consulting services** – Proxy advisory firms’ selling of corporate governance, DEI, and ESG ratings creates a conflict of interest. Stated simply, no one can serve two masters.

Investors can be harmed by the arrangement because proxy advisory firms have an incentive to support their most lucrative customers, corporate boards, rather than reject management proposals.

Issuers may be harmed because they may decide to pay for expensive governance consulting rather than face potential lack of support from proxy advisory firms. A legitimate use of the proxy advisory firms by issuers is accessing their data and algorithms at a reasonable price.

- **End robo-voting and other dubious practices** – Shareholders’ votes on directors and major actions by corporations are critical to the proper functioning of the economy. Thus, abdicating that responsibility should be disallowed. Examples of negligence include (1) always voting with management or (2) voting in a manner that replicates the voting of other investors, which is also known as “mirror voting.”

IV. Legislative Proposals

As part of the hearing, the committee noted several important pieces of legislation that will greatly improve the proxy advisory industry. Specifically, we support Representative Fitzgerald’s (R-WI) draft legislation, the “Stopping Proxy Advisor Racketeering Act.” Though onerous, SEC examinations would ensure proxy advisory firms mitigate conflicts of interest.

Similarly, although there are costs associated with providing issuers advance “notice and awareness” of recommendations, this rule could prevent inaccuracies in proxy recommendations.

Conversely, two proposals fail to address the fundamental issues we have outlined and will erect barriers to entry for new entrants into the sector.

1. Impose liability on proxy advisory firms for recommendations
2. Require undefined “economic analyses” for all recommendations that defy management

Thank you for holding the hearing titled, “Exposing the Proxy Advisory Cartel: How ISS & Glass Lewis Influence Markets” and for allowing Egan-Jones to submit this letter for the record.

Regards,
Eric Mandelbaum
Senior Vice President and General Counsel, Egan-Jones

Questions for the Record for

Charles Crain
Managing Vice President, Policy
National Association of Manufacturers

Before the

U.S. House of Representatives
Committee on Financial Services
Subcommittee on Capital Markets

Hearing on

"Exposing the Proxy Advisory Cartel: How ISS & Glass Lewis Influence Markets"

April 29, 2025

Questions for the Record from Rep. Maxine Waters, Ranking Member, Committee on Financial Services

1. Which of the following options best describes your self-identified race? (You may choose more than one)
 - a. White or Caucasian
 - b. Black or African American
 - c. Hispanic/Latinx
 - d. Asian
 - e. Middle Eastern/North African
 - f. Choose not to answer
 - g. Prefer to self-describe (please specify)

White or Caucasian

2. Which of the following options best describes your gender identity?
 - a. Woman
 - b. Man
 - c. Non-binary
 - d. Transgender Man
 - e. Transgender Woman
 - f. Choose not to answer
 - g. Prefer to self-describe (please specify)

Choose not to answer

FRENCH HILL, AR
CHAIRMAN



MAXINE WATERS, CA
RANKING MEMBER

United States House of Representatives
One Hundred Nineteenth Congress
Committee on Financial Services
2124 Rayburn House Office Building
Washington, DC 20515

Questions for the Record
Subcommittee on Capital Markets Hearing, entitled
“Exposing the Proxy Advisory Cartel: How ISS & Glass Lewis Influence Markets”
April 29, 2025

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-

[DISCUSSION DRAFT]

119TH CONGRESS
1ST SESSION

H. R. _____

To amend the Securities Exchange Act of 1934 to provide for the registration of proxy advisory firms, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

Mr. STEIL introduced the following bill; which was referred to the Committee on _____

A BILL

To amend the Securities Exchange Act of 1934 to provide for the registration of proxy advisory firms, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. REGISTRATION OF PROXY ADVISORY FIRMS.**

4 (a) AMENDMENT.—The Securities Exchange Act of
5 1934 (15 U.S.C. 78a et seq.) is amended by inserting after
6 section 15G the following new section:

1 **“SEC. 15H. REGISTRATION OF PROXY ADVISORY FIRMS.**

2 “(a) CONDUCT PROHIBITED.—It shall be unlawful
3 for a proxy advisory firm to make use of the mails or any
4 means or instrumentality of interstate commerce to pro-
5 vide proxy voting advice, research, analysis, ratings or rec-
6 ommendations to any client, unless such proxy advisory
7 firm is registered under this section.

8 “(b) REGISTRATION PROCEDURES.—

9 “(1) APPLICATION FOR REGISTRATION.—

10 “(A) IN GENERAL.—A proxy advisory firm
11 shall file with the Commission an application
12 for registration, in such form as the Commis-
13 sion shall require, by rule, and containing the
14 information described in subparagraph (B).

15 “(B) REQUIRED INFORMATION.—An appli-
16 cation for registration under this section shall
17 contain—

18 “(i) a certification that the applicant
19 is able to consistently provide proxy advice
20 based on accurate information;

21 “(ii) with respect to clients of the ap-
22 plicant that vote shares held on behalf of
23 shareholders, a certification that the appli-
24 cant—

1 “(I) will provide proxy voting ad-
2 vice only in the best economic interest
3 of those shareholders; and

4 “(II) has the requisite expertise
5 to ensure that voting recommenda-
6 tions are in the best economic interest
7 of those shareholders;

8 “(iii) information on the procedures
9 and methodologies that the applicant uses
10 to ensure that proxy voting recommenda-
11 tions are in the best economic interest of
12 the ultimate shareholders;

13 “(iv) information on the organiza-
14 tional structure of the applicant;

15 “(v) an explanation of whether or not
16 the applicant has in effect a code of ethics,
17 and if not, the reasons therefor;

18 “(vi) a description of any potential or
19 actual conflict of interest relating to the
20 provision of proxy advisory services, includ-
21 ing those arising out of or resulting from
22 the ownership structure of the applicant or
23 the provision of other services by the appli-
24 cant or any person associated with the ap-
25 plicant;

1 “(vii) the policies and procedures in
2 place to publicly disclose and manage con-
3 flicts of interest under subsection (f);

4 “(viii) information related to the pro-
5 fessional and academic qualifications of
6 staff tasked with providing proxy advisory
7 services; and

8 “(ix) any other information and docu-
9 ments concerning the applicant and any
10 person associated with such applicant as
11 the Commission, by rule, may prescribe as
12 necessary or appropriate in the public in-
13 terest or for the protection of investors.

