

THE PROXY ADVISOR DUOPOLY'S ANTICOMPETITIVE CONDUCT

HEARING

BEFORE THE

SUBCOMMITTEE ON THE ADMINISTRATIVE STATE,
REGULATORY REFORM, AND ANTITRUST

COMMITTEE ON THE JUDICIARY

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THE PROXY ADVISOR DUOPOLY'S ANTICOMPETITIVE CONDUCT

Wednesday, June 25, 2025

HOUSE OF REPRESENTATIVES

SUBCOMMITTEE ON THE ADMINISTRATIVE STATE,
REGULATORY REFORM, AND ANTITRUST

COMMITTEE ON THE JUDICIARY

Washington, DC

The Subcommittee met, pursuant to notice, at 10 a.m., in Room 2141, Rayburn House Office Building, the Hon. Scott Fitzgerald [Chair of the Subcommittee] presiding.

Members present: Representatives Fitzgerald, Jordan, Issa, Cline, Gooden, Hageman, Harris, Nadler, Raskin, Garcia, and Johnson.

Mr. FITZGERALD. The Subcommittee will come to order.

Without objection, the Chair is authorized to declare a recess at any time.

We want to welcome everyone to today's hearing on "The Proxy Advisor Duopoly's Anticompetitive Conduct."

I will now recognize myself for an opening statement.

Today, we are here to examine a deeply concerning threat to our system of free enterprise and competitive markets, the foreign-owned proxy advisor duopoly. Institutional Shareholder Services, or ISS, and Glass Lewis control more than 90 percent of the proxy advisor market and can sway, roughly, one-third of the vote on any shareholder proposal.

These foreign-owned proxy advisors use their power to act as de facto regulators of American companies, dictating the outcome of board elections and major business proposals. They set their own politically motivated agenda and pressure U.S. companies to comply.

ISS and Glass Lewis are not regulatory agencies subject to APA requirements. They are not fiduciaries that owe a responsibility to investors, and they are certainly not elected officials answering to the American voters. Yet, they have become unsupervised referees for every major corporate decision in America.

One negative recommendation from this duopoly can erase millions of dollars in market capitalization overnight. Just ask America's oil and gas producers, who have seen their boards reshuffled,

or the American manufacturers forced to adopt costly emissions targets not required by any statute or regulation.

American companies live in constant fear of a proxy advisor duopoly that owes no responsibility to anyone. Even more concerning, both of these gatekeepers are foreign-owned. The strategic direction of American enterprise is being ghost written in other countries, then rubberstamped on U.S. proxy statements. That should concern just about everyone who is here today who cares about our economic system or America's competitiveness in the global arena.

Today's hearing will show how ISS and Glass Lewis wield power in shaping policy entrenched in their duopoly and stifling all competition.

Consider their involvement in the climate cartel. This committee has already shown how ISS and Glass Lewis colluded with climate activists, the world's largest asset managers, and international nonprofits to impose radical ESG mandates on U.S. companies.

While this Subcommittee has been encouraged by the progress made by asset managers to return to its foundational model, the proxy duopoly remains the largest impediment to ensuring our capital markets are focused on growing America's retirement investment accounts.

Through their recommendations, ISS and Glass Lewis pressure businesses to slash reliable energy production, adopt DEI quotas, and reroute capital away from lawful, and profitable endeavors. This is not responsible for corporate governance. It is policymaking by proxy, and it is putting politics over profits.

What is the cost of this activism? Higher prices for consumers, lower returns for retirees, and a distortion of American capitalism.

If that were not bad enough, ISS and Glass Lewis engage in a blatant conflict of interest, selling consulting services to the very companies they issue recommendations against and punishing the ones that refuse to pay. In a mafia-style shakedown, companies are forced to pay for the duopoly's consulting services at the risk of retaliation during the next proxy season. This is not objectivity or sound corporate governance. It is a coerced, pay-to-play system that harms businesses and investors alike.

How do the proxy advisors maintain their market power? They don't just issue voter recommendations; they control the very systems that investors use to vote through their voting platforms, and through those, the ISS and Glass Lewis make sure most investors never see another advisor's recommendations before casting their vote.

The rival proxy advisors cannot access these systems, and public companies cannot reasonably avoid them. This is the exact kind of gatekeeping that our antitrust laws were written to prevent.

Because ISS and Glass Lewis have complete control over these platforms, they can preload each ballot with their own recommendations. When investors rely on the default settings, as many do, a massive number of shareholder votes move to lockstep with the duopoly's ideological agenda. In practice, that means two private foreign entities can shift approximately one-third of the shareholder vote on any given proposal, and it works.

In 2022, when the New York City Pension Fund filed a shareholder proposal requesting an audit of Starbucks' labor practices,

the duopoly lent its support, and the proposal passed with 52 percent.

That same year, ISS and Glass Lewis supported a resolution requesting McDonald's conduct a third-party civil rights audit. That proposal was adopted as well.

Congress cannot continue to allow foreign-owned proxy advisors to regulate the practices of American companies. We certainly cannot allow them to continue strong-arming companies into purchasing their consulting services.

That is why I have introduced the Stopping Proxy Advisors Racketeering Act, which would prevent these advisors from offering consulting services on the very recommendations that give them power.

I would also encourage our competition authorities at the DOJ and the FTC to take note of this hearing and consider focusing their attention and resources on studying the potential anticompetitiveness and the effects of this proxy duopoly.

Congress must make sure that American corporations answer to shareholders and the U.S. law, not foreign interests. Today's hearing is the first step toward doing just that.

Our witnesses today have firsthand knowledge of how this system operates and the effects it has on American businesses.

Mr. Sean Egan is the Co-Founder and President at Egan-Jones Rating Company. Egan-Jones is one of the few proxy advisor firms competing against this massive duopoly.

Mr. Charles Crain is the Managing Vice President of policy at the National Association of Manufacturers. He represents American manufacturing firms that have experienced the harmful impacts of the proxy advisor duopoly.

Mr. Caleb Griffin is an Associate Professor of Law at the University of North Carolina Law School. He has done extensive scholarly work on the corporate governance, proxy advisors, and related systematic reforms.

I want to thank each witness for appearing before us today and look forward to your insights.

I now recognize the Ranking Member, Mr. Nadler, for his opening statement.

Mr. NADLER. Thank you, Mr. Chair.

Thank you to our witnesses for being here today.

Yet again, our Republican colleagues are pushing baseless allegations of antitrust violations at the expense of American consumers. Today's hearing alleges collusion between the two largest proxy advisors, consulting firms that provide analysis and recommendations to institutional investors, such as pension funds and employee benefit plans, on how to vote their shares at companies' shareholder meetings.

The Republicans' theory: That these two companies, Institutional Shareholder Services, or ISS, and Glass Lewis, work together to push ideological goals over financial reform. They allege that these proxy advisors advance socially liberal policies at the expense of their investors, their customers' return on investment, and their own businesses. Like so many of the flawed antitrust theories the Republicans have brought before this Committee, it simply does not hold water.

Proxy advisors are a vital tool for investors. While deep-pocketed companies or clients can do assessments of proxy materials in-house, retail investors and mutual funds rely on expert independent advice from large proxy firms like ISS and Glass Lewis.

Proxy advisors inform their customers about the hundreds, and sometimes thousands, of complex proposals they may be called on to consider, helping them to fully exercise their rights as shareholders of publicly traded companies.

They do this by providing independent assessments of company proxy materials and shareholder proposals. Anyone in the financial services industry understands the value of trusted information. Customers pay ISS and Glass Lewis, and sometimes both companies, or even a third service, for independent assessments of company proxy materials and shareholder proposals.

To be clear, no one is forcing these customers to pay for their services, and no investor is bound by their subscription to ISS or Glass Lewis to follow their recommendations. The fact the companies generally do follow their advice is a reflection of the hard work proxy advisors do to ensure that their recommendations are in line with the goals and values of their clients. They do not leverage their market power over their clients' independent determinations. If their customers do not like their information or their advice, they can stop subscribing to ISS or Glass Lewis at any time. We should remember that it is the investor, not the proxy advisor, that casts the ultimate vote at shareholder meetings.

Proxy advisors can be particularly beneficial to pension funds by allowing them to maximize returns for their beneficiaries by reallocating resources that would otherwise go to analyzing the vast quantity of shareholder proposals they face.

Take New York, for example. As of 2018, it was the third largest public pension plan in the Nation and held \$207.4 billion in assets. These assets are overseen by the New York State Controller's Office and are held on behalf of more than one million members of the New York State and local retirement systems.

The Controller's Office, like its counterparts in other States, takes advantage of proxy advisory services to be better informed about the companies to which they have invested public employees' funds. The majority's baseless attacks on the proxy advisor market may force New York's, and other pension funds, to expend unnecessary resources by conducting their own shareholder analyses, which could undermine their ability to deliver strong returns for their beneficiaries.

Once again, the Majority has invented a flawed antitrust theory to justify its attacks on an industry it does not like. Although the vast majority of investor proposals are uncontroversial, such as uncontested board elections or the approval of company-nominated slates of electors, they are a tiny fraction of issues concerning social governance that the Majority labels DEI or proposals that, quite reasonably, consider the risks of climate change in making responsible investment decisions.

In each case, proxy advisors conduct an independent analysis and offer their best advice to their clients, who are free to make their own independent judgment on how to vote. Republicans do not like some of the recommendations that these two proxy advi-

sors have made, and therefore, as has become commonplace in this Committee, they have launched another unfounded antitrust investigation designed purely to intimidate and harass their opponents.

During the last Congress, the Republicans a fatally flawed antitrust investigation targeting investment groups that consider environmental, social, and governance, or ESG, strategies. Now, the Majority is following the same playbook and arguing that ISS and Glass Lewis are conspiring to advance pro-ESG and pro-DEI recommendations, in spite of a lack of evidence.

This fact-free investigation is all part of the Republicans' larger goal of entrenching corporate interests and conservative political preferences. The Republicans' focus on alleged collusion between ISS and Glass Lewis not only furthers their culture war campaign, but also allows them to target and dilute shareholder rights that would otherwise threaten the interests of their corporate allies.

The Majority alleges collusion between ISS and Glass Lewis because they often issue similar recommendations, but this reflects incredibly shallow analysis. If you go to multiple doctors and they each diagnose you with cancer, that is not evidence of collusion.

In this case, fair and impartial analyses of market conditions and best practices are yielding similar conclusions. There is nothing nefarious about this.

Proxy advisory firms empower shareholders to exercise their own judgment and expertise. The market is working as it should. Yet, Republicans are trying to meddle in it for political purposes. I urge my colleagues to end this fishing expedition and to focus on the real issues our constituents face.

I look forward to hearing from the witnesses, and I yield back.

Mr. FITZGERALD. The gentleman yields back.

I now recognize the Chair of the Full Committee, Mr. Jordan, for his opening statement.

Chair JORDAN. Thank you, Mr. Chair.

I want to thank our witnesses for being here today.

I especially want to thank the Chair for the work he is doing on exposing this duopoly and what they have been up to. This is an important hearing and an important subject.

With that, I yield back.

Mr. FITZGERALD. The gentleman yields back.

I now recognize the Ranking Member of the Full Committee, Mr. Raskin, for his opening statement.

Mr. RASKIN. Mr. Chair, thank you very much.

Today's hearing is another installment in what I'm thinking of as a series of nonantitrust antitrust hearings. Because my Republican colleagues seem so confused on the subject, I think a basic primer on what antitrust means may be in order.

The Supreme Court has compared the antitrust laws to the Magna Carta of free enterprise that is as important to the preservation of economic freedom in our free enterprise system as the Bill of Rights is to the protection of fundamental personal freedom.

Robust antitrust enforcement is vital for everyone in American society—from consumers to workers, to innovators, and to citizens. Antitrust is fundamentally about making sure the marketplace is an open and fair terrain for companies to innovate and compete.

Now, like Donald Trump, our GOP colleagues seem to think that antitrust is about Congress and the President picking business favorites to help and punishing business companies they disfavor. That has got nothing to do with antitrust, free markets, or fair competition. That is just gangster-State economics. That is how a business operates in authoritarian societies.

Our colleagues accuse two proxy advisors, ISS and Glass Lewis, of colluding to advance a progressive agenda when they make recommendations to their clients in advance of shareholder meetings. Well, of course, on the Antitrust Subcommittee, we should be concerned about collusion in the market. As Justice Scalia warned, “the supreme evil of antitrust is collusion.” That’s *Verizon v. Trinko*.

Collusion between competitors with the intent to fix pricing is per se illegal. You would think that, if our colleagues were going to use their bully pulpit to charge two companies with the “supreme evil of antitrust,” they would come armed with mountains of compelling, unassailable, and ironclad evidence. Even their own witnesses are not alleging collusion.

It reminds me of when the Oversight Committee had an impeachment hearing against President Biden in the last Congress, and none of their expert witnesses could identify evidence of impeachable high crimes and misdemeanors. Instead, they couldn’t find sufficient quantum of evidence.

It is not like my colleagues haven’t been warned. The Supreme Court has gone out of its way to explain, quote, “An allegation of parallel conduct and a bare assertion of conspiracy will not suffice,” to constitute an antitrust violation. That is exactly what our colleagues are doing here. They are making allegations based on the independent market actors sometimes taking parallel positions, and then, asserting collusion without any proof. I don’t believe that there is even an assertion of price fixing going on.

Now, you might chalk this up to just confusion about antitrust law and an innocent mistake, but our colleagues are using these allegations to intervene in and distort the market, and to target ideas and actors they simply disfavor; they don’t like.

They did this last Congress by targeting carbon-conscious investors for daring to use their rights as shareholders to push oil companies to invest in renewable fuel and position these companies to be more competitive in the face of the pervasive threat of climate change—a global emergency that, obviously, will have a direct effect on the bottom line of fossil fuel companies.

Now, the majority wields this same empty theory of antitrust harm against proxy advisors. Why? Simply because these companies help shareholders, including those committed to responsible investing, maximize their rights as part owners of publicly traded companies. Antitrust collusion is now the all-purpose GOP name for any market activity or commercial or political speech that they disagree with.

The proxy advisors are plainly responding to a marketplace demand. If they weren’t, they wouldn’t be in business. They are responding to the needs and the requests of their customers. There is an increased appetite among shareholders to invest responsibly. Some don’t want to invest in businesses contributing to climate

change or to gun violence. Some don't want to invest in companies doing business with Iran or Russia, or other repressive countries. These investors, proxy advisors' clients, want to exercise their rights as shareholders to push for changes to corporate governance and policy in the companies where they own shares. They have got every right to do so.

Proxy advisors like ISS and Glass Lewis go through hundreds of thousands of pages of proxy materials and give their customers their independent assessment of shareholder proposals, helping them decide whether to support or oppose them. Their only role is to provide information for their clients to enable them to exercise their rights. These companies have every right to issue their assessment of these proposals. It is protected as commercial speech, just as their clients have a shareholder right to propose, consider, and vote on them.

To be clear, the issues they are called to evaluate are not just progressive shareholder initiatives. True, my colleagues seem worked-up about shareholder initiatives that call for things like an audit of child labor practices in the meat packing industry or an assessment of working conditions in commercial warehouses that have an extraordinary rate of workplace injuries.

The exercise of shareholder rights is not, and has never been, a one-sided partisan exercise. Over the past several years, there has been record growth in shareholder proposals from conservative groups, like the proposal at Disney to demand that the company sever its ties with the Human Rights Campaign and with different kinds of gay and lesbian policies. They have got every right to do that. That proposal failed, just like many progressive shareholder proposals failed, and even if it succeeded, let me remind you that these proposals are entirely nonbinding. They can give expression to shareholder of concerns of the right to left of the center, but they can't force a company to do anything at all.

What is the real problem here? Why are we repeating a hearing that the Financial Services Committee just had at the end of April? Why are we concerning ourselves with supposed conflicts of interest, when the SEC has already addressed them with rules proposed under Trump and kept under Biden?

We are here because it seems the Trump Administration doesn't seem to believe in allowing voters to be informed. Instead, they are making it harder for voters to learn about the issues and tougher for voters to cast their ballots, especially when they are likely to disagree with them.

Shareholder rights, like citizen rights, are protected by law. This empty theory of antitrust harm infringes on the free market, on the rights of shareholders, and on the ability of shareholders to be informed about what companies are doing. Antitrust should not be used to censor political or commercial speech, to distort markets, or to disenfranchise shareholders. This is censorship masquerading in the language of antitrust analysis.

I thank my colleagues, and I yield back to you, Mr. Chair.

Mr. NADLER. Mr. Chair?

Mr. FITZGERALD. The gentleman yields back.

Mr. NADLER. I have two unanimous consent requests.

Mr. FITZGERALD. State your requests.

Mr. NADLER. OK. I ask unanimous consent to enter into the record a summary provided by ESG strategeis Diligent, dated December 21, 2023, which lists the new competitors expanding the proxy voting advice industry in the United States: Egan-Jones Proxy Services, Segal Marco Advisors, and ProxyVote Plus.

I have a second unanimous consent request. I ask unanimous consent to enter into the record an article from *The Guardian* titled, "Sustaining Corporations Perform Better Financially, Report Finds," which finds that, quote, "Corporations that are actively managing and planning for climate change secure an 18 percent higher return on investment than companies that aren't—and 67 percent higher than companies who refuse to disclose their emissions."

This puts to bed the tired and false talking about the sustainability- and diversity-focused shareholder proposals hurt the savings of everyday people. Quite the opposite is true.

Mr. FITZGERALD. Without objection. We will now introduce today's witnesses.

Mr. Sean Egan. Mr. Egan is Co-Founder, President, and CEO of Egan-Jones Company, a credit-rating and proxy advisor firm. Prior to founding Egan-Jones, Mr. Egan was a commercial and investment banker in the financial industry.

Professor Caleb Griffin. Mr. Griffin is an Associate Professor of Law at the University of North Carolina School of Law. His research focuses on business organizations, contracts, corporate law and governance, secured transactions, and technology and the law.