14 “(2) REVIEW OF APPLICATION.—

15 “(A) INITIAL DETERMINATION.—Not later
16 than 90 days after the date on which the appli-
17 cation for registration is filed with the Commis-
18 sion under paragraph (1) (or within such longer
19 period as to which the applicant consents) the
20 Commission shall—

21 “(i) by order, grant registration; or

22 “(ii) institute proceedings to deter-
23 mine whether registration should be de-
24 nied.

25 “(B) CONDUCT OF PROCEEDINGS.—

1 “(i) CONTENT.—Proceedings referred
2 to in subparagraph (A)(ii) shall—

3 “(I) include notice of the grounds
4 for denial under consideration and an
5 opportunity for hearing; and

6 “(II) be concluded not later than
7 120 days after the date on which the
8 application for registration is filed
9 with the Commission under paragraph
10 (1).

11 “(ii) DETERMINATION.—At the con-
12 clusion of such proceedings, the Commis-
13 sion, by order, shall grant or deny such ap-
14 plication for registration.

15 “(iii) EXTENSION AUTHORIZED.—The
16 Commission may extend the time for con-
17 clusion of such proceedings for not longer
18 than 90 days, if the Commission finds
19 good cause for such extension and pub-
20 lishes its reasons for so finding, or for such
21 longer period as to which the applicant
22 consents.

23 “(C) GROUNDS FOR DECISION.—The Com-
24 mission shall grant registration under this sub-
25 section—

1 “(i) if the Commission finds that the
2 requirements of this section are satisfied;
3 and

4 “(ii) unless the Commission finds (in
5 which case the Commission shall deny such
6 registration) that—

7 “(I) the applicant has failed to
8 certify to the Commission’s satisfac-
9 tion that it is able to consistently pro-
10 vide proxy advice based on accurate
11 information and to materially comply
12 with the procedures and methodolo-
13 gies disclosed under paragraph (1)(B)
14 and with subsections (f) and (g); or

15 “(II) if the applicant were so reg-
16 istered, its registration would be sub-
17 ject to suspension or revocation under
18 subsection (d).

19 “(3) PUBLIC AVAILABILITY OF INFORMATION.—
20 Subject to section 24, the Commission shall make
21 the information and documents submitted to the
22 Commission by a proxy advisory firm in its com-
23 pleted application for registration, or in any amend-
24 ment submitted under paragraph (1) or (2) of sub-
25 section (c), publicly available on the Commission’s

1 website, or through another comparable, readily ac-
2 cessible means.

3 “(c) UPDATE OF REGISTRATION.—

4 “(1) UPDATE.—Each registered proxy advisory
5 firm shall promptly amend and update its applica-
6 tion for registration under this section if any infor-
7 mation or document provided therein becomes mate-
8 rially inaccurate, except that a registered proxy advi-
9 sory firm is not required to amend the information
10 required to be filed under subsection (b)(1)(B)(i) by
11 filing information under this paragraph, but shall
12 amend such information in the annual submission of
13 the organization under paragraph (2) of this sub-
14 section.

15 “(2) CERTIFICATION.—Not later than 90 cal-
16 endar days after the end of each calendar year, each
17 registered proxy advisory firm shall file with the
18 Commission an amendment to its registration, in
19 such form as the Commission, by rule, may prescribe
20 as necessary or appropriate in the public interest or
21 for the protection of investors—

22 “(A) certifying that the information and
23 documents in the application for registration of
24 such registered proxy advisory firm continue to
25 be accurate in all material respects; and

1 “(B) listing any material change that oc-
2 curred to such information or documents during
3 the previous calendar year.

4 “(d) CENSURE, DENIAL, OR SUSPENSION OF REG-
5 ISTRATION; NOTICE AND HEARING.—The Commission, by
6 order, shall censure, place limitations on the activities,
7 functions, or operations of, suspend for a period not ex-
8 ceeding 12 months, or revoke the registration of any reg-
9 istered proxy advisory firm if the Commission finds, on
10 the record after notice and opportunity for hearing, that
11 such censure, placing of limitations, suspension, or revoca-
12 tion is necessary for the protection of investors and in the
13 public interest and that such registered proxy advisory
14 firm, or any person associated with such an organization,
15 whether prior to or subsequent to becoming so associ-
16 ated—

17 “(1) has committed or omitted any act, or is
18 subject to an order or finding, enumerated in sub-
19 paragraph (A), (D), (E), (H), or (G) of section
20 15(b)(4), has been convicted of any offense specified
21 in section 15(b)(4)(B), or is enjoined from any ac-
22 tion, conduct, or practice specified in subparagraph
23 (C) of section 15(b)(4), during the 10-year period
24 preceding the date of commencement of the pro-

1 ceedings under this subsection, or at any time there-
2 after;

3 “(2) has been convicted during the 10-year pe-
4 riod preceding the date on which an application for
5 registration is filed with the Commission under this
6 section, or at any time thereafter, of—

7 “(A) any crime that is punishable by im-
8 prisonment for 1 or more years, and that is not
9 described in section 15(b)(4)(B); or

10 “(B) a substantially equivalent crime by a
11 foreign court of competent jurisdiction;

12 “(3) is subject to any order of the Commission
13 barring or suspending the right of the person to be
14 associated with a registered proxy advisory firm;

15 “(4) fails to furnish the certifications required
16 under subsections (b)(2)(C)(ii)(I) and (c)(2);

17 “(5) has engaged in one or more prohibited acts
18 enumerated in paragraph (1);

19 “(6) fails to maintain adequate financial and
20 managerial resources to consistently offer advisory
21 services to clients that vote shares held on behalf of
22 shareholders consistent with the best economic inter-
23 est of those shareholders, including by failing to
24 comply with subsections (f) or (g);

1 “(7) fails to maintain adequate expertise to en-
2 sure that proxy advisory services for clients that vote
3 shares held on behalf of shareholders are tied to the
4 best economic interest of those shareholders; or

5 “(8) engages in a prohibited act enumerated in
6 subsection (j).

7 “(e) TERMINATION OF REGISTRATION.—

8 “(1) VOLUNTARY WITHDRAWAL.—A registered
9 proxy advisory firm may, upon such terms and con-
10 ditions as the Commission may establish as nec-
11 essary in the public interest or for the protection of
12 investors, which terms and conditions shall include
13 at a minimum that the registered proxy advisory
14 firm will no longer conduct such activities as to
15 bring it within the definition of proxy advisory firm
16 in section 3(a)(82), withdraw from registration by
17 filing a written notice of withdrawal to the Commis-
18 sion.

19 “(2) COMMISSION AUTHORITY.—In addition to
20 any other authority of the Commission under this
21 title, if the Commission finds that a registered proxy
22 advisory firm is no longer in existence or has ceased
23 to do business as a proxy advisory firm, the Com-
24 mission, by order, shall cancel the registration under
25 this section of such registered proxy advisory firm.

1 “(f) MANAGEMENT OF CONFLICTS OF INTEREST.—

2 “(1) ORGANIZATION POLICIES AND PROCE-
3 DURES.—Each registered proxy advisory firm shall
4 establish, maintain, and enforce written policies and
5 procedures reasonably designed, taking into consid-
6 eration the nature of the business of such registered
7 proxy advisory firm and associated persons, to pub-
8 licly disclose and manage any conflicts of interest
9 that arise or would reasonably be expected to arise
10 from such business.

11 “(2) COMMISSION AUTHORITY.—The Commis-
12 sion shall, within one year of the date of enactment
13 of this section, issue final rules to prohibit, or re-
14 quire the management and public disclosure of, any
15 conflicts of interest relating to the offering of proxy
16 advisory services by a registered proxy advisory firm,
17 including, without limitation, conflicts of interest re-
18 lating to—

19 “(A) the manner in which a registered
20 proxy advisory firm is compensated by the cli-
21 ent, any affiliate of the client, or any other per-
22 son for providing proxy advisory services;

23 “(B) business relationships, ownership in-
24 terests, or any other financial or personal inter-
25 ests between a registered proxy advisory firm,

1 or any person associated with such registered
2 proxy advisory firm, and any client, or any af-
3 filiate of such client;

4 “(C) the formulation of proxy voting poli-
5 cies;

6 “(D) the execution, or assistance with the
7 execution, of proxy votes if such votes are based
8 upon recommendations made by the proxy advi-
9 sory firm in which a person other than the
10 issuer is a proponent; and

11 “(E) any other potential conflict of inter-
12 est, as the Commission deems necessary or ap-
13 propriate in the public interest or for the pro-
14 tection of investors.

15 “(3) DISCLOSURE ON FACTORS INFLUENCING
16 RECOMMENDATIONS.—Each registered proxy advi-
17 sory firm shall annually disclose to the Commission
18 and make publicly available the economic and other
19 factors that a reasonable investor would expect to in-
20 fluence the recommendations of such proxy advisory
21 firm, including the ownership composition of such
22 proxy advisory firm and any meetings with, or feed-
23 back received from, outside entities.

24 “(g) RELIABILITY OF PROXY ADVISORY FIRM SERV-
25 ICES.—

1 “(1) IN GENERAL.—Each registered proxy advi-
2 sory firm shall—

3 “(A) have staff and other resources suffi-
4 cient to produce proxy voting recommendations
5 that are based on accurate and current infor-
6 mation and designed for clients that vote shares
7 held on behalf of shareholders to advance the
8 best economic interest of those shareholders;

9 “(B) implement procedures that permit
10 issuers that are the subject of proxy voting rec-
11 ommendations—

12 “(i) access in a reasonable time to
13 data and information used to make rec-
14 ommendations; and

15 “(ii) a reasonable opportunity to pro-
16 vide meaningful comment and corrections
17 to such data and information, including
18 the opportunity to present (in person or
19 telephonically) details to the person re-
20 sponsible for developing such data and in-
21 formation prior to the publication of proxy
22 voting recommendations to clients;

23 “(C) employ an ombudsman to receive
24 complaints about the accuracy of information
25 used in making recommendations from the com-

panies that are the subject of the proxy advisory firm’s voting recommendations and seek to resolve those complaints in a timely fashion and prior to the publication of proxy voting recommendations to clients; and

“(D) if the ombudsman is unable to resolve a complaint to a company’s satisfaction prior to the publication of proxy voting recommendations to clients, include in the final report of the firm to clients—

“(i) a statement detailing the company’s complaints, if requested in writing by the company; and

“(ii) a statement explaining why the proxy voting recommendation is in the best economic interest of shareholders.