Mr. Charles Crain. Mr. Crain is the Managing Vice President of Policy at the National Association of Manufacturers, where he oversees the association's advocacy efforts on behalf of manufacturers in America. He previously was the Vice President of Domestic Policy at NAM, working at the Biotechnological Innovation Organization, and as a House and Senate staff member.

Ms. Nell Minow. Ms. Minow is the Chair of ValueEdge Advisors, an institutional investor advisory firm. She previously was the Co-Founder and Director of GMI Ratings, and was editor and co-founder of its predecessor firm, The Corporate Library.

We welcome our witnesses and thank them for appearing today.

We will begin by swearing you in. Would you please rise and raise your right hand?

Do you swear or affirm under penalty of perjury that the testimony you are about to give is true and correct to the best of your knowledge, information, and belief, so help you God?

Let the record reflect that the witnesses have answered in the affirmative.

Thank you. You can please be seated.

Please know that your written testimony will be entered into record in its entirety. Accordingly, we ask that you summarize your testimony in five minutes.

Mr. Egan, you may begin.

STATEMENT OF SEAN EGAN

Mr. EGAN. Chair Fitzgerald, Ranking Member Nadler, and the Members of the Subcommittee, thank you for the opportunity to testify today.

I'm Sean Egan, Co-Founder and Managing Director of Egan-Jones. Egan-Jones has two primary businesses, a credit-rating agency registered with the SEC and a proxy advisory business. I'm testifying today on behalf of the proxy advisory business.

The Egan-Jones Proxy Services was established in 2002 and has become the leading independent proxy advisor. Unlike the other two major proxy advisory firms, Egan-Jones does not offer corporate consulting services, which creates an unmanageable conflict of interest. In our opinion, disclosures and perceived firewalls do not sufficiently mitigate the inherent conflicts of interest. Additionally, unlike our foreign-owned competitors, Egan-Jones Proxy Services is owned and operated in the United States. U.S. capital markets are not well-served by the duopoly of ISS and Glass Lewis, whose combined market share exceeds 90 percent.

Our clients rely on our recommendations for voting on corporate matters, such as director elections, compensation, M&A, and other events. While we offer several methodologies, our fastest-growing one is our wealth-focused approach. That is because Egan-Jones believes the vast majority of investors are investing in savings and retirement. The policy is not board-aligned because directors with poor impact on shareholder returns will be opposed. Policymakers should focus on legislative and regulatory proposals that bring competition to the marketplace by focusing on the following recommendations, which can be summarized as the 4Ps:

- (1) *Platforms*. Make them neutral. Currently, ISS provides a 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. The platform carries Egan-Jones' recommendations, but only if a client explicitly requests those recommendations. For all other potential customers, ISS hides Egan-Jones as an option. Further, ISS refuses to provide critical information such as voting deadlines, making it difficult for us to service clients.
- (2) *Purse*. No one can serve two masters. Proxy advisory firms should not provide corporations with governance, executive compensation, DEI, and ESG ratings, thereby creating an unmanageable conflict of interest. A wall between the businesses does not address the underlying conflict, as ratings or assessments from the consulting side are, typically, used by the proxy advisory side. Companies feel obligated to purchase consulting services from ISS and Glass Lewis, so that they will receive better outcomes at the ballot box. Others view this as a shakedown.
- (3) *Policies*. Expand access to alternative proxy advisory methodologies via voting choice platforms. Policymakers should continue encouraging these reforms, so investors have great choices.
- (4) *Practices*. End robo-voting and other dubious practices. Shareholders' votes are critical to the proper functioning of the economy. Abdicating that responsibility should be disallowed. Examples of dubious practices including: (a) Always voting with management, or (b) voting in a manner that replicates the voting of other investors, which is also known as mirror voting.

I commend Representative Fitzgerald's draft legislation, the Stopping Proxy Advisors Racketeering Act. The legislation would prohibit proxy advisory firms from offering consulting services.

In conclusion, the 4Ps make this market dysfunctional and impede competition.

- (1) *Platform*. ISS's platform is pervasive, and access is restricted. Additionally, information needed for competing proxy advisors should be readily available.
- (2) *Purse*. Charging corporations for consulting services creates an unmanageable conflict of interest.
- (3) *Policies*. Expand access to alternative proxy advisors' methodologies via voting choice programs.
- (4) *Practices*. End robo-voting and other dubious practices.

These factors impede the market and make it more difficult for Americans to save for a meaningful retirement.

Thank you again for inviting me to testify.

[The prepared statement of Mr. Egan follows:]

**U.S. House of Representatives
Subcommittee on the Administrative State, Regulatory Reform, and Antitrust of the Committee
on the Judiciary**

Hearing Entitled: “The Proxy Advisor Duopoly’s Anticompetitive Conduct”

**Testimony of Sean Egan
Co-Founder and Managing Partner of the Egan-Jones Company**

**2141 Rayburn House Office Building
June 25, 2025**

Chairman Fitzgerald, Ranking Member Nadler, and members of the subcommittee – thank you for the opportunity to testify today. I am Sean Egan, co-founder and managing director of Egan-Jones.

Egan-Jones has two primary businesses: a credit rating agency registered with the Securities and Exchange Commission (SEC) as a Nationally Recognized Statistical Rating Organization (NRSRO), and a proxy advisor business. I am testifying today on behalf of the proxy advisor business.

Egan-Jones Proxy Services was established in 2002 and has become the leading independent provider of proxy vote guidance. Unlike the other two major proxy advisory firms, Egan-Jones does not offer corporate consulting services, which creates an unmanageable conflict of interest. In our opinion, disclosures and perceived firewalls do not sufficiently mitigate the inherent conflicts. Additionally, unlike our foreign-owned competitors, Egan-Jones Proxy Services is owned and operated in the United States.

Egan-Jones Proxy Services was formed because investors came to us demanding alternative voices. We have heard time and again from market participants how the U.S. capital markets and our corporate governance system were not being well served by the existing duopoly of ISS and Glass-Lewis. Today, these two firms’ combined market share exceeds 90 percent of the proxy advisory business¹.

I will also highlight how ISS and Glass-Lewis use their market dominance to erect barriers to entry by keeping smaller competitors from gaining market share through restraint of trade practices.

There is a bipartisan consensus on the need for additional competition and reducing barriers to entry across the economy. In fact, the Biden Administration established the White House Competition Council and issued an executive order not only promoting competition policies but pursuing enforcement actions against anti-competitive behavior².

¹ Testimony of Professor Paul Rose, Dean, School of Law, Case Western Reserve University, Hearing Entitled: Exposing the Proxy Advisory Cartel: How ISS & Glass Lewis Influence Markets. Before the Subcommittee on Capital Markets Committee on Financial Services U.S. House of Representatives, April 29, 2025.

² <https://bidenwhitehouse.archives.gov/briefing-room/presidential-actions/2021/07/09/executive-order-on-promoting-competition-in-the-american-economy/>

The Trump Administration has a unique opportunity to continue enhancing market competition, promoting corporate governance reforms, and ensuring the U.S. capital markets remain the envy of the world.

About Egan-Jones Proxy Services

Our customers rely upon our recommendations for voting in shareholder meetings and proxy ballots for proposals regarding director elections, compensation, M&A and other items. We offer customized voting guidance so that investors can choose which methodology best aligns with their values.

While we offer several methodologies, our fastest growing policy is our "Wealth Focused Policy." That is because Egan-Jones believes the vast majority of investors are investing to save for retirement and to grow their nest egg. Our "Wealth Focused Policy" is based only on protecting and enhancing investor wealth. The policy is not a "board aligned" policy because directors with poor impact on shareholder return will be opposed.

Need for Competition

Egan-Jones has long advocated for additional competition in both the ratings business and the proxy advisory business. We were founded on the notion that the market is better served with multiple voices; not less (or fewer). Today's powerful duopoly has resulted in anti-competitive market behavior, whereby the economic interests of issuers, investors, and the country are harmed.

As the predominant player in the proxy advisory sector, ISS effectively controls access to the plumbing due to its market share. ISS has erected several barriers to entry by controlling the proxy voting platform.

I'd like to offer several key observations and examples of how ISS and Glass-Lewis use their dominant market share to prevent newer entrants from growing and competing.

- Some proxy advisors risk a conflict of interest by selling vote recommendations to investors and governance consulting to issuers. Our main competitors offer a robust consultancy practice offering companies the opportunity to improve their corporate governance scores, manage executive compensation decisions, and strengthen ESG ratings³.
FIX: [Consulting and proxy advisory should be separately owned 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 separately owned businesses. Voting platforms should share information neutrally across proxy advisors.](#)

³ <https://www.iss-corporate.com/solutions/governance-solutions/>

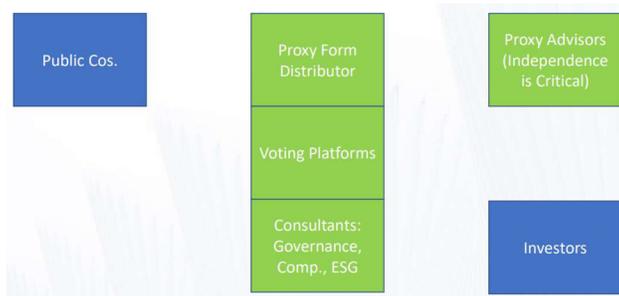
- There are concerns regarding the concentration among asset managers and seeking to appeal to corporations to attract 401k business.
FIX: Enable investors who use asset managers to select votes themselves through a proxy advisor by expanding "voting choice" programs.
- Corporations can only respond 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.

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.



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.

- **Restrict conflict-laden consulting services** – Proxy advisory firms’ selling of corporate governance, executive compensation, DEI, and ESG ratings creates a conflict of interest. Simply put, no one can serve two masters. A “wall” between the businesses does not address the underlying conflict of interest as ratings or assessments from the consulting side are typically used by the proxy advisory side, thereby inappropriately monetizing the proxy advisors’ market power.

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.”
- **Expand Proxy Voting Choice Programs** – Pressure has been building on the largest asset managers to allow underlying investors to vote on individual proxy ballots via “voting choice” programs. Several Egan-Jones methodologies are now available for investors in index funds to select as voting options. This democratization of the voting programs allows for investors to vote on annual proxies aligning with their own values rather than simply defaulting to the views of the fund managers. Policymakers should continue encouraging these reforms so investors have greater choice and optionality.

Legislative Proposals and Regulatory Reforms

We commend Representative Fitzgerald’s (R-WI) draft legislation, the “Stopping Proxy Advisor Racketeering Act.” The legislation would prohibit proxy advisory firms from issuing proxy voting advice if the proxy advisory firm also offers consulting services such as ESG rating scores, corporate governance and executive compensation consulting, among others. As we outline above, companies feel obligated to purchase consulting services from proxy advisor firms so that they will receive better recommendations and outcomes at the ballot box. It is essentially a shakedown. Companies are being forced to manage their businesses to the likes of ISS and Glass-Lewis’s recommendations rather than focusing on the best interest of shareholders, employees, and the long-term value creation of the company.

Conclusion

Investors have not been well served by the current duopoly. This sector is in dire need of reform. Investors would be better served by more competition and more optionality. Egan-Jones Proxy Services strongly believes the market will benefit from additional choices, which will in turn increase shareholder value and generate positive returns for investors to grow their nest egg and achieve a comfortable retirement.

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

Mr. FITZGERALD. Thank you, Mr. Egan. Professor Griffin, you may begin.

STATEMENT OF CALEB N. GRIFFIN

Mr. GRIFFIN. Chair Fitzgerald, Ranking Member Nadler, Chair Jordan, Ranking Member Raskin, and distinguished Members of the Subcommittee, thank you very much for inviting me to testify this morning.

Proxy advisory firms wield substantial influence over corporate governance, acting as pivotal intermediaries between publicly traded corporations and institutional investors. In our classic archetype of the corporation, shareholders possess both economic and voting rights. Today, however, investors often provide monetary investment, while firm-level voting rights reside with another party. This introduces additional complexity into the governance process. How can intermediaries vote for such a large number of shares? How do we ensure that they possess strong incentives to vote them well?

Proxy advisors have become the de facto answer to the former question, and I would suggest that we have yet to adequately solve the latter. Owners have strong incentives to care about the governance impact of various policies because it is their own money on the line, but this simply isn't true for many intermediaries. Proxy advisors, in particular, do not capture any of the gains or suffer any of the losses from share price movements. They are effectively insulated from the consequences of their governance decisions, either good or bad. This insulation weakens the responsiveness to investor concerns, generates potentially significant conflicts of interest, and may lead to misalignment with investor priorities.

In my view, the key issues in the proxy advisor industry can be consolidated into three broad categories: Concentration, competition, and conflicts.

First, concentration. As others have noted, just two firms, Institutional Shareholder Services and Glass Lewis control roughly 90 percent of the market for proxy advisory services. This, essentially, duopolistic structure significantly limits the range of governance opinions available to investors, and it may generate biases or amplify inaccuracies, potentially diminishing the health of our capital markets.

Moreover, the concentrated nature of the proxy advisor industry enhances the influence of the major proxy advisory firms over firm-level voting outcomes. Research has suggested that ISS and Glass Lewis hold considerable sway over institutional investors' voting behavior. For instance, equity plan proposals, uncontested director elections, and proxy contests receive 17 percent, 18 percent, and 73 percent more votes in favor, respectively, when supported by ISS. Likewise, a favorable recommendation from Glass Lewis generates 16 percent more support for say-on-pay votes, 12 percent more for equity plan proposals, and 64 percent more for proxy contest ballot items.

Second, the proxy advisory industry would significantly benefit from enhanced competition. A key point here is that it is not only the number of meaningful competitors that may be deficient, but also the nature of that competition. Currently, proxy advisors often cater to the needs and preferences of intermediary agents rather

than those of the actual investors and beneficiaries whose retirements are at stake.

Third, and perhaps most critically, proxy advisors suffer from important conflicts of interest. For instance, both ISS and Glass Lewis offer certain consulting services, whereby these advise clients on governance issues, and subsequently, influence voting outcomes on those very issues. Thus, major proxy advisors may occupy multiple roles, playing the part of advisor and arbiter.

For example, consider governance decisions related to executive compensation. ISS issues voting recommendations on thousands of say-on-pay votes that occur every year. Research suggests that a negative recommendation from ISS on say-on-pay proposals is associated with a 25 percent lower rate of support overall—an impact that, in the words of one scholar, is indicative of “strong influence of overshielded votes.”

Companies seeking to garner a favorable recommendation from ISS may be motivated to purchase a service that it calls “executive compensation solutions.” For an undisclosed fee, companies can consult with a compensation expert to design, monitor, and communicate executive pay programs. The fact that ISS is judging the merits of the same executive compensation packages it was paid to advise heightens the risk of problematic conflicts of interest. Companies and investors may perceive, accurately or not, that paying a proxy advisor for governance consulting will influence their voting recommendations. Although the dominant proxy advisors may take internal measures to help ameliorate this challenge to the objectivity of the recommendations, there is, to my knowledge, no clear regulatory protection.

Much as Sarbanes-Oxley addressed similar conflicts of interest in the context of accounting firms, some of the draft legislation in Congress today, such as the bill by Congressman Fitzgerald, aims to provide analogous protection in the proxy advisory context.

In my view, the disclosure and prevention of conflicts of interest in our financial markets is not a partisan issue, but rather an important protection for investors, companies, and the American capital markets.

Thank you very much for inviting me to testify and I look forward to your questions.

[The prepared statement of Mr. Griffin follows:]

*Hearing Before the House Judiciary Committee
Subcommittee on the Administrative State, Regulatory Reform, and Antitrust
United States House of Representatives*

"The Proxy Advisor Duopoly's Anticompetitive Conduct"

June 25, 2025

*Testimony of Caleb N. Griffin
Associate Professor of Law
University of North Carolina School of Law*

Chairman Fitzgerald, ranking member Nadler, and distinguished members of the subcommittee,

Thank you for inviting me to testify this morning. Proxy advisory firms wield substantial influence over corporate governance, acting as pivotal intermediaries between institutional investors and publicly traded corporations. Their rise reflects a seismic shift in corporate governance and the way in which we conceptualize corporate democracy.

In the classic corporate governance archetype, informed shareholders vote their own shares.¹ So conceived, the primary problem facing policymakers and governance scholars is how to get firm managers (agents) to faithfully act in the interests of shareholders (principals) — i.e., to minimize agency costs.² This intellectual framework dominated late twentieth century corporate governance,³ and numerous legal and market mechanisms were created or refined in an effort to enhance fidelity to shareholders' interests and minimize agency costs, particularly in the fields of executive compensation⁴ and the rights and powers of shareholders *vis-à-vis* the board.⁵

However, the classic framework is largely a relic of a different era. Today, as a result of changing investor appetites,⁶ increased demand for diversification,⁷ and legal requirements for diversification

¹ See *Unocal Corp. v. Mesa Petroleum Co.*, 493 A.2d 946, 959 (Del. 1985) (“If the stockholders are displeased with the action of their elected representatives, the powers of corporate democracy are at their disposal to turn the board out.”).

² The seminal paper on agency costs is widely regarded as Michael C. Jensen & William H. Meckling, *Theory of the Firm: Managerial Behavior, Agency Costs and Ownership Structure*, 3 J. FIN. ECON. 305 (1976).

³ See Ronald J. Gilson, *Corporate Governance and Economic Efficiency: When Do Institutions Matter?*, 74 WASH. U. L.Q. 327, 331 (1996) (“Managers and shareholders had potentially different interests: what economists call the agency problem. Thus, for the next sixty years, the intellectual mission of American corporate governance took the form of a search for the organizational Holy Grail, a technique that bridged the separation of ownership and control by aligning the interests of shareholders and managers”).

⁴ See, e.g., Lucian Ayre Bebchuk & Jesse Fried, *Executive Compensation as an Agency Problem*, 17 J. ECON. PERSP. 71, 71-72 (2003) (“Any discussion of executive compensation must proceed against the background of the fundamental agency problem afflicting management decisionmaking.”).

⁵ Zohar Goshen & Richard Squire, *Principal Costs: A New Theory for Corporate Law and Governance*, 117 COLUM. L. REV. 767, 777-78 (2017) (“Inspired by Jensen and Meckling, many scholars assert that corporate law should be reformed to give more power to shareholders. For example, such scholars condemn corporate-governance structures that insulate incumbent managers against hostile takeovers and activist hedge funds. And they apply similar reasoning to the conflict between controlling shareholders and minority shareholders, focusing on the potential for controllers to oppress the minority.”).

⁶ An important driver of these changing appetites has been the nature of employee-sponsored retirement plans, which increasingly include a narrow set of mutual funds. See Leo E. Strine, Jr., *Who Bleeds When the Wolves Bite?: A Flesh-and-Blood Perspective on Hedge Fund Activism and Our Strange Corporate Governance System*, 126 YALE L.J. 1870, 1878 (2017) (“Under the predominant approach, though, American workers are not able to buy securities in public companies directly. Instead, they are given an option to invest in the funds of whatever mutual fund families with which their employer contracts. Although these families may have a seeming breadth of options because the investment choices are numerically diverse, those choices in reality consist only of the menus of funds of the fund families their employer has selected.”).

⁷ Ronald J. Gilson & Jeffrey N. Gordon, *The Agency Costs of Agency Capitalism: Activist Investors and the Revaluation of Governance Rights*, 113 COLUM. L. REV. 863, 884 (2013) (“The past thirty-five years have seen a sharp increase in U.S. household ownership of equities, but equity mutual funds have been the vehicle. As of 1977, approximately 20% of households owned equities directly. While the percentage of direct owners has remained stable, the rise in mutual fund investment has increased the percentage of households that own equities directly or through mutual funds by 30% to a total of 50%. The increase in household mutual fund ownership has been significantly advanced by the portfolio theory of diversified investing.”).

for certain retirement plan assets,⁸ among other factors, most investors hold equity assets indirectly through various intermediary agents.⁹ As a result, the classic framework has largely been replaced by a new model of intermediation.¹⁰

The rise of intermediated equity ownership has fundamentally transformed shareholder voting. Although not all financial intermediaries wield voting power on behalf of their clients or beneficiaries,¹¹ those that do have essentially become the default channel through which most American investors access our capital markets.¹² For instance, when investors purchase mutual fund or ETF assets, the asset manager (rather than the investor) exercises voting power with respect to the underlying equity securities.¹³ Similarly, ERISA fiduciaries are obligated to make voting decisions for stock held by ERISA plans.¹⁴ Likewise, state constitutions frequently oblige public pension funds to make proxy voting decisions on behalf of their beneficiaries.¹⁵ The result is that the majority of individual investors own stock through intermediary agents that exercise governance rights—either independently or via proxy advisors—and thereby generate governance costs.¹⁶

The rise of proxy advisors can be viewed as a response to this transformation, emerging to serve the unique needs of intermediaries and institutions engaged in governance activities. Broadly, proxy advisors play a variety of roles. First, they provide research and analysis on the wide range of issues that arise in the course of governance decision making, ranging from the election of corporate directors to “say-on-pay” votes about executive compensation to shareholder proposals.¹⁷ Second,

⁸ See Peter Molk & Adriana Z. Robertson, *Discretionary Investing by “Passive” S&P 500 Funds*, 41 YALE J. ON REG. 248, 263 (2024) (discussing diversification requirements for certain funds).

⁹ Oliver Hart & Luigi Zingales, *The New Corporate Governance*, 1 U. CHI. BUS. L. REV. 195, 205 (2022) (“Today most dispersed shareholders own their shares through intermediaries such as BlackRock, Fidelity, and Vanguard.”).

¹⁰ Ronald J. Gilson & Jeffrey N. Gordon, *The Agency Costs of Agency Capitalism: Activist Investors and the Revaluation of Governance Rights*, 113 COLUM. L. REV. 863 (2013) (“Equity ownership in the United States no longer reflects the dispersed share ownership of the canonical Berle-Means firm. Instead, we observe the reconcentration of ownership in the hands of institutional investment intermediaries, which gives rise to ‘the agency costs of agency capitalism.’”)

¹¹ Notably, brokers are effectively barred from discretionary voting. See Jill E. Fisch, *Standing Voting Instructions: Empowering the Excluded Retail Investor*, 102 MINN. L. REV. 11, 13–14 (2017) (discussing the “virtual elimination of discretionary broker voting”).

¹² See Oliver Hart & Luigi Zingales, *The New Corporate Governance*, 1 U. CHI. BUS. L. REV. 195, 205 (2022) (“Most investors own stock via a financial intermediary, generally a mutual fund. Currently, these institutions vote on behalf of their investors, almost universally taking the view that they have a fiduciary duty to vote for the value-maximizing outcome.”).

¹³ See Disclosure of Proxy Voting Policies and Proxy Voting Records by Registered Management Investment Companies, Securities Act Release No. 8188, Exchange Act Release No. 47,304, Investment Company Act Release No. 25,922, 68 Fed. Reg. 6564, 6580 (Jan. 31, 2003) (referring to mutual funds’ “fiduciary duties to vote proxies of portfolio securities in the best interest of fund shareholders”).

¹⁴ 29 CFR Part 2550 (“The Department has a similarly longstanding position that the fiduciary act of managing plan assets that involve shares of corporate stock includes making decisions about voting proxies and exercising shareholder rights.”).

¹⁵ See Paul G. Mahoney & Julia D. Mahoney, *The New Separation of Ownership and Control: Institutional Investors and ESG*, 2021 COLUM. BUS. L. REV. 840, 877–78 (2022) (“Formally, state constitutions or statutes often require trustees to consider only the interests of beneficiaries when making investment and voting decisions.”).

¹⁶ See Oliver Hart & Luigi Zingales, *The New Corporate Governance*, 1 U. CHI. BUS. L. REV. 195, 205 (2022) (“Most investors own stock via a financial intermediary, generally a mutual fund.”).

¹⁷ See Michael Simkovic, *Natural-Person Shareholder Voting*, 109 CORNELL L. REV. 1525, 1572 (2024) (discussing how intermediaries turn to “advice and recommendations from proxy advisory services such as ISS and Glass-Lewis”).

proxy advisors issue recommendations on how shareholders should vote on various ballot items.¹⁸ Third, some proxy advisors offer custom voting policies, wherein the advisor offers the opportunity to tailor its voting recommendations to suit the values or preferences of its clients.¹⁹ Fourth, proxy advisors may provide vote execution services, thus streamlining the actual process of executing votes.²⁰ Finally, some proxy advisors offer consulting services to their clients, such as advising management with respect to governance decisions, executive compensation packages, sustainability policies, or cyber risk programs.²¹

Notably, the primary clients of proxy advisors are not ordinary investors, but large institutional intermediaries, such as mutual funds. As a result, the policy issues surrounding proxy advisors are part of a larger problem of how the corporate governance system can incentivize non-owners to vote as owners would. The impact of various governance policies is important to owners because they ultimately possess the economic rights to the profit or loss stemming from the price movements of the underlying equity assets—put simply, owners often have substantial “skin in the game,” while many financial intermediaries and other market participants do not. Proxy advisors, in particular, do not capture any of the gains from share price increases, or suffer any of the losses from share price declines. They are effectively insulated from the consequences of their governance decisions, either good or bad. This insulation from the consequences of their own recommendations weakens their responsiveness to investor concerns, generates significant conflicts of interest, and leads to potential misalignment with key investor priorities.

Key Issues

In my view, the key issues in the proxy advisory industry can be consolidated into four broad categories: concentration, competition, subjectivity, and conflicts.

First, the proxy advisory industry is characterized by significant concentration. As others have testified, just two firms — Institutional Shareholder Services (“ISS”) and Glass, Lewis & Co (“Glass Lewis”) — control roughly 90% of the market for proxy advisory services.²² This essentially duopolistic structure significantly limits the range of governance opinions available to investors. It may also generate systemic biases or amplify inaccuracies, potentially diminishing the health of our capital markets. The current concentrated market structure likely reduces incentives for

¹⁸ *Id.*

¹⁹ Edwin Hu, Nadya Malenko & Jonathon Zynick, *Custom Proxy Voting Advice 2-3* (Nat’l Bureau Econ. Rsch., Working Paper No. 32559, 2024) (discussing custom voting policies).

²⁰ See, e.g., *Proxy Voting Services*, INSTITUTIONAL INVESTORS SERVS., <https://www.issgovernance.com/solutions/proxy-voting-services/> (“ISS’ agile and secure technology enables you to manage the entire voting process and flawlessly execute your mandates, season after proxy season.”).

²¹ See, e.g., *ISS-Corporate*, INSTITUTIONAL INVESTORS SERVS., <https://www.issgovernance.com/solutions/proxy-voting-services/> (“ISS-Corporate helps companies design and manage their governance, compensation, sustainability, and cyber risk programs to align with company goals, reduce risk, and manage the needs of diverse stakeholders by delivering expert advisory, data, and software solutions.”).

²² Chong Shu, *The proxy advisory industry: Influencing and being influenced*, 154 J. FIN. ECON. 103810 (Apr. 2024).

experimentation and innovation, and it may generate an entrenched and artificially narrow set of governance standards.

Moreover, the concentrated nature of the proxy advisory industry enhances the influence of the major proxy advisors over firm-level voting outcomes. Research has suggested that ISS and Glass Lewis hold considerable sway over voting behavior, particularly for certain institutional investors. For instance, favorable ISS recommendations on equity plan proposals are associated with 17 percent more votes in favor, while favorable recommendations on uncontested director elections and proxy contests are associated with 18 and 73 percent more votes in favor, respectively.²³ In addition, receiving a favorable recommendation from Glass Lewis is associated with 16 percent increased support for say-on-pay votes, 12 percent increased support for equity plan proposals, and 64 percent increased support for proxy contest ballot items.²⁴ In a similar vein, a recent study found that clients of proxy advisors that issue a recommendation against management are 20 percentage points more likely to also oppose management than other investors.²⁵ These trends appear to be exacerbated by reliance upon the major proxy advisors' voting platforms — among those funds that subscribe to both ISS and Glass Lewis's recommendations, vote behaviors more closely parallel the recommendations of the proxy advisor upon whose voting platform they rely.²⁶

Second, and closely related to the prior point, the corporate governance ecosystem would significantly benefit from enhanced competition in the proxy advisory industry. A key point here is that it is not only the number of meaningful competitors that is deficient, but also the *nature* of that competition. To the extent the current market is competitive, such competition often involves catering to the needs and preferences of intermediary agents rather than those of the actual investors and beneficiaries whose retirements are at stake. These intermediaries serve as governance gatekeepers with respect to their investors' assets, and they often face financial incentives to focus more on fulfilling their own compliance obligations than faithfully stewarding client funds.²⁷

A lack of meaningful competition, as well as competition that is improperly targeted, may limit innovation and impede market-driven checks and balances. In the absence of adequate competitive pressures, proxy advisory firms have far weaker incentives to ensure accuracy, neutrality, and investor alignment, which may reduce the quality of corporate governance advice available to investors. Moreover, market dominance risks elevating the two largest proxy advisors into a quasi-regulatory role, allowing them to influence important governance issues such as which items should be considered financially material, the standards for director independence, and the effective voting thresholds for board action in response to shareholder proposals.

²³ James R. Copland, David F. Larcker, & Brian Tayan, *The Big Thumb on the Scale: An Overview of the Proxy Advisory Industry*, STAN. CLOSER LOOK (May 30, 2018), <https://gsbpreserve.stanford.edu/file/87528/content>.

²⁴ *Id.*

²⁵ Shu, *supra* note 30 at 103810.

²⁶ *Id.*

²⁷ For a more in-depth discussion of these issues, *see*, Caleb N. Griffin, *Mass Corporate Governance*, 103 WASH. U. L. REV. ____ (forthcoming 2026) (available at <https://ssrn.com/abstract=5227132>).

Third, the governance issues at stake are often the subject of significant controversy, with empirical support existing for both sides of many contested corporate governance issues. Thus, it is not the case that proxy advisors can easily serve as a neutral arbiter helping intermediaries find some universally agreed upon “right answer.”²⁸ Because many governance issues lack definitive answers, particularly with respect to unique firm-specific questions, proxy advisors and the intermediaries that they serve are generally able to take virtually any approach to a given issue area without restriction or restraint.²⁹ This gives proxy advisors significant power, which is often largely unconstrained by existing fiduciary or legal obligations.

Fourth, and perhaps most critically, proxy advisors suffer from important conflicts of interest. For instance, both ISS and Glass Lewis provide certain consulting services, whereby they advise clients on governance issues and, subsequently, influence voting outcomes on those very issues. Thus, the major proxy advisors occupy multiple roles, both *advising* clients on what constitutes “good governance” and *deciding* what constitutes “good governance.” This dual capacity, effectively both advisor and judge, generates an important structural conflict. Companies and investors may perceive, accurately or not, that paying a proxy advisor for governance consulting will influence the advisor’s voting recommendations. Although the dominant proxy advisors may take internal measures to help ameliorate this challenge to the objectivity of their recommendations, there is, to my knowledge, no clear regulatory protection. As a result, such conflicts or potential conflicts represent an important area for legislative and regulatory consideration.

For example, consider governance decisions related to executive compensation. ISS issues voting recommendations on the thousands of say-on-pay votes that occur every year. Research suggests that a negative recommendation from ISS on say-on-pay proposals is associated with 25% lower support overall — an impact indicative of “strong influence over shareholder votes.”³⁰ Companies seeking to garner a favorable recommendation from ISS might be motivated to purchase ISS’ “executive compensation solutions.”³¹ For an undisclosed fee, companies can consult with a “compensation expert” to design, monitor, and communicate executive pay programs.³² The fact that ISS is generating revenue from its executive compensation consulting services while simultaneously influencing the outcome of say-on-pay proposals through its voting recommendations — i.e., judging the merits of the same executive compensation packages it was paid to advise — heightens the risk of problematic

²⁸ See *id.* at 20-34 (identifying sufficient disagreement in the empirical literature about which governance approaches best serve investors’ interests).

²⁹ *Id.* at 33 (“Mass corporate governors are entirely unconstrained by extant mandates on the ends of corporate governance. Not only do similarly situated mass corporate governors routinely vote in opposite ways on controversial ballot items, even ‘consensus’ positions lack convincing empirical support.”).

³⁰ Nadya Malenko and Yao Shen, *The Role of Proxy-Advisory Firms: Evidence from a Regression Discontinuity Design*, 29 REV. FIN. STUDIES 3394 (2016) (“Using a regression discontinuity design, we find that from 2010 to 2011, a negative ISS recommendation on a say-on-pay proposal leads to a 25 percentage point reduction in say-on-pay voting support.”).

³¹ *Executive Compensation Advisory Services*, INSTITUTIONAL SHAREHOLDER SERV., <https://www.iss-corporate.com/solutions/executive-compensation-advisory-services/>.

³² *Id.*

conflicts of interest. Much as Sarbanes-Oxley addressed similar conflicts of interest in the context of accounting firms,³³ some of the draft legislation in Congress today, such as the bill by Congressman Fitzgerald, aims to provide analogous protection in the proxy advisor context. In my view, the disclosure and prevention of conflicts of interest in our financial markets is not a partisan issue, but rather, an important protection for investors, companies, and American capital markets.

It should be noted that not only is the influence of proxy advisors already substantial, but it is likely to further increase. As asset managers face regulatory and market pressure with respect to their own proxy voting behavior, a number of them have begun to effectively transfer a measure of their own considerable corporate governance influence into the hands of proxy advisors.³⁴ While in some ways a salutary development, given the current market structure for proxy advisory services, such measures largely *shift* rather than solve the problem of concentrated and unaccountable intermediary power over corporate governance outcomes. Thus, as such programs become more widely adopted, an increasing portion of the concentrated governance influence currently held by the largest asset managers will be transferred to proxy advisors. Given the tens of trillions of dollars that such intermediaries currently manage, this shift may considerably enhance the number of shares with respect to which the dominant proxy advisors exert governance influence. As a consequence, the issues and proposals discussed today are likely to become even more significant going forward.

In conclusion, thoughtful and well-calibrated regulatory interventions could enhance competitiveness in the proxy advisory industry and generate significant benefits for the broader corporate governance ecosystem. In particular, policies emphasizing enhanced disclosure and transparency, greater responsiveness and accountability, increased investor choice and responsibility, and protections against conflicts of interest merit further study and consideration. Additionally, any such regulatory interventions should pay special attention to calibrating the potential costs imposed, particularly with respect to smaller competitors and new market entrants. Ultimately, targeted policy interventions have the potential to improve the performance and competitiveness of the proxy advisory industry, increase the overall quality of corporate governance, and enhance the health of U.S. capital markets.

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

³³ Sarbanes-Oxley Act of 2002, Pub. L. No. 107-204, 116 Stat. 745 (codified in sections of 11, 15, 18, 28, and 29 U.S.C.A.).

³⁴ See Caleb N. Griffin, *Open Proxy*, 99 TUL. L. REV. 247, 255 (2024) (discussing the development of voting choice programs that transfer power from intermediaries to proxy advisors).

Mr. FITZGERALD. Thank you, Professor Griffin. Mr. Crain, you may begin.

STATEMENT OF CHARLES CRAIN

Mr. CRAIN. Good morning, Chair Fitzgerald, Ranking Member Nadler, Ranking Member Raskin, and the Members of the Subcommittee.

My name is Charles Crain, and I'm the Managing Vice President of policy at the National Association of Manufacturers.

Manufacturers have long understood that the proxy firm duopoly of ISS and Glass Lewis has a significant and damaging impact on their businesses. Proxy firms' outsized influence dictates corporate decisions and it distracts from the long-term best interests of Main Street shareholders. Yet, these firms remain stubbornly unregulated.

ISS and Glass Lewis have cornered the market on proxy voting advice and they have not been shy about using their market position to create a feedback loop of power and influence—at the expense of investors saving for a new home, a child's education, or a secure retirement.

Let's start with the facts of this duopoly. ISS and Glass Lewis together control 97 percent of the proxy advice market. This dominant position insulates the firms from accountability—to the point where the two market players, as has been discussed, have significant conflicts of interest and are widely recognized as offering error-filled, opaque, and one-size-fits-all advice, and yet, they still enjoy market dominance. In other words, when two entities run the show, they can run it however they please, and everyday people are the ones who pay the price.