“(2) DEFINITIONS.—In this subsection:

“(A) DATA AND INFORMATION USED TO MAKE RECOMMENDATIONS.—The term ‘data and information used to make voting recommendations’—

“(i) means the financial, operational, or descriptive data and information on an issuer used by proxy advisory firms and

1 any contextual or substantive analysis im-
2 pacting the recommendation; and

3 “(ii) does not include the entirety of
4 the proxy advisory firm’s final report to its
5 clients.

6 “(B) REASONABLE TIME.—The term ‘rea-
7 sonable time’—

8 “(i) means not less than 1 week be-
9 fore the publication of proxy voting rec-
10 ommendations for clients; and

11 “(ii) shall not otherwise interfere with
12 a proxy advisory firm’s ability to provide
13 its clients with timely access to accurate
14 proxy voting research, analysis, or rec-
15 ommendations.

16 “(h) PRIVATE RIGHT OF ACTION WITH RESPECT TO
17 ILLEGAL RECOMMENDATIONS.—Any proxy advisory firm
18 that endorses a proposal that is not supported by the
19 issuer but is approved and subsequently found by a court
20 of competent jurisdiction to violate State or Federal law
21 shall be liable to the applicable issuer for the costs associ-
22 ated with the approval of such proposal, including imple-
23 mentation costs and any penalties incurred by the issuer.

24 “(i) DESIGNATION OF COMPLIANCE OFFICER.—Each
25 registered proxy advisory firm shall designate an indi-

1 vidual who reports directly to senior management as re-
2 sponsible for administering the policies and procedures
3 that are required to be established pursuant to subsections
4 (f) and (g), and for ensuring compliance with the securi-
5 ties laws and the rules and regulations thereunder, includ-
6 ing those promulgated by the Commission pursuant to this
7 section.

8 “(j) PROHIBITED CONDUCT.—

9 “(1) PROHIBITED ACTS AND PRACTICES.—Not
10 later than one year after the date of enactment of
11 this section, the Commission shall issue final rules
12 to prohibit any act or practice relating to the offer-
13 ing of proxy advisory services by a registered proxy
14 advisory firm that the Commission determines to be
15 unfair, coercive, or abusive, including any act or
16 practice relating to—

17 “(A) advisory or consulting services (of-
18 fered directly or indirectly, including through
19 an affiliate) related to corporate governance
20 issues; or

21 “(B) modifying a voting recommendation
22 or otherwise departing from its adopted system-
23 atic procedures and methodologies in the provi-
24 sion of proxy advisory services, based on wheth-
25 er an issuer, or affiliate thereof, subscribes or

1 will subscribe to other services or product of the
2 registered proxy advisory firm or any person as-
3 sociated with such organization.

4 “(2) RULE OF CONSTRUCTION.—Nothing in
5 paragraph (1), or in any rules or regulations adopt-
6 ed thereunder, may be construed to modify, impair,
7 or supersede the operation of any of the antitrust
8 laws (as defined in the first section of the Clayton
9 Act, except that such term includes section 5 of the
10 Federal Trade Commission Act, to the extent that
11 such section 5 applies to unfair methods of competi-
12 tion).

13 “(k) STATEMENTS OF FINANCIAL CONDITION.—
14 Each registered proxy advisory firm shall, on a confiden-
15 tial basis, file with the Commission, at intervals deter-
16 mined by the Commission, such financial statements, cer-
17 tified (if required by the rules or regulations of the Com-
18 mission) by an independent public auditor, and informa-
19 tion concerning its financial condition, as the Commission,
20 by rule, may prescribe as necessary or appropriate in the
21 public interest or for the protection of investors.

22 “(l) ANNUAL REPORT.—

23 “(1) IN GENERAL.—Each registered proxy advi-
24 sory firm shall, not later than 90 calendar days after
25 the end of each fiscal year, file with the Commission

1 and make publicly available an annual report in such
2 form as the Commission, by rule, may prescribe as
3 necessary or appropriate in the public interest or for
4 the protection of investors.

5 “(2) CONTENTS.—Each annual report required
6 under paragraph (1) shall include, at a minimum,
7 disclosure by the registered proxy advisory firm of
8 the following:

9 “(A) A list of shareholder proposals the
10 staff of the registered proxy advisory firm re-
11 viewed in the prior fiscal year.

12 “(B) A list of the recommendations made
13 in the prior fiscal year.

14 “(C) The economic analysis conducted to
15 determine that final recommendations provided
16 in the prior fiscal year (other than rec-
17 ommendations relating to an issuer-sponsored
18 proposal or recommendations consistent with
19 that of a board of directors composed of a ma-
20 jority of independent directors) delivered to cli-
21 ents that vote shares held on behalf of share-
22 holders were in the best economic interest of
23 those shareholders.

1 “(D) The staff who reviewed and made
2 recommendations on such proposals in the prior
3 fiscal year.

4 “(E) The qualifications of such staff to en-
5 sure that each of the recommendations for cli-
6 ents that vote shares held on behalf of share-
7 holders were tied to the best economic interest
8 of those shareholders.

9 “(F) The recommendations made in the
10 prior fiscal year where the proponent of such
11 recommendation was a client of or received
12 services from the proxy advisory firm.