Bolstering this power are the firms' voting platforms. Now, these platforms do provide a legitimately useful service. They connect institutional investors to the back-end of the proxy voting system. ISS and Glass Lewis use their proxy voting platforms to push their clients toward their proxy voting research and recommendations. They will even prefill the platform with their preferred votes, and then, robo-vote an investor's shares on their behalf. This system, which would be virtually impossible for a new market entrant to replicate, leverages the utility of these platforms to push clients toward their voting recommendations.

Now, let's turn to those voting recommendations themselves.

First and foremost, these recommendations are powerful. ISS and Glass Lewis can swing the outcome of shareholder votes—meaning they, effectively, set corporate governance standards for the entire market. This usurps the authority of corporate boards and of the SEC, and it ensures that investors need to hire proxy firms and that companies need to pay them.

Further, proxy firms' recommendations are both complicated and opaque. This effectively forces companies to purchase those consulting services to understand the firms' complex methodologies. The proxy firms' standards appear designed to increase their own market power, often at the expense of companies and shareholders.

Take, for example, proxy firms' insistence on annual say-on-pay votes, when Congress has made explicitly clear that annual votes are not required. Who benefits from forcing annual votes more than

ISS and Glass Lewis, who will be paid to provide voting recommendations for each and every one of these votes across thousands of public companies every single year?

Similarly, on some issues, the proxy firms require companies to meet a supermajority vote threshold to avoid a future negative recommendation. The easiest way to fail to meet that threshold, of course, is to have ISS or Glass Lewis recommend against the company. A negative vote recommendation can depress shareholder support, which, in turn, leads to more negative vote recommendation, which further depresses shareholder support on more issues and more nominees, and on and on and on—and all the while, the company, manufacturers across the country are being pitched by proxy firms' consulting services to just pay up and avoid this costly and self-perpetuating cycle.

These complicated fact patterns keep emerging because proxy firms operate with conflicts of interest baked into their business models. One-half of a proxy firm operating a consulting service to help companies avoid a negative recommendation from the other half of the same proxy firm is a per se risk to investors—raising the specter which we have seen time and time again of recommendations that are designed to enrich the firms rather than benefit investors.

That is why manufacturers support Chair Fitzgerald's legislation to prevent proxy firms from offering supposedly neutral proxy voting advice if they have a conflict of interest poisoning their objectivity. Manufacturers understand the stakes of getting this right, and we stand ready to help Congress rein in the proxy firm duopoly and institute much-needed guardrails that address proxy firms' conflicts of interest, their errors, their robo-voting, their one-size-fits-all standards, their ESG agendas, and more.

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 the Judiciary
Subcommittee on the Administrative State, Regulatory Reform, and Antitrust

Hearing on

“The Proxy Advisor Duopoly’s Anticompetitive Conduct”

June 25, 2025

Good morning Chairman Fitzgerald, Ranking Member Nadler, and members of the Subcommittee on Administrative State, Regulatory Reform, and Antitrust. My name is Charles Crain, and I am the Managing Vice President of Policy at the National Association of Manufacturers. On behalf of the 13 million people who make things in America, I appreciate the opportunity to testify before you today to illustrate the impact that the anti-competitive practices of the proxy firm duopoly has on publicly traded 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.

The two major U.S. proxy firms—ISS and Glass Lewis—set corporate governance standards for public companies, and they provide voting recommendations based on those standards to institutional investors who engage in proxy voting of their shares at 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, while further entrenching their dominant market positions. 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.

In addition, 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. Many mid-size and smaller institutional investors—who *do* have a fiduciary duty to the Main Street investors whose assets they manage—vote in lockstep with the two 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—which

together control more than 90% of the U.S. proxy advice market—effectively dictate corporate governance policies for America’s capital markets.

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, which many companies feel compelled to subscribe to, present an obvious conflict of interest. Their inflexible voting policies do not account for the individual circumstances of disparate companies and their investors, and they are developed with minimal transparency or corporate input. And proxy firms have been reluctant 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.

Additionally, the proxy firms’ business practices raises a series of antitrust concerns that should be addressed by Congress and regulators. In short, the firms use their dominant market positions—namely, their one-size-fits-all policies and their robo-voting platforms—to exercise undue influence over proxy voting outcomes, consolidate power, and drive revenue toward their consulting services.

- For example, the complexity and opacity of their corporate governance standards increase institutional investors’ reliance on the firms and, subsequently, necessitate companies’ reliance on their consulting services. Indeed, some of the firms’ policies appear designed specifically to increase their own power—such as their standard requiring companies to hold Say on Pay votes annually when Congress expressly set the minimum frequency at every three years, or their practice of setting vote thresholds for shareholder support that are impossible to meet without a positive proxy firm recommendation.
- Similarly, the firms’ voting platforms drastically improve the logistics of proxy voting for institutional investors—a market position the firms use to sell their vote recommendation services, which allow their preferred vote outcomes to be pre-populated within the voting platform and often robo-voted on investors’ behalf.

These practices have created a feedback loop that has given the firms outsized influence over voting decisions, which often exceeds that of a company’s largest investors. This allows ISS and Glass Lewis to dictate the corporate governance practices of U.S. companies—which makes it all the more important for companies to pay thousands of dollars for the proxy firms’ consulting services. Publicly traded manufacturers and their investors have for years experienced the impact of this pervasive duopoly.

I. Antitrust Concerns Posed by the Two Dominant Proxy Firms

A. *The Origins of the Proxy Firm Duopoly*

The current U.S. proxy advice duopoly was fostered by a series of regulatory changes that incentivized investment managers and other institutional investors to hire proxy advisors. In 1988, the Department of Labor issued its Avon opinion letter, which advised fund managers that their fiduciary duty to manage retirement plan assets included the responsibility for proxy voting. In 2003, the SEC required mutual fund managers to start disclosing their proxy voting records annually through Form N-PX. The Commission also adopted Rule 206(4)-6,¹ which directed investment advisers to adopt written policies and procedures reasonably designed to ensure that they voted

¹ Final Rule, *Proxy Voting by Investment Advisers*, 17 CFR Part 275 (31 January 2003). Available at https://www.sec.gov/rules-regulations/2003/01/proxy-voting-investment-advisers#P49_6200.

proxies in their clients' best interests.² In the rule's adopting release, the SEC provided guidance on avoiding potential conflicts of interest and stated that investment advisers could demonstrate that they complied with their fiduciary duties if they voted "in accordance with a pre-determined policy, based upon the recommendations of an independent third party."³

The Commission also issued a pair of no-action letters to ISS⁴ and a smaller proxy firm (Egan-Jones) that clarified that voting in accordance with a proxy advisor's recommendations could protect an investment adviser from liability based on alleged conflicts of interest. The no-action letters and investment advisers' desire to avoid liability and reduce their proxy season workloads drove many fund managers to hire one of the major proxy firms, ISS (which was founded in 1985) and Glass Lewis (founded in 2003). In addition, the significant increase in institutional ownership⁵ of U.S. public companies has further contributed to the growth of proxy advisors and bolstered their influence over public companies.

Over time, the two dominant proxy advisors, which were largely bankrolled by private equity funds and foreign investors,⁶ consolidated their growing market position by rolling up smaller rivals and related businesses that offered governance ratings and research on accounting risk, cyber risks, sustainability, and "socially responsible" investing. Notable examples of acquisitions of direct competitors include the ISS acquisitions of Proxy Monitor in 2001 and IRRC in 2005 and Glass Lewis's acquisition of the clients of Proxy Governance Inc. in 2010. ISS itself was purchased by RiskMetrics Group in 2007, which later was acquired by MSCI, Inc., and then spun off in 2014 into a separate entity backed by private equity. Today, ISS and Glass Lewis collectively control between 90% and 97%⁷ of the U.S. proxy advice market,⁸ followed by a handful of smaller competitors, most notably Egan-Jones. While a few new entrants have tried to compete with the dominant proxy firms,

² See, e.g., Andrew F. Tuch, "Proxy Advisor Influence in a Comparative Light," *Boston University Law Review*, Vol. 99:145 (2019); Tamara C. Belinfanti, "The Proxy Advisory and Corporate Governance Industry: The Case for Increased Oversight and Control," *Stanford Journal of Law, Business & Finance* (2009).

³ While the SEC's intent was to reduce conflicts of interest by investment managers, many have outsourced their proxy voting to the two dominant proxy firms, which themselves are not truly independent and have significant conflicts of interest.

⁴ Investment Advisers Act of 1940 - Rule 206(4)-6, Institutional Shareholder Services, Inc. (15 September 2004). Available at <https://www.sec.gov/divisions/investment/noaction/iss091504.htm>.

⁵ In the 1970s, individual investors owned about 80% of the shares in U.S. companies, while institutions owned 20%. Today, those ownership positions have roughly reversed, as institutions own about 80% of the shares in large-cap S&P 500 companies. See, e.g., Jan Fitchner, "The Rise of Institutional Investors," *The Routledge International Handbook of Financialization* (2020); *Pensions & Investments*, "80% of equity market cap held by institutions" (25 April 2017).

⁶ During their history, the two major proxy firms have been at times owned by entities based in China, the United Kingdom, Canada, and Germany. Glass Lewis, which was previously owned by two Canadian pension funds, is now owned by Toronto-based Peloton Capital Management. ISS is majority owned by Deutsche Borse Group.

⁷ A 2009 Stanford law review article estimated that ISS had a 61% share of the proxy advice market, followed by Glass Lewis with a 36% stake, which totaled a combined market share of 97%. Tamara C. Belinfanti, "The Proxy Advisory and Corporate Governance Industry: The Case for Increased Oversight and Control," *Stanford Journal of Law, Business & Finance* (2009). This 97% figure also was cited by a George Mason University Mercatus Center paper by James Glassman and Hester Peirce, "How Proxy Advisory Services Became So Powerful" (18 June 2014), available at <https://www.mercatus.org/research/policy-briefs/how-proxy-advisory-services-became-so-powerful>.

⁸ While ISS has questioned the 97% market share estimate, other studies have found comparable results. An analysis of mutual funds' Form N-PX filings in 2021 found that the two proxy giants collectively had a 90% market share. According to this analysis, ISS controlled 48% of the proxy advice market for U.S. mutual funds, with assets totaling \$26.8 trillion from 144 fund families, while Glass Lewis had a 42% stake, with \$23.6 trillion in assets across 94 fund families. Chong Shu, "The proxy advisory industry: Influencing and being influenced," *Journal of Financial Economics*, Vol. 154, 103810 (April 2024), available at <https://www.sciencedirect.com/science/article/abs/pii/S0304405X24000333>.

those competitors have not been able to gain traction with a sufficient number of institutional clients nor match the incumbent firms' research coverage.

Both ISS and Glass Lewis cover a wide swath of smaller U.S. companies beyond the S&P 500 and also provide research on thousands of companies in non-English-speaking markets that their clients hold shares in. Even if a new research provider were to focus solely on large-cap U.S. issuers, it would be costly and difficult for a startup to fully replicate the back-office proxy vote instruction delivery services that the two major firms have established over the past two decades. The U.S. proxy voting system is extremely convoluted, and there are various intermediaries that stand between companies and their Main Street investors (including brokers, custodial banks, vote tabulators, investment managers, and Broadridge Financial, a firm that maintains investor lists and works on behalf of brokers to transmit proxy materials). Most proxy firm clients (particularly those that manage multiple diversified funds) remain with the same firm for years, in part because of concern that some votes may not get processed correctly after a switch to a rival proxy firm.

B. New Regulatory Requirements Helped the Proxy Firms Further Consolidate Their Market Power

1.) The Firms Have Increased Their Influence by Requiring Supermajority Approval During Non-Binding Shareholder Votes on Compensation

The influence of the proxy advisor duopoly also has been further bolstered by additional regulatory developments, most notably Section 951 of the Dodd-Frank Act of 2010, which required public companies to hold Say on Pay shareholder votes on their executive compensation practices. Although these votes are not binding, the outcome of these votes and the proxy advisors' recommendations during these votes have real consequences and significant costs for public companies.

To ensure that companies pay close attention to their Say on Pay recommendations, both proxy firms have voting policies that call for stricter scrutiny if a company fails to earn supermajority⁹ support during those votes. If that happens, ISS "will conduct a qualitative review of the compensation committee's responsiveness to shareholder opposition at the next annual meeting."¹⁰ Likewise, Glass Lewis explains its approach: "When 20% of more of shareholders vote contrary to management . . . , we believe that boards should engage with shareholders on the issue and demonstrate some initial level of responsiveness."¹¹

If a board fails to be sufficiently responsive (in view of the proxy firm), then the firm will then advise their clients to vote "no" during the company's next Say on Pay vote or to vote against its compensation committee chair or members. While most boards take notice when there is significant shareholder dissent, directors are well aware that these sub-70% votes on Say or Pay do not happen organically but (in almost every case) are directly attributable to a negative recommendation from one or both of the major proxy firms. Under the proxy firms' self-perpetuating policies, a company can find itself in a multiple-year cycle of escalating negative recommendations until the company can demonstrate that it has addressed all the proxy firms' concerns about the company's

⁹ ISS applies a 70% standard, while Glass Lewis has a stricter 80% standard. While some company bylaws (or state law) require supermajority support for approval of a merger or a bylaw change, there is no such requirement for Say on Pay votes on executive compensation, which are advisory.

¹⁰ ISS, U.S. Compensation FAQs, at 8, *available at* <https://www.issgovernance.com/file/policy/active/americas/US-Compensation-Policies-FAQ.pdf>.

¹¹ Glass Lewis, 2025 U.S. Benchmark Policy Guidelines at 15, *available at*: <https://resources.glasslewis.com/hubfs/2025%20Guidelines/2025%20US%20Benchmark%20Policy%20Guidelines.pdf>.

pay practices. Faced with this embarrassing and distracting prospect, many companies opt to increase their outreach to major investors, rework their disclosures, and hire proxy solicitors and governance consultants to boost their Say on Pay support.

ISS, of course, offers consulting services to help companies avoid negative Say on Pay recommendations from its own proxy voting service—often the easiest way to avoid this often-years-long saga.

2.) The Proxy Firms Back Annual Pay Votes to Further Entrench Their Market Positions

When Congress drafted the Say on Pay provisions of the Dodd-Frank Act, lawmakers gave public companies and their shareholders the flexibility to choose the most appropriate frequency (every one, two, or three years) for these votes.¹² Despite Congress's intent to provide company-specific flexibility, both ISS and Glass Lewis have consistently recommended that their clients opt for annual compensation votes at *all companies*.

As a result, annual Say on Pay votes have become the *de facto* market standard in the United States. This is despite the fact that some investors initially expressed a preference for a triennial frequency so they could better manage their busy proxy voting workloads and more thoughtfully analyze each company's pay practices. Notwithstanding these valid concerns, most investors have continued to follow the major proxy advisors' recommendations for an annual Say on Pay frequency, which has further cemented investors' reliance on the services of the proxy firms.

Most institutions with diversified portfolios have little choice but to hire ISS or Glass Lewis to cope with the large volume of annual Say on Pay votes—a clear illustration of the impact of the firms' decision to override Congress and insist on annual votes.

3.) Proxy Firms Have Profited From Listing Standards Requiring Binding Votes on Equity Plans

One of the most significant (but overlooked) regulatory requirements that has bolstered the market power of proxy firms are the NYSE and Nasdaq listing standards that require companies to obtain shareholder approval of equity compensation plans that allow companies to provide stock, options, or other equity-based incentives to officers and their employees.

Depending on the scope of these plans and the number of shares or options remaining, companies may have to seek approval for new or amended equity plans every few years. Companies in certain industries that experience greater share price volatility or rely more heavily on equity compensation, such as biotechnology or technology, have to get new plans approved more frequently. These shareholder votes on equity plans are binding, so companies understandably do not want to risk a plan rejection and then have to either convene a special meeting or temporarily lose their ability to provide new equity incentives to officers and employees.

While the proxy firms provide general guidelines for these plans, they purposely do not publish the complex quantitative methodology and models they use to determine whether to recommend in favor of a company's equity plan.¹³ Given the opaque nature of the firms' equity plan models, many

¹² The Dodd-Frank Act requires companies to hold non-binding Say on Frequency votes at least every six years to determine whether the company's Say on Pay votes should be held every one, two, or three years.

¹³ For instance, Glass Lewis provides a general explanation of its methodology without disclosing the absolute limits within its model: "Our quantitative analysis assesses the plan's cost and the company's pace of granting utilizing a number of different analyses, comparing the program with absolute limits we believe are key to equity value creation and with a carefully chosen peer group. In general, our model seeks to determine whether the proposed plan is either

companies believe that they have to pay for the firms' equity plan consulting services so they will know whether they need to make adjustments to their draft plans in order to increase their chances of obtaining a positive recommendation from the firms' proxy research analysts.¹⁴ This clear conflict of interest results in companies grudgingly paying thousands of dollars to the proxy firms for the assurance of knowing that their equity plans will pass.

4.) Proxy Firms Have Capitalized on the Record Number of ESG Shareholder Proposals

Since the 2010s, there has been a steady increase in the volume of environmental and social proposals being filed and appearing on corporate proxy ballots. Many of these proposals are filed by shareholders with tiny stakes in a company,¹⁵ and they often deal with highly politicized topics that bear little relevance to the specific company where they are filed.

In 2020, the SEC tried to stem this tide of special-interest ESG proposals by raising the resubmission thresholds for resolutions that do not attract wide support. However, the Commission issued a staff legal bulletin in 2021, called SLB 14L, that opened the flood gates to an even greater surge of prescriptive shareholder proposals on environmental, social, and political topics. In both 2022 and 2023, activists filed a record number of proposals at U.S. companies—more than 800 each year. Some well-known companies were hit with more than a dozen resolutions, including multiple proposals on climate-related topics as well as competing social issue proposals from both sides of the political aisle.¹⁶ Many institutions were frustrated (and at times overwhelmed) by this additional proxy voting workload, which further cemented their reliance on proxy firms to help them vote on these additional environmental and social proposals.

Fortunately, the SEC under then-Acting Chair Mark Uyeda recently rescinded SLB 14L, but companies still are dealing with an excessive number of special-interest proposals that impose significant costs on companies and other shareholders.¹⁷ Notwithstanding this SEC action, the proxy firms will continue to play a key role in determining which proposals on new environmental and social topics will gain traction and those that will not.

II. The Firms' Influence Over Proxy Voting Outcomes Has Made Them De Facto Regulators of U.S. Corporate Governance Practices

A. *Proxy Firms Exercise Outsized Control Over Proxy Voting Outcomes*

At many companies, ISS and Glass Lewis have as much power over proxy voting outcomes as some of their largest shareholders, despite owning no shares in those companies. A growing

absolutely excessive or is more than one standard deviation away from the average plan for the peer group on a range of criteria, including dilution to shareholders and the projected annual cost relative to the company's financial performance. Each of the analyses (and their constituent parts) is weighted and the plan is scored in accordance with that weight." Glass Lewis, 2025 U.S. Benchmark Policy Guidelines at 63.

¹⁴ The risk of a negative recommendation is a real concern for companies that rely on equity incentives. In 2023, ISS recommended against equity plan proposals at 30% of Russell 3000 companies and 13% of S&P 500 companies, up from 26% and 10% in 2022. Corporate Board Member, "Succeeding With Stock Plan Proposals," *available at* <https://boardmember.com/succeeding-with-stock-plan-proposals/>.

¹⁵ Under SEC rules, a shareholder must hold just \$2,000 in a company's shares for at least three years to get their proposal on the company's annual meeting ballot.

¹⁶ According to the Conference Board, activists filed 513 proposals on environmental and social topics in 2023, up from 466 proposals in 2022.

¹⁷ Staff Legal Bulletin 14M (12 February 2025), *available at* <https://www.sec.gov/about/shareholder-proposals-staff-legal-bulletin-no-14m-cf>.

number of small and medium-sized investment managers are voting in lockstep¹⁸ with the proxy firms' recommendations, and in many cases the proxy firms actually cast votes on behalf of these managers via their automated "robo-voting" services. These technology platforms allow for the pre-population of voting instructions based on a client's general policy preferences; if the client doesn't take action to change those instructions, shares can be voted by the proxy advisor on their behalf.

A study conducted during the SEC's consideration of its 2020 proxy firm rule 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.^{19,20} Another study found that ISS can affect support for a dissident slate of board nominees by 73% and support for an uncontested director by 18%.²¹ During Say on Pay votes, negative recommendations by the major proxy firms have been correlated with a 17 to 25 percentage point drop in support for management.²² Given this influence, companies are 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.

To reduce costs and streamline the proxy recommendation process, both ISS and Glass Lewis have developed one-size-fits-all proxy voting guidelines²³ that they apply to all covered companies in a given market, regardless of industry and market cap. Many of these policies are stricter than exchange listing standards and state corporate law and are often influenced by activists' demands. 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 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. While most companies try to be attentive to emerging best practices in governance, many express frustration that the proxy firms appear to keep "moving the goal posts" and further tightening their standards.

Many of these voting policies provide that the proxy firm will recommend "generally for" (or "generally against") depending on the topic of a shareholder proposal, a compensation practice, a takeover defense, or a director-related issue. For instance, both firms have strict numerical limits on the number of outside boards a corporate director may serve on (regardless of the actual workload) and will recommend against incumbent directors based on their attendance at board meetings. The firms' policies also provide for a "case-by-case" approach to a limited number of topics (such as whether to

¹⁸ While the two proxy firms assert that a majority of their clients vote their shares based on "custom" voting policies, most of those policies closely track the firms' benchmark proxy voting guidelines and reflect the proxy firms' normative views about good governance.

¹⁹ Timothy M. Doyle, *The Realities of Robo-Voting* (9 November 2018), American Council for Capital Formation. Available at https://accfcorp.gov.org/wp-content/uploads/ACCF-RoboVoting-Report_11_8_FINAL.pdf.

²⁰ Researcher Chong Shu observed a similar trend, noting that "the proportion of ISS's customers who vote almost exclusively in line with its recommendations has increased from 7 percent in 2007 to 23 percent in 2021." See Chong Shu, *supra* note 8.

²¹ David F. Larcker, 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://corp.gov.law.harvard.edu/2018/06/14/the-big-thumb-on-the-scale-an-overview-of-the-proxy-advisory-industry/>.

²² See Chong Shu, *supra* note 8.

²³ While both firms now conduct annual surveys on their policies and ISS publishes some of its proposed updated policies for public comment, the firms historically have been far more responsive to the views of activists than those of companies. When ISS does seek comment on certain draft policies, the comment period is typically just a few weeks, which is not sufficient time for most companies to analyze the potential impact and share their views.

support a management proposal calling for shareholders to ratify the company's "poison pill" takeover defense), which typically entails a more detailed evaluation of the company's circumstances. That type of discretionary case-by-case analysis is the exception rather than the rule, as it requires more deliberation by the firms' analysts. Nevertheless, most companies believe that the proxy advisors do not adequately consider each company's unique circumstances when making recommendations.

In recent years, however, proxy firms have increasingly adopted prescriptive policies and provided recommendations on a wide range of environmental and social 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.²⁴ 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."

B. Proxy Firms Operate With Glaring Conflicts of Interest

Over the past 22 years, both major firms have developed (or acquired) other businesses beyond the proxy voting research and vote execution/delivery services that they provide to institutional investors. The two firms have used their dominant market position and their influence over proxy voting outcomes to drive clients to their other services, which historically have earned higher profit margins than lower-margin, labor-intensive proxy research. The firms' obvious conflicts of interest harm public companies and Main Street investors—while increasing their own profits and market power.

Most prominently, ISS has for years maintained a profitable²⁵ corporate consulting arm that provides advice to companies on executive compensation and corporate governance matters. These are the very same topics that are the subject of vote recommendations issued by the firm's proxy research analysts. While ISS has long insisted that the proxy analysts on the institutional side of its business are unaware of which companies are corporate clients, that knowledge is available to ISS senior staff members who are deemed to be above this corporate "firewall." In addition, the ISS corporate consulting staff is well aware of which companies receive negative vote recommendations from the proxy analysts—and have aggressively marketed their advisory services to those issuers. Public companies have repeatedly reported their surprise (and dismay) after being pitched by ISS Corporate Services shortly after receiving a negative recommendation. To many companies, it is clear that ISS is using its dominant market position and influence over voting outcomes to drive more business for its corporate consulting arm.

ISS is not the only firm with such conflicts. Glass Lewis recently started offering its own "Equity Plan Advisory Service" to companies. This service "offers tailored support to help you design

²⁴ While the proxy giants insist that they are simply implementing the views of their clients and have no stake in proxy voting outcomes, the firms continue to be closely aligned with shareholder activists. For example, both Glass Lewis and ISS have been "affiliate members" of the Interfaith Center on Corporate Responsibility, a coalition of left-leaning religious funds and other activists that file shareholder proposals and engage on ESG issues. In addition, the ISS benchmark policy on board accountability on climate issues mentions that it will apply closer scrutiny to companies that appear on an activist group's list of high emitters of greenhouse gases.

²⁵ Although ISS's financials are no longer public, the firm's corporate consulting business generated significant revenues when ISS was owned by MSCI. In 2013, MSCI reported that "revenues related to our ISS Corporate Services products and services represented 29.2% of our [ISS] Governance business total revenues." In 2012, corporate services accounted for 25.1% of total ISS governance revenue. See MSCI, Form 10-K for the Year Ended December 31, 2013, *available at* 08399e64-25f7-4382-8c6f-eb77f9eed590, and MSCI, Annual Report 2012, *available at* NYSE_MSCI_2012.pdf.

shareholder-friendly equity plans that minimize the risk of disruptions.” The firm’s website promises companies that they can “make equity plan decisions with confidence, leveraging our data and expertise to position your proposals for stronger shareholder approval.”²⁶ Given this marketing pitch, companies can only assume that approval of their equity plans by Glass Lewis and its clients could be at risk if the company fails to pay for a consulting service.

In another type of conflict, Glass Lewis offers a suite of “stewardship solutions” to investors, including an “active stewardship engagement” offering and “custom engagement services” whereby the firm’s stewardship team will engage on behalf of its investor clients to pressure companies on specific issues.²⁷ The firm’s services include “scheduling engagement meetings with companies,” a “custom engagement escalation process,” and “leading engagement meetings (with optional client participation).” Of course, it is highly foreseeable that some of these Glass Lewis-assisted engagement efforts will prompt clients to file shareholder proposals or wage vote-no campaigns that Glass Lewis’s proxy analysts will eventually opine on. In addition, it is hard to imagine that Glass Lewis’s proxy analysts would even-handedly assess a company’s governance practices if the company was resistant to demands by the firm’s stewardship team.

C. Proxy Firms Are Resistant to Sharing Draft Reports and Correcting Errors

In addition to enforcing strict preferences about public company governance, proxy firm reports and recommendations often include errors and misleading statements, ranging from specific incorrect facts to disingenuous assumptions about, for instance, a company’s peer group or compensation practices. The prevalence of errors is not unexpected, as the firms publish hundreds of reports on companies each week during the peak of the U.S. proxy season in April and May. Despite this risk of errors, 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 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”—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.

The firms’ unwillingness to share draft reports with companies, or to correct errors or misunderstandings, degrades the quality of their proxy advice—ultimately resulting in voting decisions being made or corporate policies being set based on inaccurate information. That is why the NAM has long called for proxy firms to provide all public companies a reasonable opportunity to review proxy report drafts and to provide feedback before a report is published and proxy clients’ shares start to be voted through the firms’ robo-voting platforms.

²⁶ The firm’s website further promises to help companies “anticipate how institutional investors and Glass Lewis may assess your plan and increase your chances of shareholder approval.” See Glass Lewis, Equity Compensation Advisory page, available at <https://www.glasslewis.com/corporate-solutions/equity-compensation-plan-advisory>.

²⁷ See Glass Lewis Active Stewardship and Custom Engagement pages, available at <https://www.glasslewis.com/investor-solutions/active-stewardship-engagement> and <https://www.glasslewis.com/investor-solutions/custom-engagement-services>.

III. Past Efforts to Regulate Proxy Firms

In 2020, the SEC finalized a long-awaited rule to provide appropriate oversight of proxy advisory firms.²⁸ This 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 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.²⁹

Notably, the 2020 rule's issuer engagement requirements were significantly less strict than what the SEC had proposed in 2019.³⁰ The 2019 proposal would have required proxy firms to allow companies to review and provide feedback on their *draft* reports. 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,³¹ the Division of Corporation Finance suspended enforcement of the rule,³² and the SEC granted ISS "relief" from the rule's requirements.³³ 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 required notice-and-comment process.³⁴

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

²⁸ *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>.

²⁹ See *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>.

³⁰ 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>.

³¹ *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>.

³² *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>.

³³ See *Mtn. for Abeyance, Institutional Shareholder Services Inc. v. SEC*, No. 19-cv-3275 (D.D.C.).

³⁴ *Nat'l Ass'n of Mfrs. v. SEC*, 631 F.Supp.3d 423 (W.D. Tex. 2022).

company responses to those recommendations.³⁵ 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 these rescissions.³⁶ 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."³⁷

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.³⁸

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. On May 2, the D.C. Circuit heard oral argument in *ISS v. SEC*—which is now effectively *ISS v. NAM*. A decision is expected later this year. If ISS prevails in its challenge, the SEC will need legislation from Congress that reaffirms the Commission's authority to regulate proxy advice under the proxy solicitation rules of the Exchange Act.

IV. Harms to Competition and Public Companies Posed by Proxy Firms' Anticompetitive Practices

As I have explained, the two major proxy firms have created an entrenched duopoly that is rife with conflicts of interest and business practices that empower the firms at the expense of public companies and Main Street investors.

Over the past 20 years, the firms have opportunistically leveraged new regulatory requirements (such as Say on Pay votes) and governance trends (such as the proliferation of ESG shareholder proposals) to increase their clients' reliance on their services. The firms (most notably ISS) also have created lucrative corporate consulting businesses to provide advice on the very topics on which they provide research and voting recommendations. The two major firms have cemented their market positions and made it highly unlikely that a new entrant could gain a meaningful market share. It is not surprising that no new competitors that seek to advise institutions broadly have emerged since Proxy Governance Inc. ceased operations in 2010.

³⁵ *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>.

³⁶ NAM Comments on File No. S7-17-21 (24 December 2021). Available at https://documents.nam.org/tax/nam_proxy_comments_2021.pdf.

³⁷ *Nat'l Ass'n of Mfrs. v. SEC*, 105 F.4th 802 (2024).

³⁸ *Institutional S'holder Servs. Inc. v. SEC*, No. 24-5105 (consolidated with 24-5112) (D.C. Cir.), Mot. to Voluntarily Dismiss Appeal.

The proxy firm duopoly damages public companies in several ways. The proxy firms' business model relies on a one-size-fits-all approach to corporate governance that does not try to take into account differences in companies' businesses and the flexibility allowed under securities law. Over the past 20 years, there has been a gradual homogenization of U.S. companies' compensation and governance practices, as many companies have decided that it is easier to give to the proxy giants' demands than to trust their board's judgment to select policies that are tailored to the company.

While the proxy firms assert that their error rate is low, companies continue to notice that the firms' reports often include errors and misleading statements, ranging from specific incorrect facts to disingenuous assumptions about, for instance, a company's peer group or compensation practices. These mistakes, especially when amplified by the growing use of the firms' robo-voting platforms, means that more investor shares are being voted based on flawed research before companies have a chance to request corrections. In the unlikely event that a company can persuade a proxy firm to acknowledge its mistake and publish a correction, not all clients will bother to go back and change their votes.

Another consequence of the proxy duopoly is that it has contributed to an inhospitable regulatory environment for new public companies. When faced with the spectre of having to pay ISS for equity plan consulting, haggle with the two firms after a non-supermajority Say on Pay vote, and persuade investors to disregard the firms' support of a prescriptive ESG proposal, the board of a privately held manufacturer might reasonably decide that private capital is preferable to the public markets—preventing everyday Americans from investing in their business.

V. Recommendations to Rein in the Proxy Firm Duopoly

Given the major proxy firms' dominant market position, their glaring conflicts of interest, and their pervasive influence over proxy voting and U.S. corporate governance, it is necessary for policymakers to act to ensure appropriate regulatory oversight of proxy firms.

Manufacturers have supported legislation that reaffirms the SEC's authority to regulate proxy firms and ensures that the SEC can act to address the firms' conflicts of interest, improve the accuracy of proxy research, provide more transparency around proxy advisor policies, and ensure that investment managers fulfill their fiduciary duties to clients when hiring proxy firms to vote their shares. We commend members of this Subcommittee for your interest in proxy advice and your efforts to build on the rich legislative record of proxy firm abuses set forth by recent hearings held by the House Subcommittee on Capital Markets³⁹ and the House Subcommittee on Health, Employment, Labor, and Pensions.⁴⁰

Conflicts of interest remain the clearest threat to Main Street investors posed by the proxy firm duopoly. 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. Glass Lewis now has its own equity plan advisory product that raises similar concerns. The firm also provides stewardship services to activists who likely will file shareholder proposals that Glass Lewis analysts will pass judgement on. The NAM has long supported efforts to prohibit, or at a

³⁹ *Exposing the Proxy Advisory Cartel: How ISS & Glass Lewis Influence Markets* (29 April 2025). House Committee on Financial Services, Subcommittee on Capital Markets. See <https://financialservices.house.gov/calendar/eventsingle.aspx?EventID=409697>.

⁴⁰ *Investing for the Future: Honoring ERISA's Promise to Participants* (30 April 2025). House Committee on Education and Workforce, Subcommittee on Health, Employment, Labor, and Pensions. See <https://edworkforce.house.gov/calendar/eventsingle.aspx?EventID=412370>.

minimum require public disclosure of, proxy firm conflicts of interest in order to protect companies from the firms and to enhance transparency and objectivity of proxy research for investors.

The NAM supports the Stopping Proxy Advisor Racketeering Act, sponsored by Chairman Fitzgerald, 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.

The NAM also supports a revival of the SEC's 2019 proposed rulemaking, which mandated a pre-publication draft review process to ensure that all public companies had a reasonable opportunity to correct factual errors and analytical flaws in proxy research reports before investors start voting. Such a process is far more beneficial for both companies and investors than the post-publication review that was included by the SEC in the final 2020 rule as a compromise.

* * * *

Publicly traded manufacturers are committed to growing their businesses, creating value for shareholders, and driving economic expansion, but manufacturers still must contend with proxy advisory firms that have divergent agendas and little interest in their success. This remains the case despite the fact that the SEC finalized its landmark 2020 proxy firm rule nearly five years ago—a rule that has never been allowed to take effect.

Congress now has the opportunity to preserve and improve upon that rule, including by affirming the SEC's authority to regulate proxy voting advice. Manufacturers are depending on Congress to pass legislation—and the SEC to finalize regulations—that will respond to the firms' anti-competitive behavior by reducing conflicts of interest, increasing transparency, ensuring research accuracy, limiting robo-voting, and reining in the firms' outsized influence over public company governance and the security of millions of Main Street investors' life savings.

The NAM stands ready to work with Congress to ensure that manufacturers can escape the outsized influence of proxy firms and instead focus on creating jobs, contributing to their communities, powering the American economy, and investing for the future.

Mr. FITZGERALD. The gentleman yields back. Ms. Minow, you are not recognized for five minutes.

STATEMENT OF NELL MINOW

Ms. MINOW. Thank you very much, and thanks to the Committee for including me.

When I worked in the Reagan Administration, one of the things that I was proudest of was our commitment to free markets and to reducing nanny-state-type regulations. I feel like I'm a little bit through the looking glass here today because it is very disappointing to me to hear the Republicans on this Committee want to interfere with the most robust free market evolution of a product that I could possibly imagine.