13 “(G) A certification by the chief executive
14 officer, chief financial officer, and the primary
15 executive responsible for overseeing the compila-
16 tion and dissemination of proxy voting advice
17 that the final recommendations (other than rec-
18 ommendations relating to an issuer-sponsored
19 proposal or recommendations consistent with
20 that of a board of directors composed of a ma-
21 jority of independent directors) delivered to cli-
22 ents that vote shares held on behalf of share-
23 holders in the last fiscal year—

24 “(i) were based on internal controls
25 and procedures that are designed to ensure

1 accurate information and that such inter-
2 nal controls and procedures are effective;

3 “(ii) do not violate applicable State or
4 Federal law; and

5 “(iii) were based on the best economic
6 interest of those shareholders.

7 “(H) The economic and other factors that
8 a reasonable investor would expect to influence
9 the recommendations of such proxy advisory
10 firm, including the ownership composition of
11 such proxy advisory firm.

12 “(m) TRANSPARENT POLICIES.—Each registered
13 proxy advisory firm shall file with the Commission and
14 make publicly available its methodology for the formula-
15 tion of proxy voting policies and voting recommendations
16 to clients that vote shares held on behalf of shareholders
17 and how that methodology ensures that the firm’s voting
18 recommendations are in the best economic interest of
19 those shareholders.

20 “(n) RULES OF CONSTRUCTION.—Registration under
21 and compliance with this section does not constitute a
22 waiver of, or otherwise diminish, any right, privilege, or
23 defense that a registered proxy advisory firm may other-
24 wise have under any provision of State or Federal law,
25 including any rule, regulation, or order thereunder.

1 “(o) REGULATIONS.—

2 “(1) NEW PROVISIONS.—Such rules and regula-
3 tions as are required by this section or are otherwise
4 necessary to carry out this section, including the ap-
5 plication form required under subsection (a)—

6 “(A) shall be issued by the Commission,
7 not later than 180 days after the date of enact-
8 ment of this section; and

9 “(B) shall become effective not later than
10 1 year after the date of enactment of this sec-
11 tion.

12 “(2) REVIEW OF EXISTING REGULATIONS.—Not
13 later than 270 days after the date of enactment of
14 this section, the Commission shall—

15 “(A) review its existing rules and regula-
16 tions which affect the operations of proxy advi-
17 sory firms; and

18 “(B) amend or revise such rules and regu-
19 lations in accordance with the purposes of this
20 section, and issue such guidance as the Com-
21 mission may prescribe as necessary or appro-
22 priate in the public interest or for the protec-
23 tion of investors.

1 “(p) APPLICABILITY.—This section, other than sub-
2 section (n), which shall apply on the date of enactment
3 of this section, shall apply on the earlier of—

4 “(1) the date on which regulations are issued in
5 final form under subsection (o)(1); or

6 “(2) 270 days after the date of enactment of
7 this section.

8 “(q) BEST ECONOMIC INTEREST DEFINED.—In this
9 section, the term ‘best economic interest’ means decisions
10 that seek to maximize investment returns over a time hori-
11 zon consistent with the investment objectives and risk
12 management profile of the fund in which the shareholders
13 are invested.”.

14 (b) CONFORMING AMENDMENT.—Section 17(a)(1) of
15 the Securities Exchange Act of 1934 (15 U.S.C.
16 78q(a)(1)) is amended by inserting “proxy advisory firm,”
17 after “nationally recognized statistical rating organiza-
18 tion,”.

19 (c) PROXY ADVISORY FIRM DEFINITIONS.—Section
20 3(a) of the Securities Exchange Act of 1934 (15 U.S.C.
21 78c(a)) is amended—

22 (1) by redesignating the second paragraph (80)
23 (relating to funding portal) as paragraph (81); and

24 (2) by adding at the end the following:

1 “(82) PROXY ADVISORY FIRM.—The term
2 ‘proxy advisory firm’—

3 “(A) means any person who is primarily
4 engaged in the business of providing proxy vot-
5 ing advice, research, analysis, ratings, or rec-
6 ommendations to clients, which conduct con-
7 stitutes a solicitation within the meaning of sec-
8 tion 14; and

9 “(B) does not include any person that is
10 exempt under law or regulation from the re-
11 quirements otherwise applicable to persons en-
12 gaged in such a solicitation.

13 “(83) PERSON ASSOCIATED WITH A PROXY AD-
14 VISORY FIRM.—With respect to a proxy advisory
15 firm—

16 “(A) a person is ‘associated’ with the
17 proxy advisory firm if the person is—

18 “(i) a partner, officer, or director of
19 the proxy advisory firm (or any person oc-
20 cupying a similar status or performing
21 similar functions);

22 “(ii) a person directly or indirectly
23 controlling, controlled by, or under com-
24 mon control with the proxy advisory firm;

1 “(iii) an employee of the proxy advi-
2 sory firm; or

3 “(iv) a person the Commission deter-
4 mines by rule is controlled by the proxy
5 advisory firm; and

6 “(B) a person is not ‘associated’ with the
7 proxy advisory firm if the person only performs
8 clerical or ministerial functions with respect to
9 a proxy advisory firm.”.

[DISCUSSION DRAFT]119TH CONGRESS
1ST SESSION**H. R.** _____

To amend the Securities Exchange Act of 1934 to provide for liability for certain failures to disclose material information or making of material misstatements, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

Mr. STEIL introduced the following bill; which was referred to the Committee on _____

A BILL

To amend the Securities Exchange Act of 1934 to provide for liability for certain failures to disclose material information or making of material misstatements, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. LIABILITY FOR CERTAIN FAILURES TO DIS-**
2 **CLOSE MATERIAL INFORMATION OR MAKING**
3 **OF MATERIAL MISSTATEMENTS.**

4 Section 14 of the Securities Exchange Act of 1934
5 (15 U.S.C. 78n) is amended by adding at the end the fol-
6 lowing:

7 “(l) FALSE OR MISLEADING STATEMENTS.—For
8 purposes of section 18, the failure to disclose material in-
9 formation (such as a proxy voting advice business’s meth-
10 odology, sources of information, or conflicts of interest)
11 or the making of a material misstatement regarding proxy
12 voting advice that makes a recommendation to a security
13 holder as to the security holder’s vote, consent, or author-
14 ization on a specific matter for which security holder ap-
15 proval is solicited, and that is furnished by a person that
16 markets the person’s expertise as a provider of such proxy
17 voting advice separately from other forms of investment
18 advice, and sells such proxy voting advice for a fee, shall
19 be considered to be false or misleading with respect to a
20 material fact.”.