It meets every one of the criteria that I learned at the University of Chicago. The proxy advisory firms rose to meet a need that began in the 1980s. In fact, I was there at the beginning of ISS. We intended to have a different product entirely, and everybody we talked to said, "What we want is proxy voting recommendations."

Nobody has to buy it. Nobody has to follow their recommendations. They are purchased by the most sophisticated financial professionals on the planet. What I'm hearing here is a lot of vague allegations that are not supported.

If ISS and Glass Lewis are too powerful, corporate America should be popping champagne corks. They recommend votes with management 96 percent of the time. I would love to hear from America's corporations why four percent of the time a suggestion that perhaps they might disagree with management is too much. It is very disappointing to me to hear corporations say they don't want to hear from their shareholders and they don't want independent advice to be available to them.

If there are more votes against pay packages because of proxy advisor recommendations, that is because those pay packages have been determined by market forces to be too much. I suggest you look at Mr. Zaslav's pay package, which did get a majority against. Remember, though, those votes, as Mr. Raskin pointed out, are nonbinding. Even a 100 percent vote in favor of whatever shareholder proposal that you don't like, if it is about the environment or ESG, a company doesn't have to follow it and companies do ignore these votes, even a 52 percent vote, all the time. Why they wouldn't want this very low-pressure mechanism for delivering the comments about shareholder concerns, I do not understand.

I hear terms like "dictates" and "stubbornly unregulated." The last people who need the nanny State stepping in are these financial professionals, the largest investors. Proxy advisor services are not sold to individual households. There are new entrants all the time. I personally use one that is nonprofit and free for my accounts. We have ones that are more pro-ESG. We have ones that are explicitly anti-woke, anti-ESG.

Public corporations are currently devoting enormous amounts of money and effort—and I might say creativity—to coming up with ways to cutoff shareholder oversight and including restricting the sole sources of independent research on matters presented to them for their approval. Really, the worst you can come up with is that they want to review pay annually instead of every three years.

Congress gave shareholders the right to choose whether they wanted to look at say-on-pay annually or every three years. They choose annually. ISS doesn't get paid by the vote. It is more work for them for the same pay. That is just completely wrong.

I strongly urge this Committee to allow the free market to operate.

Thank you very much.

[The prepared statement of Ms. Minow follows:]



**Subcommittee on the Administrative State, Regulatory Reform, and
Antitrust**

“The Proxy Advisor Duopoly’s Anticompetitive Conduct”

June 25, 2025

Testimony of Nell Minow, Chair, ValueEdge Advisors¹

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

My connection to this field is that when I left the Justice Department’s Antitrust Division during the Reagan administration as a special assistant to now-Judge Douglas Ginsburg, I was the fourth person hired and the first General Counsel at Institutional Shareholder Services (ISS). I left as president of ISS in 1990 and remained on its board of directors until 1992. While I have remained 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. Neither I, my partners, nor my clients are in any way financially benefitted by the

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.

¹ Graphics courtesy of ISS. I also reached out to Glass-Lewis with the same questions but they did not respond, further demonstrating a lack of coordination.

matters covered in this hearing, except as they affect the options available for purchase by institutional investors to evaluate investment risk and the overall robustness of our capital markets.

Before I went to DOJ, ISS founder Bob Monks and I met working on President Reagan's Regulatory Relief initiative, he in then-Vice President Bush's office and I at the Office of Management and Budget. It may help you understand my perspective if I explain that my education at the University of Chicago Law School, those two positions in government, and my career in the private sector as a founder or co-founder of five companies, three of which have been sold, reflect my commitment to free markets as the foundation for a healthy economy. That means limiting federal government interference most of the time to matters of public health and safety, the social safety net, and resolving conflicts of interest and collective choice problems.

Proxy advisory firms are an exemplary free market success story for two reasons. They were created to respond to two critical needs not being met.

The first was the creation of securities in the 1980s that enabled any size of takeover or leveraged buy-out, creating for the first time a series of issues on proxy cards that were unprecedentedly complex. It was no longer the simple task of voting for the board members nominated by management and approving the auditors. There were new questions to be voted on with exotic, colorful names: poison pills, greenmail, and golden parachutes. These issues required expertise beyond the scope of most portfolio managers. Traditional securities analysis did not cover corporate governance risk. And that was just part of the problem.

The second need not being met was the repeatedly documented failures of investment managers to respond to proxy voting questions as fiduciaries. Vanguard founder Jack Bogle described this problem in his books and public statements. If a portfolio company was also a client of the firm, investment managers voted to benefit the corporate insiders who paid them instead of the beneficial holders they had a fiduciary obligation to

consider “exclusively.”² In more than one case, an institutional investor was paid by a corporation to switch their votes.

Access to the sole sources of independent research and recommendations is a vital, indispensable requirement for efficient markets. If this committee is concerned about proxy voting, the focus should be on the SEC and Labor Department offices overseeing the fiduciary obligation of institutional investors, not on killing the messenger, the sole providers of independent research and recommendations.

In further support of proxy advisory firms as exemplars of the free market, I will add that they provide research no one has to buy and recommendations no one has to follow. Their products are purchased – or not – exclusively by the most sophisticated financial professionals in the world. They offer a range of options and continually ask their clients for feedback on how to adjust their policies to better serve their needs and preferences. The government should not interfere with the decisions made by financial services firms on what services to buy or what their products should include.

Institutional investors who wish to have access to independent research and recommendations on proxy issues have wide and varied choices. There are no barriers to entry. In fact, there are other options, including two recent entrants who describe themselves as “anti-woke,” Proxy Navigator and Bowyer Research. A few years ago, a former SEC commissioner started a proxy advisory firm. It failed because its original funding came from corporations, and so, in a market-based assessment, institutional investors did not trust them. The Shareholder Commons and As You Sow are nonprofits that make proxy voting recommendations available at no cost.

This is a textbook example of market efficiency – entrepreneurs responding to changing needs and sophisticated, knowledgeable customers responding to the wide range of options available to them. And it is also a textbook example of market efficiency that, with the help of legislation like Dodd-Frank and Sarbanes-Oxley and regulation like the SEC’s requirement that

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/>

fund managers disclose their proxy votes, the access to independent research and recommendations from proxy advisory firms has led to improvement in corporate governance, especially more independent, better qualified corporate board members.

What is not an example of market efficiency is insisting that a successful corporation be forced to take a service it has developed and licensed and make that available to a competitor who has been unable to persuade customers to purchase its services because they consider it less valuable. That is in fact the dictionary definition of socialism.

Pass-Through Voting

I support making pass-through proxy voting available to investors who want it. I actually have exercised that option for my own small account because I benefit from the sunk cost of being an expert in proxy issues from my professional life, and my professional life benefits from the experience of voting proxies myself. Like the large institutional investors, I want to see the recommendations from proxy advisors, in my case, the non-profits, and make my own decisions.

I also understand that the push for making pass-through voting available does not come from market forces. There is no evidence that a large group of index fund investors or pension fund beneficiaries are interested in this option, and in fact, very few of them have exercised it. They like to have the proxy voting decisions made by professionals for the same reason they like to have buy-sell-hold decisions made by professionals: expertise and fiduciary obligation. Proxy voting is like any other investment decision; it is likely to be better when made by professionals governed by the strictest legal standard for care and loyalty.

BlackRock and other firms offer that option to customers. 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 ensures that companies obtain a quorum.

Further information on proxy advisory firms

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 First 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.

The proxy advisory services constantly adapt and improve their recommendations according to client preferences, like any other business. They are more likely to be influenced by their institutional investor clients than to influence them. With the exception of the small non-profits, they are market-driven.

Their recommendations are to support corporate managers as much as 96 percent of the time. Their clients like their analysis of the other four percent but make their own decisions on whether to follow their advice. For example, 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 by far was the \$55.8 billion for Elon Musk at Tesla, 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.

The Council of Institutional Investors is a nonprofit, nonpartisan association of U.S. public, corporate and union employee benefit funds, other employee benefit plans, state and local entities charged with investing public assets, and foundations and endowments with combined assets under management of approximately \$5 trillion. Their survey of members found overwhelming support for proxy advisory firms, used by about 90 percent. Notably, 77 percent responded that they use proxy advisory firms to implement their own policies. More than a quarter said they ignore the recommendations, and 64 percent said that a recommendation to vote against management's recommendation triggers

additional scrutiny. 62 percent oppose efforts to require proxy advisors to submit their reports to the corporations they cover, a proposal that I note raises concerns about prior restraint that likely violates the First Amendment.

Response to Criticism of Proxy Advisory Firms:

In general, the claims are selective and slanted. ISS and Glass Lewis are successful because the sophisticated financial professionals who have a range of choices do not think their competition's proxy advice is as valuable. As noted above, the two biggest firms have a variety of products and services, constantly changing to meet client demands, and there are also new entrants to the field who give institutional investors an unprecedented range of options. Many fund managers choose not to purchase any proxy advisory services at all, doing all of their research in-house. There is no possible justification for any government interference with this industry.

Specifically:

Conflicts of interest: Some critics object to proxy advisors providing consulting services. I did not allow it when I was the president of ISS, and yet I recognize the frustration of the insiders at the companies we covered who said it was unfair to make determinations without giving them guidance on how to do better. Those clients who are clear about the potential conflicts and choose to purchase their services factor that in when assessing the value of their products, and there is no need for government interference. One of Egan-Jones' best selling points in distinguishing itself from the competition is freedom from most conflicts of interest and I recommend they emphasize that in their marketing materials to see if it will help.

"Robo-voting:" Robo-voting is a made-up term for a non-existent issue. But there is no evidence of any kind of any institutional investor who has failed to assess the risks and values of proxy votes. More than 90 percent of the items put to a vote are routine: elect unopposed candidates for the board and approve the auditors. Authorizing a third party to cast those votes is not "robo-voting." There is no evidence that the non-routine items are voted without care and loyalty, consistent with proxy voting policies on

issues like CEO pay and shareholder proposals. But as noted above, I endorse any inquiry into the SEC's and DOL's enforcement of fiduciary obligation in voting by investment managers and pension funds.

Platform: Unless Congress is prepared to force Amazon truck drivers to deliver packages from anyone who wants to use them, the Committee should not tell a private company that developed its own online delivery system that they have to make it available to competitors who do not have the skill, the resources, or the strategic judgment to develop their own. The platforms developed by ISS and Glass-Lewis are like your interface with your bank or brokerage. Clients log in and see information about their own accounts along with the research and recommendations according to their own policies. ISS tells me that if enough clients ask for another service to be distributed on their platform, they will provide it, and that includes Egan-Jones' materials.

Providing Proxy Recommendations to Issuers Before the Vote: There is no justification for forcing a proxy advisory firm to give their proprietary product to the companies they cover before the proxy vote. This would be a "prior restraint" violation of the First Amendment and would harm the ability of the sole sources of independent analysis to get their materials to their clients in a timely fashion. We don't require newspapers to provide their editorials to politicians before publication or theater critics to submit their reviews to the director before they appear in the press.

The entire basis of capitalism is allowing outsiders to invest based on their confidence in the checks and balances that minimize agency costs and assure them that their capital will be used to create shareholder value, not for the benefit of corporate insiders. What has made our economy the envy of the world is our unparalleled commitment transparency and strong corporate governance. Any effort to limit shareholder oversight further will diminish confidence in our markets and increase the cost of capital.

Again, well over 90 percent of the proxy issues they cover are routine votes as management recommends. If corporate executives and boards cannot handle having shareholders make an advisory-only, non-binding vote against them less than four percent of the time, I recommend they go private at a fair price and see how they like dealing with private equity instead of public shareholders.

Mr. FITZGERALD. Thank you very much.

I will now proceed under the five-minute rule with questions.

The gentlewoman from Wyoming—

Mr. NADLER. Mr. Chair, I have a unanimous consent request.

Mr. FITZGERALD. The gentleman is recognized. Can we hold some of these until the end, I guess?

Mr. NADLER. OK, after this one.

Mr. FITZGERALD. OK, go ahead.

Mr. NADLER. I ask unanimous consent to enter into the record an article dated July 31, 2024, entitled, “ESG: Illegal Conclusion or Just Good Business Sense?” which explains how, quote,

Limiting investors’ ability to assess risk and reducing competition for financial services is detrimental to investors’ returns in these, and the people who are paying the price for this are the constituents—the firefighters, the police officers, and the teachers.

Mr. FITZGERALD. Without objection. The gentlewoman from Wyoming is now recognized for five minutes.

Ms. HAGEMAN. I’m sorry, but this sounds like a racket. I can just hear, “That’s a nice company you have there. It would be a tragedy if something happened to it.”

Wow, about 70 percent of publicly traded equity shares are held by institutional investors rather than individuals. ISS and Glass Lewis control at least 90 percent of the proxy advisor market, exerting influence over \$20 trillion in investor assets. Glass Lewis is owned by two Canadian financial institutions and ISS by a German corporation. Yet, together, they dictate votes for most of America’s publicly traded companies.

Mr. Egan, should foreign-owned businesses hold that kind of power and control over U.S. companies?

Mr. EGAN. Thank you very much for the question.

In our opinion, for capital markets to work properly, you need a diversity of views. Perhaps the biggest concern that exists in the market is that it is dysfunctional in the sense that the two dominant proxy advisory firms are not independent; that they are using the recommendations and the scores and the ratings on the consulting side to drive their proxy advisory votes. If they charged nothing for their proxy advisory services, and basically, using a monopoly on one area—that is, with the platforms—to extend to the other area, they would be just fine.

There is relatively little competition because there is blockage, and those four items that I had mentioned really should be examined to keep the markets competitive.

Ms. HAGEMAN. Well, do you think that most Americans know about this foreign ownership or what these companies actually do?

Mr. EGAN. I highly doubt it.

Ms. HAGEMAN. OK. Mr. Crain, with this much control, there must be an understanding of whether proxy advice actually aligns with investor preferences, as these firms grow in power and influence. In your experience in working with U.S. manufacturers, have these ideology-driven directives, based in climate change policies, the DEI agenda, ESG policy, and more, strengthened their competitiveness or added unnecessary costs and constraints?

Mr. CRAIN. Thank you for that question, Congressman—Congresswoman. Excuse me.

I think that the key thing to remember here is that the proxy advisor firms don't have a fiduciary duty to the underlying Main Street investors who are saving for a secure retirement via these larger institutional investors. When they are making these voting recommendations and casting investors' votes through their robo-voting services on their behalf, they have no underlying obligation to those everyday Americans. Whether that is on everyday corporate governance topics or on some of the ESG matters that you have described, they have their own set of beliefs about how corporate America should be run and they don't have any obligation to align those beliefs with the financial needs of everyday Americans saving for retirement in the public market.

Ms. HAGEMAN. Well, listening to the testimony from the four of you, that is the thing that struck me the most; is that this seems to be a fundamental violation of these companies' fiduciary responsibilities to maximize profits for their shareholders. Do you agree with that, Mr. Crain?

Mr. CRAIN. I do, and that is a question that has been raised at the SEC, in fact, of whether and to what extent the institutional investors who blindly follow these proxy firm recommendations, or, indeed, allow votes to be robo-vote without even reviewing what the proxy firms are suggesting, whether and to what extent they are complying with their fiduciary obligations, as managing assets on behalf of everyday Americans saving for retirement.

Ms. HAGEMAN. Mr. Griffin, I would like to turn to you. If proxy advisors are making recommendations to asset managers who vote with other people's money, and these recommendations are politically driven, then is the system actually protecting the interests of the real owners, such as the retirees and savers, or is it really furthering the agenda of these other organizations?

Mr. GRIFFIN. Thank you for the question.

There is a risk that we prioritize different interests than those of the true investors, those individuals who are working people, teachers, firefighters saving for their retirement, and those interests may diverge from the intermediaries who hire the proxy advisory firms. I think that is a risk.

Ms. HAGEMAN. Has the market share of ISS and Glass Lewis allowed for this shift from protection of real investor interest to what seems to be a more politically driven agenda, Mr. Griffin?

Mr. GRIFFIN. That is certainly possible. That the market concentration and market power that they have has created—essentially, put them in a quasiregulatory role, in some ways allowing them to determine things like influence from materiality standards, standards for director independence, and effective voting thresholds for board response to shareholder proposals and—

Ms. HAGEMAN. Well, thank you, gentlemen and Ms. Minow, for being here today.

I ask unanimous consent to introduce into the record a document entitled, "The Conflicted Role of Proxy Advisors," from May 2018.

Mr. FITZGERALD. Without objection.

Mr. FITZGERALD. The gentlewoman yields back.

Ms. HAGEMAN. Thank you.

Mr. FITZGERALD. The Ranking Member is now recognized for five minutes.

Mr. NADLER. Thank you, Mr. Chair.

Ms. Minow, you worked in the DOJ's Antitrust Division. Is there any evidence that ISS and Glass Lewis are colluding?

Ms. MINOW. There is none.

Mr. NADLER. Is there any evidence that they are fixing prices?

Ms. MINOW. There is no evidence of that.

Mr. NADLER. Is there any evidence that they are blocking new entrants?

Ms. MINOW. No. There are new entrants all the time, as I mentioned, including two nonprofits and two—one started by Vivek Ramaswamy—that are explicitly anti-woke.

Mr. NADLER. Typically, when competitors collude, they do so to raise prices. The majority, however, is alleging that ISS and Glass Lewis are colluding to push ESG and DEI agendas. At the same time, the Majority is arguing that ESG and DEI issues are detrimental to the companies that their clients are investing in. If both things are true, wouldn't this collusion mean that investors are getting bad advice from proxy advisors, and that, therefore, the investors would be incentivized to change providers?

Ms. MINOW. Absolutely. Let's remember that the clients of the proxy advisor services are enormous, multimillion-dollar financial firms who are very sophisticated and who are completely driven by shareholder returns. Furthermore, ISS and Glass Lewis—and I presume all the other proxy advisory firms—are constantly in touch with their clients saying, "Do we need to change our policies to better reflect your priorities?" The people who purchase those services are market-driven, and the people who provide those services are market-driven to meet their needs.

Mr. NADLER. Thank you.

Are there competitors that these investors could turn to? We are not seeing a retreat from these firms, isn't that correct?

Ms. MINOW. That's right. If Sean's firm wants to compete with ISS and Glass Lewis, he should probably try to produce a better product.

What I really don't understand is why he thinks he has a right to the platform that they built with their time, with their energy, and with their expertise. It would be like me saying, "I'd like to send my packages through Amazon trucks because they have got this great infrastructure." If he wants to compete with that, let him build his own; make it better.

Mr. NADLER. Assuming that the Majority is right, these actions would, presumably, undermine ISS and Glass Lewis' own bottom lines and revenue, and therefore, would hurt these firms and damage their position in the market. There is no evidence of that, is there?

Ms. MINOW. There is no evidence of that.

Mr. NADLER. Ms. Minow, the Majority also claims that ISS and Glass Lewis prevent new market entrants because they control voting platforms, as well as provide advisory services. Is this true?

Ms. MINOW. No. They developed their own platforms, just as if you want to log into your account on the bank at a bank or a brokerage house. They have created their own platforms, and anyone else can create theirs as well.

Mr. NADLER. Investors are not forced to use the voting platforms, and thus, they could get advice from ISS and Glass Lewis, and then, use a separate entity's voting platform, is that correct?

Ms. MINOW. That is correct. ISS told me that, if enough of their clients asked to have Sean's firm on their platform, they would add it, but nobody is asking for it.

Mr. NADLER. Thank you.

This hearing is yet another example of my colleagues across the aisle weaponizing an empty theory of antitrust harm to come after free speech and the exercise of shareholders' right, simply because they disagree with the content of that speech and the exercise of those rights. It is a dangerous use of this Committee's power, and I urge my colleagues to reconsider.

I yield to the Ranking Member of the Full Committee.

Mr. RASKIN. Thank you very much, Mr. Nadler.

Mr. Egan, does your firm—you are, essentially, a competitor to the two big firms we are talking about, is that right?

Mr. EGAN. Thank you for your question, and the answer is yet.

Mr. RASKIN. OK. Does your firm collude with other proxy advisors?

Mr. EGAN. No.

Mr. RASKIN. Do you have an ESG policy for the people you advise?

Mr. EGAN. We do.

Mr. RASKIN. Do you have a non-ESG policy for the people you advise?

Mr. EGAN. We don't label it as non-ESG. We have a wealth-focused policy we—

Mr. RASKIN. OK. If I want ESG, I could come to you? If I don't want ESG, I could come to you? I have got alternatives, options?

Mr. EGAN. That is accurate.

Mr. RASKIN. Why do you set up as an array of options like that?

Mr. EGAN. To provide investors with a choice.

Mr. RASKIN. You are meeting the needs and desires of your clients and meeting market demand?

Mr. EGAN. That's accurate.

Mr. RASKIN. OK. It seems to me that is exactly what your competitors are doing. I understand you are a new entrant there, but everybody is responding to a market demand. I appreciate your candor in answering.

I would yield back. Thank you, Mr. Nadler.

Mr. NADLER. I yield back.

Mr. FITZGERALD. The gentleman yields back.

The gentleman from Texas is now recognized for five minutes.

Mr. GOODEN. Hi, Mr. Griffin. Can you explain what guardrails, whether legal or regulatory, exist to ensure that ISS and Glass Lewis provide voting recommendations in the best financial interest of shareholders, and that they are not giving conflicting recommendations to clients about the proxy and shareholder proposals, if those exist?

Mr. GRIFFIN. Thank you for your question, Congressman.

There are very limited legal and regulatory guardrails in place right now. Currently, there are no direct fiduciary duties to the ul-

timate investors, the clients of these institutional investors, who, in turn, hire the proxy advisors.

When we look at market demand and we use the term “investor” to refer not to the people who invested their money, but to the financial intermediaries who control it, it can generate incorrect policy insights. In my view, firms like BlackRock should be considered intermediaries rather than true investors, essentially, custodians of the true investors’ money.

Mr. GOODEN. If I understand this correctly, kind of moving on down the road of some things I heard earlier, is it accurate to say that ISS is able to offer advisory services to boards of directors while also offering recommendations for how shareholders vote? Is that a thing?

Mr. GRIFFIN. That’s correct.

Mr. GOODEN. Do you know of any other industry where such an inherent conflict of interest might exist?

Mr. GRIFFIN. I’m not aware of any. I know that some analogous conflicts existed in the auditing and accounting firm context, but Congress took action with respect to those.

Mr. GOODEN. The board of directors could be paying for them for services, and then, also, they are getting paid to recommend to the proxy advisors. Does that seem right?

Mr. GRIFFIN. It does generate a potential conflict of interest, yes.

Mr. GOODEN. Do you think, Ms. Minow, that there is a potential conflict of interest there?

Ms. MINOW. Yes, I do. That’s why I don’t buy ISS services, and I do believe that anybody who does want to buy them should be able to buy them, understanding what the conflict of interest is.

Mr. GOODEN. Interesting.

Mr. Egan, I think I am hearing that Egan-Jones is taking on two duopolistic actors, and in doing so, creating a more competitive marketplace. One of those areas that has been a particular concern for this Subcommittee has been the ESG issues, which are inherently politically charged. Do you know how often ISS and Glass Lewis are voting against the boards of directors on ESG issues?

Mr. EGAN. I do not.

Mr. GOODEN. OK. I would like to hear more from you, Mr. Griffin. This idea of these conflicts of interest, is this a thing with a business like Mr. Egan’s or is this a problem with just the two big ones?

Mr. GRIFFIN. The specific conflict of interest you’re referring to arises from the provision of consulting services rather than the proxy advisory service itself. My understanding is that his firm does not offer those type of services, and the two largest proxy advisors do.

Mr. GOODEN. What do you recommend that Congress should do to fix that?

Mr. GRIFFIN. Well, there are a number of potential solutions. Congressman Fitzgerald’s bill providing for, again, disclosure of and regulation of conflicts of interest, Could be very beneficial in a number of ways, and something analogous to what we did in the accounting firm context for Sarbanes-Oxley may be beneficial here.

Mr. GOODEN. Thank you. I would yield my extra time to the Chair, if he has anything.

Mr. FITZGERALD. The Chair is recognized.

Chair JORDAN. No.

Mr. FITZGERALD. Yes, well, I will recognize the Ranking Member for five minutes.

Mr. RASKIN. OK. Thank you very much, Mr. Chair.

I'm very new to this whole field, but one thing I have learned about the proxy service community is that it is one that favors aliteration. We have platforms, purses, proxies, and practices; concentration, competition, and conflicts of interest. Even though they are both "P" and "C" words, I didn't really hear anything about collusion or price fixing.

Which leads me to believe that the fact that we are in the Antitrust Subcommittee today, and we are talking about antitrust, it is really the use of a metaphor here. I don't know—perhaps, Ms. Minow, you can correct me. Did you hear any allegations of an actual antitrust violation from any of your fellow witnesses?

Ms. MINOW. I did not.

Mr. RASKIN. OK. Well, I heard a lot about conflicts of interest. Just to be clear about this, is a conflict of interest an antitrust collusion?

Ms. MINOW. No.

Mr. RASKIN. OK. A conflict of interest is not an antitrust violation. I understand that the whole question of conflict of interest within this proxy service community is something that is heavily discussed and contested within the Securities and Exchange Commission and within our colleagues in the Financial Services Committee. Am I right about that? Do you know about that, the conflict of interest?

Well, perhaps I can come to you, Mr. Crain. You are using antitrust here as a metaphor, the way sometimes people say, "The Democrats and the Republicans are a duopoly. They control 90 percent or 95 percent of the votes. They control the House and the Senate."

Sometimes, actually, that duopoly engages in unconstitutional practices. In Maryland, if I want to run for office, I just need one signature. If I want to run as an Independent, not as a Democrat or a Republican, I need 87,000 signatures.

Although it is not an antitrust violation, strictly speaking, that metaphor helps to understand why there is a First Amendment problem there or an equal protection one.

You are just using antitrust as a metaphor? Am I right? Just help me understand. It is not a "gotcha" question. I'm trying to figure out what we are doing here.

Mr. CRAIN. Yes, I think it is a fair question from manufacturers' perspectives. They certainly feel the effects of this duopoly. I obviously defer to the distinguished Members of the Subcommittee about whether and to what extent it is officially an antitrust violation, but certainly manufacturers have experienced the effects of the market power that these firms yield.

Mr. RASKIN. All right, well, let's talk about conflicts of interest, then.

Mr. Egan, your firm was actually charged with misrepresentations by the SEC. It was in 2008 or 2009, is that right?

Mr. EGAN. We have been in NRSO (phonetic) for a number of years. We have been in the business as a rating firm for over 30 years. There have been a number of regulatory actions.

Mr. RASKIN. Let me just speed ahead because I have got so little time. In 2022, you were charged with a conflict of interest, is that right?

Mr. EGAN. Egan-Jones and I personally reached a settlement order on the rating side with our regulator in 2022.

Mr. RASKIN. In 2022, OK. You were not charged with antitrust violations then. You were just charged with a conflict of interest, and you settled that with SEC, is that right?

Mr. EGAN. We reached a settlement in 2022 with our regulator.

Mr. RASKIN. All right. Ms. Minow, do you know whether ISF has been charged with a conflict of interest by the SEC?

Ms. MINOW. They have not.

Mr. RASKIN. What about the other one, Glass Lewis?

Ms. MINOW. I don't believe they have. I certainly haven't read anything about it. I know that there have been discussions about it, but as I said, that is really for their customers to judge whether that affects their ability to provide independent research or not.

Mr. RASKIN. OK, look, if proxy advisors or the duopolies that claim them are so omnipotent and they are allegedly colluding to advance so-called progressive proposals against corporations, why do the vast majority of the recommendations actually align with the management view? I would think that this duopoly is much more in service of the corporate State viewed from the Right or the Left. Isn't that right?

Ms. MINOW. Ninety-six percent of the recommendations are to vote with management on matters like unopposed board members—

Mr. RASKIN. OK. We are having an antitrust hearing about whether two firms out of many firms that are operating for-profit and not for-profit that advise companies voluntarily who want to come and become their customers about how to vote in shareholder proposals that are nonbinding are engaged in an antitrust conspiracy. This just blows my mind.

You mentioned one though where I don't know where the companies were on this, but Zaslav's salary was rejected. It was a \$51.9 million salary, and the shareholders voted that there was too much money in Disney and the board dropped the salary by \$16 million. What is wrong with that?

Ms. MINOW. That is exactly how markets are supposed to work. I would just say that—

Mr. RASKIN. How did the proxy advisors go on that one?

Mr. FITZGERALD. The gentleman's—

Ms. MINOW. They recommended a vote against as all the financial press. It is objectively too much money for that and yet the companies still can ignore it if they want.

Mr. FITZGERALD. The gentleman's time has expired. The gentleman from North Carolina is now recognized for five minutes.

Mr. HARRIS. Thank you, Mr. Chair, and I thank all of you on the panel for your testimony today.

Mr. Crain, from my understanding of your testimony, your organizations argued the proxy advisors should give companies an op-

portunity to provide feedback on voting recommendations and to let shareholders see the dialog prior to a vote. There was a 2020 rule from the Securities and Exchange Commission that did expand transparency in this way, although such requirements were later revised and also struck down by the courts.

In your view, was this rule effective at all in improving the proxy advisor ecosystem?

Mr. CRAIN. Thank you for that question, Congressman. We certainly believe that that rule would have been effective at enhancing the degree of transparency and reliable, accurate information that investors could rely on. As you indicated, unfortunately, under the previous administration, Chair Gensler rescinded critical parts to that rule, including the provision of recommendations to companies so that they could respond appropriately and it has been tied up in litigation since then. The NAM is actually a party in that litigation and we are hopeful that we can defend the SEC's authority, but ISS has been steadfast in not wanting to be regulated, so we certainly think that there is more work to be done both by Congress and by the SEC to ensure that there is an appropriate degree of oversight of these powerful actors.

Mr. HARRIS. Well, let me just follow that up then. Now that this rule is no longer in place, what would you say in your opinion should be done to increase proxy advisor transparency?

Mr. CRAIN. Thank you for that question again. I think we start with the conflicts of interest. Certainly, the Chair's legislation about outright banning those conflicts is something that we support. From the SEC side, we have long supported transparency around those conflicts. Then, the issue that you raise at the beginning of your line of questioning of allowing the proxy firms to provide to companies draft recommendations that they can respond to spot errors and misunderstandings and most importantly to convey to investors here are the two sides of this issue and then that way they can make an informed decision. That is something that we move the ball forward in the right direction in the 2020 rule, but there is much more work to be done depending on how the outcome of these court cases go.

Mr. HARRIS. Well proxy advisors exist, obviously, because shareholders don't have time to research the company's policies before they are called on to help make decisions, so how do you think having access to more information would be helpful essentially if shareholders don't look at that information, how would it improve the proxy advisor's work product?

Mr. CRAIN. It is critically important that shareholders have access to all the information they need to make an informed decision. Unfortunately, under the status quo, we often see that proxy advisors robo-vote investors' shares before even reading the proxy firm's recommendation to say nothing of a potential corporate response to that recommendation. We really are starting behind the eight ball here in terms of investor understanding of these issues and transparency into them. There is much more work that needs to be done to ensure that investors have the information that they need to make an informed decision.

Mr. HARRIS. OK. Thank you very much. Mr. Griffin, when Americans invest in funds and companies, these entities have a fiduciary

responsibility to act in the best interest of their investors. Unfortunately, ISS and Glass Lewis have worked together to push companies to implement ESG agendas. Does pushing recommendations, Mr. Griffin, favor ESG reflect the preferences of everyday Americans who are affected by these decisions?

Mr. GRIFFIN. Thank you, Congressman. That the system is set up to serve the interests of these intermediaries rather than the investors to whom they owe fiduciary obligations. When we speak about it being market driven, I think that there are important limits on that and to the extent these large intermediaries favor the current system, favor the status quo, I find that unsurprising because it is designed to serve their interests.

Mr. HARRIS. In your opinion, what would be the most effective way to help insure proxy advisors are serving the interests of the American investors and consumers?

Mr. GRIFFIN. There are a number of excellent proposals throughout some of the bills in Congress today. Conflicts of interest are particularly a ripe area for looking at just to ensure the objectivity and neutrality of the recommendations that proxy advisors provide.

Mr. HARRIS. Thank you. Thank you very much. Mr. Egan, you mentioned in your written testimony that unlike your foreign-owned competitors, Egan-Jones Proxy Services is owned and operated in the United States. We know ISS is owned by a German corporation. Glass Lewis is owned by two Canadian financial institutions. What are the concerns surrounding the fact that the two leading providers of proxy vote guidance in the United States are based abroad? Could you expand on that?

Mr. EGAN. Yes, and thank you for the question. In my opinion, the structure of this industry needs attention. The reason why I say that is because it is very easy for regulators to push on regulated entities without anybody knowing about it, without any rules, and without any regulation.

In the case of one of our competitors, ISS is owned by Deutsche Boerse. My presumption is that on a regular basis, they are meeting with the regulators because there are so many issues connected with the stock exchange. Therefore, those regulators, they might have a completely different view than what is in the United States for what constitutes something of value.

Mr. FITZGERALD. Thank you. The gentleman's time has expired. The gentleman from Illinois is now recognized for five minutes.

Mr. GARCIA. Thank you, Chair Fitzgerald. I heard some very interesting descriptive language at the beginning of the hearing, and I want to ask Ms. Minow three quick yes or no questions, hopefully.

Are you part of a climate cartel?

Ms. MINOW. No.

Mr. GARCIA. Are you engaged in any racketeering?

Ms. MINOW. No.

Mr. GARCIA. Have you participated in any Mafia-style shake-downs?

Ms. MINOW. No.

Mr. GARCIA. OK. Today's hearing is supposedly about antitrust issues involving proxy advisors, but what is really going on here is we are seeing culture war and procorporate policies being ad-

vanced. Republicans argue that Glass Lewis and ISS have too much power and collude to advance so-called woke corporate governance. I would agree that any market that is 90 percent controlled by two entities should be scrutinized and proposals to foster more competition should be considered. Let's be clear. There is no evidence of collusion between Glass Lewis and ISS and what are some of the examples of woke corporate governance where these proxy advisors have recommended against the company's board's position hasn't been made.

Reporting on the use of child labor in supply chains for meat-packing corporations, auditing working conditions at Amazon, adopting living wage principles at Walmart, reporting by tech companies on the risk posed by generative AI, deriding labor rights as woke, gives away the game. Republicans are always siding with the bosses over workers, and the irony is that these examples of wokeness are outliers.

Ms. Minow, thank you for being here. Isn't it true that in 2024, ISS recommended voting with management on 96 percent of management proposals?

Ms. MINOW. It is.

Mr. GARCIA. Thank you. In your experience including as President of ISS, have you seen any evidence that ISS and Glass Lewis are using the recommendations to push a progressive agenda?

Ms. MINOW. No.

Mr. GARCIA. You studied at the University of Chicago, did I hear you correctly?

Ms. MINOW. I did. I am from Illinois.

Mr. GARCIA. Very well. Thank you. Republicans are trying to crush shareholder rights to benefit the corporate executives who disproportionately fund their party, and they continue to push the narrative about ESG and woke corporate governance to distract us from the truth. The truth is we are nowhere close to achieving and economic democracy that would empower workers, including the worker representation on corporate boards by any stretch.

The truth is as ridiculous as Republican attacks are against ESG, we must not allow wealthy corporations to exploit ESG as cover for their predatory practices, including union busting, worker exploitation, and consumer fraud. The truth is that we are living in an oligarchy where increasingly dominant corporations and billionaires control most of our government and public policy. The fundamental problem is not proxy advisors or ESG. It is a government that has been captured by the wealthy and serves their interest above those of working people.

I represent a district of working people. If Republicans had any interest other than protecting billionaires and wealthy corporations, this Subcommittee would be focusing on policies that tangibly improve the lives of our constituents. They don't. To me that is a betrayal of the real working class in America. Thank you, and I yield back.