[DISCUSSION DRAFT]

119TH CONGRESS
1ST SESSION

H. R. _____

To amend the Securities Exchange Act of 1934 to require certain disclosures by institutional investment managers in connection with proxy advisory firms, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

Mr. LOUDERMILK introduced the following bill; which was referred to the Committee on _____

A BILL

To amend the Securities Exchange Act of 1934 to require certain disclosures by institutional investment managers in connection with proxy advisory firms, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. DUTIES OF INVESTMENT ADVISORS, ASSET**
4 **MANAGERS, AND PENSION FUNDS.**

5 Section 13(f) of the Securities Exchange Act of 1934
6 (15 U.S.C. 78m(f)) is amended by adding at the end the
7 following:

1 “(7) DISCLOSURES BY INSTITUTIONAL INVEST-
2 MENT MANAGERS IN CONNECTION WITH PROXY AD-
3 VISORY FIRMS.—

4 “(A) IN GENERAL.—Every institutional in-
5 vestment manager which uses the mails, or any
6 means or instrumentality of interstate com-
7 merce in the course of its business as an insti-
8 tutional investment manager, which engages a
9 proxy advisory firm, and which exercises voting
10 power with respect to accounts holding equity
11 securities of a class described in subsection
12 (d)(1) or otherwise becomes or is deemed to be-
13 come a beneficial owner of any security of a
14 class described in subsection (d)(1) upon the
15 purchase or sale of a security-based swap that
16 the Commission may define by rule, shall file an
17 annual report with the Commission con-
18 taining—

19 “(i) an explanation of how the institu-
20 tional investment manager voted with re-
21 spect to each shareholder proposal;

22 “(ii) the percentage of votes cast on
23 shareholder proposals that were consistent
24 with proxy advisory firm recommendations,

1 for each proxy advisory firm retained by
2 the institutional investment manager;

3 “(iii) an explanation of—

4 “(I) how the institutional invest-
5 ment manager took into consideration
6 proxy advisory firm recommendations
7 in making voting decisions, including
8 the degree to which the institutional
9 investment manager used those rec-
10 ommendations in making voting deci-
11 sions;

12 “(II) how often the institutional
13 investment manager voted consistent
14 with a recommendation made by a
15 proxy advisory firm, expressed as a
16 percentage;

17 “(III) how such votes are rec-
18 onciled with the fiduciary duty of the
19 institutional investment manager to
20 vote in the best economic interests of
21 shareholders;

22 “(IV) how frequently votes were
23 changed when an error occurred or
24 due to new information from issuers;
25 and

1 “(V) the degree to which invest-
2 ment professionals of the institutional
3 investment manager were involved in
4 proxy voting decisions; and

5 “(iv) a certification that the voting de-
6 cisions of the institutional investment man-
7 ager were based solely on the best eco-
8 nomic interest of the shareholders on be-
9 half of whom the institutional investment
10 manager holds shares.

11 “(B) REQUIREMENTS FOR LARGER INSTI-
12 TUTIONAL INVESTMENT MANAGERS.—Every in-
13 stitutional investment manager described in
14 subparagraph (A) that has assets under man-
15 agement with an aggregate fair market value on
16 the last trading day in any of the preceding
17 twelve months of at least \$100,000,000,000
18 shall—

19 “(i) in any materials provided to cus-
20 tomers and related to customers voting
21 their shares, clarify that shareholders are
22 not required to vote on every proposal;

23 “(ii) with respect to each shareholder
24 proposal for which the institutional invest-
25 ment manager votes (other than votes con-

1 sistent with the recommendation of a
2 board of directors composed of a majority
3 of independent directors) perform an eco-
4 nomic analysis before making such vote, to
5 determine that the vote is in the best eco-
6 nomic interest of the shareholders on be-
7 half of whom the institutional investment
8 manager holds shares; and

9 “(iii) include each economic analysis
10 required under clause (ii) in the annual re-
11 port required under subparagraph (A).

12 “(C) DEFINITIONS.—In this paragraph:

13 “(i) BEST ECONOMIC INTEREST.—The
14 term ‘best economic interest’ means deci-
15 sions that seek to maximize investment re-
16 turns over a time horizon consistent with
17 the investment objectives and risk manage-
18 ment profile of the fund in which share-
19 holders are invested.

20 “(ii) PROXY ADVISORY FIRM.—The
21 term ‘proxy advisory firm’—

22 “(I) means any person who is
23 primarily engaged in the business of
24 providing proxy voting advice, re-
25 search, analysis, ratings, or rec-

1 ommendations to clients, which con-
2 duct constitutes a solicitation within
3 the meaning of section 14; and

4 “(II) does not include any person
5 that is exempt under law or regulation
6 from the requirements otherwise ap-
7 plicable to persons engaged in such a
8 solicitation.”.