Mr. FITZGERALD. The gentleman yields back. I now recognize the Chair of the Full Committee, Mr. Jordan, for five minutes.

Chair JORDAN. Thank you, Mr. Chair. Mr. Crain, what percentage of publicly traded equity shares are held by institutional investors and pension funds?

Mr. CRAIN. It is a very large percentage. I forgot the exact number. It is North of 80 percent, I believe.

Chair JORDAN. Eighty percent. Because of that, most shareholder votes are cast through proxy voting because the shareholder can, is that right?

Mr. CRAIN. That is exactly correct.

Chair JORDAN. OK, and proxy advisors advise or recommend to the institutional investors and the pension funds how they are supposed to vote. Is that right?

Mr. CRAIN. That is correct.

Chair JORDAN. Is their advice followed?

Mr. CRAIN. Pardon?

Chair JORDAN. Is their advice followed? Is the proxy advisors' advice typically followed by the institutional investors and the pension funds?

Mr. CRAIN. It is absolutely followed and in many cases their shares are automatically cast by the proxy firms in line with those recommendations.

Chair JORDAN. The institutional investors are doing exactly what the proxy advisors are told?

Mr. CRAIN. That is exactly correct, yes.

Chair JORDAN. Who are the two largest again, who we have been talking about?

Mr. CRAIN. ISS and Glass Lewis.

Chair JORDAN. ISS and Glass Lewis. How much of the market do they control?

Mr. CRAIN. Ninety-seven percent.

Mr. JOHNSON. Ninety-seven percent of the market, 80 percent of the shareholders' equity shares are with institutional and pension investors. Their advice is followed 95 percent of the time?

Mr. CRAIN. That is essentially correct.

Chair JORDAN. Wow. That is pretty big. That is pretty big. How much money are we talking about?

Mr. CRAIN. Trillions of dollars of equity throughout the market.

Mr. JOHNSON. Five trillion, 20 trillion, and 30 trillion? How much are we talking?

Mr. CRAIN. I don't know the size of the market, but it is a large number of the equity markets in the United States.

Chair JORDAN. My understanding is it is at least \$20 trillion, and the other side says nothing to look at here. Nothing to look at here. Really? That seems like there is a lot to look at there and that is why we are having this hearing.

Now, what kind of advice—so their advice is followed 95 percent of the time, 70 percent of the market, over \$20 trillion, what kind of advice are they giving?

Mr. CRAIN. It is advice on everything that comes before shareholders. It is how the company is run, how the executives are paid, the shareholder proposals that have been discussed, everything that comes before the shareholder base for a vote.

Chair JORDAN. What kind of advice are they given in a political context?

Mr. CRAIN. We know that ISS, for example, recommended in favor of more than 80 percent of ESG shareholder proposals in 2023.

Chair JORDAN. Pro-ESG, pro-DEI?

Mr. CRAIN. As a general rule, yes. Not 100 percent of the time, but, yes, as a general rule.

Chair JORDAN. Vast majority of the time?

Mr. CRAIN. I would say yes.

Chair JORDAN. OK, so kind of leaning to the Left, right?

Mr. CRAIN. I think that is probably a fair characterization.

Chair JORDAN. Their advice is followed 95 percent of the time, and they have 90 percent of the market, 70 percent of these they are giving advice to, and it is always, almost always Left wing?

Mr. CRAIN. I think that is a fair characterization, yes.

Chair JORDAN. Is that how you see it, Mr. Egan?

Mr. EGAN. I have no reason for disagreeing with that.

Chair JORDAN. What about you, Mr. Griffin?

Mr. GRIFFIN. That while it varies by year and we have seen sort of swings with somewhat mirroring the political election cycle, that is—

Chair JORDAN. Is that an accurate picture? Is that an accurate framework?

Mr. GRIFFIN. Overall.

Chair JORDAN. OK, now that is not the end of it, is it? Because it is even worse because this duopoly not only offers proxy advisor services, but consulting services as well.

Mr. GRIFFIN. That is exactly right.

Chair JORDAN. You can go consult with them before they give you the recommendations that are always followed, and if you don't consult with them, they might give you recommendations that in many ways harm the company and therefore harm the shareholders, is that right, Mr. Crain?

Mr. CRAIN. It is and we have seen that when companies get negative recommendations from the advice side, they will immediately get a solicitation from the consulting side saying hey, wouldn't you really like to have us help you out next year to avoid those?

Chair JORDAN. Yes.

Mr. CRAIN. That is a pretty concerning fact pattern.

Chair JORDAN. Will you pay the protection money? Will you pay the shake down?

Mr. CRAIN. Exactly.

Chair JORDAN. Holy cow, such a deal. Such a deal. Ms. Minow was part of it all when she worked at ISS, is that right? The question wasn't for you; it is for Mr. Crain.

Ms. MINOW. I understand that, but he doesn't know the answer and I do.

Chair JORDAN. I wasn't asking you a question.

Ms. MINOW. It is wrong. I did not allow—

Chair JORDAN. You might be able to do the consulting services and the recommendations—

Ms. MINOW. I did not allow ISS to do consulting when I was—

Chair JORDAN. Does ISS do consulting now?

Ms. MINOW. ISS does consulting now and—

Chair JORDAN. There you have it. There you have it. My question—the way it works is the members get to ask the questions to the people they want to give the answers. My question was to Mr. Crain.

I appreciate you jumping in, Ms. Minow, and telling us that ISS does now offer consulting services in addition to the proxy advisor thing, which is the problem, which is—well, not the full problem, but certainly part of the problem.

Is that right, Mr. Crain?

Mr. CRAIN. I would agree with that, yes, sir.

Chair JORDAN. Then, you can even go even maybe one step further and say on the platform no competition is allowed which I sort of get Ms. Minow's argument on the Amazon issue, I sort of get. It is almost like they have got this thing rigged from start to finish and it is two companies. The other side says nothing to look at here.

Well, that is kind of ridiculous and I appreciate the Chair and his work on this important issue. With that, I yield back.

Mr. FITZGERALD. The Chair yields back. The gentleman from Georgia is now recognized for five minutes.

Mr. JOHNSON. Thank you, Mr. Chair, and I would like to offer Ms. Minow the opportunity to fully respond to Mr. Jordan.

Ms. MINOW. Thank you very much, I appreciate it. Yes, when I was at ISS, I was President. I did not allow us to do consulting services and yet, we were spending a ton of time trying to walk corporations through who would call us and say we want to understand your system. I understand why they do it now. The large institutional investors who choose to use their services bake that in.

Mr. Jordan mentioned the four-percent—

Chair JORDAN. Do you agree with ISS, the decision to—

Mr. JOHNSON. It is my time. It is my time.

Ms. MINOW. He mentioned the four-percent where they disagree. Interestingly, whenever ISS recommends a vote or Glass Lewis recommends a vote contrary to management, what we find there, if you look at the numbers, is that the clients make up their own minds. That, for example, ISS recommended a vote against Elon Musk's ridiculous \$58 billion pay package and yet, the shareholders voted overwhelmingly in favor of it.

Mr. JOHNSON. Great example. Do you believe Milton Friedman, since you are a graduate of the University of Chicago, would he be turning over in his grave listening to this attack on the free-market system that this hearing represents?

Ms. MINOW. He would be spinning like a top.

Mr. JOHNSON. Yes. Thank you. Mr. Egan, since 2002, have you been involved in the business of proxy advisor services, correct?

Mr. EGAN. Since 2002.

Mr. JOHNSON. Since 2002, your primary competitors in this proxy advisor service industry has been Glass Lewis and ISS, correct?

Mr. EGAN. That is correct.

Mr. JOHNSON. You have fought your way up to the top. Now, you are now the third largest proxy advisory firm operating in the Nation, correct?

Mr. EGAN. We have been the third largest for a number of years, yes.

Mr. JOHNSON. I commend you for that. This hearing gives you an opportunity to promote the fact that your company is an anti-woke proxy advisor firm, correct?

Mr. EGAN. I would not characterize our firm as an anti-ESG firm. We offer ESG—

Mr. JOHNSON. Well, I tell you your testimony, your testimony reads and looks like a promotional brochure for your company. I have never seen anything like it. You are here today to basically get some government help in positioning your business to become a larger player in this industry. Isn't that correct?

Mr. EGAN. In my opinion, no.

Mr. JOHNSON. Well, let me ask you this—

Mr. EGAN. If I may answer the question—

Mr. JOHNSON. No, let me ask you—

Mr. EGAN. I would be happy to answer.

Mr. JOHNSON. I am moving on. I want to ask you about that 2012 SEC complaint that was filed against you that charged you with, among other things, having conflicts of interest. You hired the attorney, the same attorney that represents Donald Trump, Jr., Mr. Alan Futerfas. Isn't that correct?

Mr. EGAN. Mr. Futerfas is not representing—

Mr. JOHNSON. He was your lawyer.

Mr. EGAN. He hasn't represented the firm for over 10 years.

Mr. JOHNSON. He was your lawyer though, right?

Mr. EGAN. Probably about 15 years ago, yes.

Mr. JOHNSON. The same lawyer that now represents Donald Trump, Jr. Are you one of the folks who contributed to Trump's inauguration campaign?

Mr. EGAN. We are not.

Mr. JOHNSON. Or his campaign?

Mr. EGAN. No.

Mr. JOHNSON. OK. You sure are seeking some exposure today on this anti-woke tip.

Mr. EGAN. I am here today to provide insight into our expediences in—

Mr. JOHNSON. You are trying to create a competitive advantage. This is like crony capitalism, and I am sure that—

Mr. EGAN. There are some real problems in this industry.

Mr. JOHNSON. I am sure that Milton Friedman would not be approving of this kind of conduct complicit with a Congress that is a rubber stamp to everything that Donald Trump is trying to do to put his finger on the free-market system and make it such that it works for him and his interests and everything else is secondary. With that, I am going to yield back.

Mr. FITZGERALD. The gentleman yields back. The gentleman from Virginia is now recognized for five minutes.

Mr. CLINE. Thank you, Mr. Chair. I am going to yield as much time to the Chair.

Chair JORDAN. I thank the gentleman. Just a quick question for Ms. Minow. Is ISS wrong now that they offer consulting services to their clients?

Ms. MINOW. I disagree with it, but I am all in favor of every possible option be offered to the market and letting the market decide.

Chair JORDAN. Is it wrong?

Ms. MINOW. I don't use those services.

Chair JORDAN. OK. Thank you.

Mr. CLINE. Thank you. I want to restate what the gentlelady from Wyoming started with her questioning. Sounds like a racket to me.

Mr. Griffin, ISS and Glass Lewis' 90 percent plus market share clearly suggests a violation of Section 1 or Section 2 of the Sherman Act. Would you agree?

Mr. GRIFFIN. Thank you for your question. I am more of a corporate governance expert. I am here to talk about that. It potentially does, but I am not able to opine on that.

Mr. CLINE. Would DOJ or FTC scrutiny be justified based on historical—

Mr. GRIFFIN. The situation certainly warrants further study and more broadly, I would take issue with the characterization of this as a market-driven phenomenon and a response to market pressure. It is a response to regulatory pressure to vote by these asset managers. Also, there are very weak financial incentives to respond to the concerns of the actual shareholders.

Mr. CLINE. It is pretty clear. The absence of fiduciary responsibility paired with high-market concentration supports a case for closer antitrust scrutiny or regulatory intervention. The opposition seems to believe that these practices are immune somehow from antitrust scrutiny simply because they occur in the context of shareholder voting. Firms apparently, firms with effective monopoly power should be allowed to self-police their own competitive and ethical boundaries.

Mr. Griffin, are ideologically aligned ESG recommendations that mirror each other grounds for a Section 1 Sherman Act claim due to collusion?

Mr. GRIFFIN. It may merit investigation. Broadly that investment managers are not incentivized to serve interest beyond those of the intermediary clients that they possess and, in particular, there are very weak ties to the actual investors.

Mr. CLINE. Does offering consulting services to the same firms you issue proxy recommendations for meet the legal threshold for monopoly leveraging?

Mr. GRIFFIN. It may be an important example of the market power they wield and there may be a cross-subsidy essentially between the consulting services and their advisory business.

Mr. CLINE. Mr. Crain, how have ESG-driven voting recommendations affected your members' costs and operation?

Mr. CRAIN. Manufacturers are focused on growing their business, delivering return for shareholders, creating jobs for American people in every State and every Congressional district. To the extent that they are distracted from that critically important mission to support the U.S. economy, to respond to activists' proposals on the proxy ballot, or to the agenda of the proxy advisory firms, that is a distraction from the ultimate goal that we would all want to support which is that of driving the American economy and creating manufacturing jobs.

Mr. CLINE. Have your members reported feeling pressure to purchase consulting services from these proxy firms?

Mr. CRAIN. They absolutely have. It is a relatively common fact pattern that you will receive a negative vote recommendation and then soon thereafter receive solicitations from the consulting serv-

ice side of the business, asking if you would like to subscribe to avoid negative recommendations in the future and just structure your policies in line with what I assess and/or Glass Lewis want so that you avoid negative recommendations in the future. There is absolutely that degree of pressure.

Mr. CLINE. If this type of dual role conflict is done by credit rating agencies or financial auditors, wouldn't it be just as unacceptable for it to be happening in those areas as well?

Mr. CRAIN. Congress has stepped in for those regards and the SEC did in this case, and unfortunately, that rule has been held up in court for the last five years and not been allowed to take effect.

Mr. CLINE. Mr. Crain—I am sorry, Mr. Egan, have you ever lost business to ISS class loads due to bundled consulting services?

Mr. EGAN. Would you mind repeating the question?

Mr. CLINE. Have you ever lost business to ISS and Glass Lewis due to bundled consulting services?

Mr. EGAN. Yes.

Mr. CLINE. Wouldn't you say that—can you cite specific shareholder proposals or climate-related screens that seem ideologically driven rather than industrial oriented?

Mr. EGAN. We see those regularly, but regarding losing business, bear in mind that they can charge nothing on the proxy advisory business and pick up in compensation on the other side of the business and maintain their preferential position which is crazy when you think about it.

Mr. CLINE. Yes, that sounds like a scam to me. I yield back.

Mr. FITZGERALD. The gentleman yields back. The gentleman from California is now recognized for five minutes.

Mr. ISSA. Thank you, Mr. Chair. Many good questions have been asked and I am going to try and close some of them together for a moment. Antitrust is complicated and you always have to ask things like what is the relevant market and so on, but per se when you have just two that control 90 percent in general, assuming it is a relevant market, that is monopolistic power, correct? Nobody on any side disagrees that we have the potential for monopolistic behavior because you have such concentration.

Now, in monopolies, the most common thing that we look at is tie-ins, one product being leveraged by another. Is there anybody here that doesn't see that at least in the abstract, there appears to be a tie-in when the two companies controlling 90 percent of the market also have a product that is, in fact, could be independent, could be spun off, but it isn't because it is a tied-in product? OK.

After all this time of not necessarily all agreeing, we have got agreement on those two which means that we have per se monopolistic power. We have a tie-in and now what we are trying to discover is have they used that tie-in?

Mr. Egan, I am going to push the envelope of this body by reminding people of Godfather 1. In "The Godfather," when the Corleones' representative goes out to California and he is talking about the things that could go bad like union problems and so on, and that the Godfather would be very appreciative if he just gives this man a part in his movie and then those problems wouldn't

exist. He gets thrown out. Then there wasn't the union strike, but there was a response.

In your experience, have you seen that this is essentially what is happening. You are being told by others, hey, if you hire these guys, things will go better. When you don't, you end up with an adverse proxy situation. Isn't that sort of what happens? It isn't quite "The Godfather." There is not actually a horse in your bed, but in fact, you do see bad things happen when you don't hire them and less bad things when you do.

Mr. EGAN. I can't disagree with that. In fact, I—

Mr. ISSA. No one disagrees with "The Godfather." It is just one of my favorite movies.

OK, I will open this up at some risk and say if that is the case, then shouldn't we and agencies in the Federal Government, in general, be looking at a breakup of that power to create a tie? Isn't that we are really here on both sides of the aisle, hopefully, looking and thinking we should consider? Each of you.

Mr. Egan?

Mr. EGAN. Absolutely. This market has become dysfunctional, OK, from our perspective, that you have two companies, particularly one company, ISS, controlling the platform with consulting. Then, also the proxy advisory one. When we have been hired by a major institutional investor and are relying on ISS to get information so we can conduct our business, we are not getting that information. That information, as I mentioned, in my testimony, was when the proxy due date is. If we don't have that, it is very, very difficult. They said, hey, listen, we are a distributor here. We are not going to give you that information. We have been impeded. OK?

As I said before, they can charge nothing on their proxy advisory service and more than make it up on their consulting service.

Mr. ISSA. That is why we call it a tie-in.

Mr. EGAN. Absolutely, and this notion of just because it is a free market everything is fine, well, with almost every single monopoly or duopoly situation, it started off as a free market and then it became dysfunctional.

Mr. ISSA. Mr. Crain, you represent so many manufacturers who are just trying to compete. They seldom, if ever, have a 90 percent or a 45 × 2 market share. Isn't it true that one of the biggest impediments to their being competitive is when the sources that they want to buy their products' subcomponents from have, if you will, a lock on the market of 90 percent between two vendors. Isn't that the most—isn't that by definition what makes the people you represent unable to deliver a product is even if they are a diverse group, if they are buying from one of two vendors, they get to pay a lot more, correct?

Mr. CRAIN. That is correct.

Mr. ISSA. Thank you, I yield back.

Mr. FITZGERALD. The gentleman yields back. This concludes today's hearing. We thank our witnesses for appearing before the Committee today. Without objection, all Members will have legislative days to submit additional written questions for the witnesses or additional materials for the record. Without objection, the hearing is adjourned.

[Whereupon, at 11:41 a.m., the Subcommittee was adjourned.]

All materials submitted for the record by Members of the Subcommittee on the Administrative State, Regulatory Reform, and Antitrust can be found at: <https://docs.house.gov/Committee/Calendar/ByEvent.aspx?EventID=118422>.