[DISCUSSION DRAFT]119TH CONGRESS
1ST SESSION**H. R.** _____

To amend the Securities Exchange Act of 1934 to provide for certain requirements related to proxy voting, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

Mr. NUNN of Iowa introduced the following bill; which was referred to the Committee on _____

A BILL

To amend the Securities Exchange Act of 1934 to provide for certain requirements related to proxy voting, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. REQUIREMENTS RELATED TO PROXY VOTING.**

4 Section 14 of the Securities Exchange Act of 1934
5 (15 U.S.C. 78n) is amended by adding at the end the fol-
6 lowing:

7 “(l) PROHIBITION ON ROBOVOTING.—

1 “(1) IN GENERAL.—The Commission shall issue
2 final rules prohibiting the use of robovoting with re-
3 spect to votes related to proxy or consent solicitation
4 materials.

5 “(2) ROBOVOTING DEFINED.—In this sub-
6 section, the term ‘robovoting’ means the practice of
7 automatically voting in a manner consistent with the
8 recommendations of a proxy advisory firm or pre-
9 populating votes on a proxy advisory firm’s elec-
10 tronic voting platform with the proxy advisory firm’s
11 recommendations, in either case, without inde-
12 pendent review and analysis.

13 “(m) PROHIBITION ON OUTSOURCING VOTING DECISIONS BY INSTITUTIONAL INVESTORS.—With respect to
14 votes related to proxy or consent solicitation materials, an
15 institutional investor may not outsource voting decisions
16 to any person other than an investment adviser or a
17 broker or dealer that is registered with the Commission
18 and has a fiduciary or best interest duty to the institu-
19 tional investor.

21 “(n) NO REQUIREMENT TO VOTE.—No person may
22 be required to cast votes related to proxy or consent solici-
23 tation materials.

24 “(o) PROXY ADVISORY FIRM CALCULATION OF
25 VOTES.—With respect to votes related to proxy or consent

1 solicitation materials with respect to an issuer, a proxy
2 advisory firm shall calculate the vote result consistent with
3 the law of the State in which the issuer is incorporated.

4 “(p) PROXY ADVISORY FIRM DEFINED.—In sub-
5 section (l) and (o), the term ‘proxy advisory firm’—

6 “(1) means any person who is primarily en-
7 gaged in the business of providing proxy voting ad-
8 vice, research, analysis, ratings, or recommendations
9 to clients, which conduct constitutes a solicitation
10 within the meaning of section 14; and

11 “(2) does not include any person that is exempt
12 under law or regulation from the requirements oth-
13 erwise applicable to persons engaged in such a solici-
14 tation.”.

[DISCUSSION DRAFT]119TH CONGRESS
1ST SESSION**H. R.** _____

To amend the Securities Exchange Act of 1934 to require the Securities and Exchange Commission to study of certain issues with respect to shareholder proposals, proxy advisory firms, and the proxy process, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

Mrs. WAGNER introduced the following bill; which was referred to the Committee on _____

A BILL

To amend the Securities Exchange Act of 1934 to require the Securities and Exchange Commission to study of certain issues with respect to shareholder proposals, proxy advisory firms, and the proxy process, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. STUDY OF CERTAIN ISSUES WITH RESPECT TO**
2 **SHAREHOLDER PROPOSALS, PROXY ADVI-**
3 **SORY FIRMS, AND THE PROXY PROCESS.**

4 Section 4(j) of the Securities Exchange Act of 1934
5 (15 U.S.C. 78d(j)) is amended by adding at the end the
6 following:

7 “(10) STUDY OF CERTAIN ISSUES WITH RE-
8 SPECT TO SHAREHOLDER PROPOSALS, PROXY ADVI-
9 SORY FIRMS, AND THE PROXY PROCESS.—

10 “(A) IN GENERAL.—Not later than 180
11 days after the date of the enactment of this
12 paragraph, and every 5 years thereafter, the
13 Commission shall conduct a comprehensive
14 study on shareholder proposals, proxy advisory
15 firms, and the proxy process.

16 “(B) SCOPE OF STUDY.—The studies re-
17 quired under subparagraph (A) shall cover—

18 “(i) the previous 10 years, with re-
19 spect to the initial study; and

20 “(ii) the previous 5 years, with respect
21 to each other study.

22 “(C) CONTENTS.—Each study required
23 under subparagraph (A) shall address the fol-
24 lowing issues:

1 “(i) The financial and other incentives
2 and obligations of all groups involved in
3 the proxy process.

4 “(ii) A consideration of whether finan-
5 cial and other incentives have created a
6 process that no longer serves the economic
7 interests of long-term retail investors.

8 “(iii) An analysis of whether regula-
9 tions and financial incentives have created
10 and protected the outsized influence of
11 proxy advisors or a duopoly in proxy ad-
12 vice, and if so, what are the benefits and
13 costs of that outsized influence or duopoly.

14 “(iv) The costs incurred by issuers in
15 responding to politically-, environmentally-
16 , or socially-motivated shareholder pro-
17 posals.

18 “(v) An assessment, including a cost-
19 benefit analysis, of the adequacy of the
20 current submission thresholds in Rule 14a-
21 8 (17 CFR 240.14a-8) to ensure that
22 shareholder proponents have demonstrated
23 a meaningful economic stake in a com-
24 pany, which is appropriate to effectively
25 serve markets and shareholders at large.

1 “(vi) An examination of the extent to
2 which the politicization of the shareholder
3 proposal process is increasing the oper-
4 ating costs of public companies.

5 “(vii) An analysis of the impact that
6 shareholder proposals have on discouraging
7 private companies from going public.

8 “(viii) An evaluation of the risk that
9 shareholder proposals may contribute to
10 the balkanization of the U.S. economy over
11 time.

12 “(ix) A thorough assessment of the
13 economic analysis, if any, conducted by
14 proxy advisory firms and institutional
15 shareholders when recommending or voting
16 in favor of shareholder proposals.

17 “(x) A review of the extent to which
18 institutional investors, who owe fiduciary
19 duties, rely on proxy advisory firm rec-
20 ommendations.

21 “(xi) An assessment of whether, in
22 light of their significant influence on cor-
23 porate actions and vote outcomes, proxy
24 advisors are subject to sufficient and effec-
25 tive regulation to ensure that their policies

1 and recommendations are accurate, free of
2 conflicts, and benefit the economic best in-
3 terest of shareholders at large.

4 “(D) REPORT.—At the completion of each
5 study required under subparagraph (A) the
6 Commission shall issue a report to the Com-
7 mittee on Banking, Housing, and Urban Affairs
8 of the Senate and the Committee on Financial
9 Services of the House of Representatives that
10 includes the results of the study.

11 “(E) PROXY ADVISORY FIRM.—In this
12 paragraph, the term ‘proxy advisory firm’—

13 “(i) means any person who is pri-
14 marily engaged in the business of pro-
15 viding proxy voting advice, research, anal-
16 ysis, ratings, or recommendations to cli-
17 ents, which conduct constitutes a solici-
18 tation within the meaning of section 14; and

19 “(ii) does not include any person that
20 is exempt under law or regulation from the
21 requirements otherwise applicable to per-
22 sons engaged in such a solicitation.”.

[DISCUSSION DRAFT]119TH CONGRESS
1ST SESSION**H. R.** _____

To amend the Securities Exchange Act of 1934 to prohibit certain acts
by proxy advisory firms, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

Mr. FITZGERALD introduced the following bill; which was referred to the
Committee on _____

A BILL

To amend the Securities Exchange Act of 1934 to prohibit
certain acts by proxy advisory firms, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Stopping Proxy Advi-
5 sor Racketeering Act”.

6 **SEC. 2. CONDUCT OF PROXY ADVISORY FIRMS.**

7 The Securities Exchange Act of 1934 (15 U.S.C. 78a
8 et seq.) is amended by inserting after section 14B the fol-
9 lowing:

1 **“SEC. 14C. CONDUCT OF PROXY ADVISORY FIRMS.**

2 “(a) PROHIBITED CONDUCT.—It shall be unlawful
3 for a proxy advisory firm to provide proxy voting advice
4 if the proxy advisory firm possesses an actual or potential
5 conflict of interest, direct or indirect, that could reason-
6 ably be expected to affect the objectivity or reliability of
7 such proxy voting advice, including by—

8 “(1) providing consulting services offered di-
9 rectly or indirectly to an issuer for a fee;

10 “(2) modifying a voting recommendation or oth-
11 erwise departing from the adopted systematic proce-
12 dures and methodologies of the proxy advisory firm
13 or affiliate for the provision of proxy voting advice
14 based on whether an issuer, or affiliate of the issuer,
15 subscribes or will subscribe to the services or prod-
16 ucts of the proxy advisory firm or any affiliate of the
17 proxy advisory firm;

18 “(3) providing proxy voting advice during any
19 period of time when the proxy advisory firm or affil-
20 iate has any business relationship with the issuer,
21 another soliciting person, shareholder proponent, or
22 affiliate of any of the foregoing related to the matter
23 covered by the proxy voting advice; or

24 “(4) being a member of any organization that
25 actively supports a shareholder-sponsored proposal

1 that is, or is substantially similar to, the subject of
2 the proxy voting advice.

3 “(b) ADMINISTRATIVE CIVIL PENALTIES AVAIL-
4 ABLE.—If the Commission finds, after notice and oppor-
5 tunity for hearing in a proceeding instituted pursuant to
6 section 21C, that a proxy advisory firm violated subsection
7 (a), the Commission may, in addition to entering an order
8 under section 21C, impose a civil penalty against the
9 proxy advisory firm and any other person that the Com-
10 mission finds was a cause of such violation. The deter-
11 mination to impose such a civil penalty and the amount
12 of the penalty shall be governed by the standards set forth
13 in section 21B.

14 “(c) DEFINITIONS.—In this section:

15 “(1) CONSULTING SERVICES.—With respect to
16 a proxy advisory firm or an affiliate of a proxy advi-
17 sory firm, the term ‘consulting services’ means—

18 “(A) providing any non-public information
19 with respect to a proxy advisory firm’s policies
20 or ratings methodologies;

21 “(B) any services designed to provide guid-
22 ance or advice regarding any corporate govern-
23 ance, compensation, corporate social responsi-
24 bility, environmental, social, political, or other

1 policies, disclosures, or actions adopted by an
2 issuer with respect to—

3 “(i) any matter—

4 “(I) for which security holder
5 vote or consent is or will be solicited;
6 and

7 “(II) as to which the proxy advi-
8 sory firm makes or will make a rec-
9 ommendation as to a security holder’s
10 vote or consent; or

11 “(ii) matters included in or covered by
12 any written report or rating furnished by
13 the proxy advisory firm; and

14 “(C) such other services as the Commis-
15 sion may determine.

16 “(2) PROXY ADVISORY FIRM.—The term ‘proxy
17 advisory firm’ means any person who is engaged in
18 providing and selling proxy voting advice.

19 “(3) PROXY VOTING ADVICE.—The term ‘proxy
20 voting advice’ means any advice that makes a rec-
21 ommendation to a security holder as to the vote,
22 consent, or authorization of the security holder on a
23 specific matter for which the approval of the security
24 holder is solicited.”.