

Heightened Scrutiny of Proxy Advisors May Present Challenges for Institutional Investors

By Daniel Barenbaum and Alex Vahdat

Proxy advisory firms play an important role in how many institutional investors vote their shares. As institutional ownership of public companies has grown, proxy advisors have helped investors manage the volume and complexity of proxy voting, meet regulatory expectations, and implement voting policies across large, diversified portfolios. At the same time, lawmakers, regulators, and market participants have increased their scrutiny of proxy advisors' influence, methodologies, and use of non-financial factors. This article summarizes that scrutiny and highlights implications for pension funds to consider in their use of proxy advisors in a changing environment.

The Role and Value of Proxy Advisors

Public companies regularly solicit shareholder votes on matters such as director elections, executive compensation, mergers, and shareholder proposals. For large institutional investors that hold hundreds or thousands of positions, analyzing each ballot item in detail is operationally difficult and costly without external support.

Proxy advisory firms emerged to meet this need. They track proxy calendars, review company disclosures, and provide research and voting recommendations. Many also offer electronic platforms that allow institutional investors to apply customized voting policies or to default to the proxy advisor's benchmark policy across portfolios. For smaller and mid-sized institutions in

particular, proxy advisors can play a central role in helping them meet regulatory expectations to adopt and follow proxy voting policies while voting on a high volume of proxies each season.

Institutional investors rely on proxy advisors to:

- Provide timely research and analysis on governance and compensation matters across many markets.
- Implement fund-specific voting guidelines consistently across accounts.
- Help satisfy fiduciary and regulatory expectations

that proxy advisors vote in a way that suits the fund's best interests and maintain appropriate records.

Many investors view these services as providing meaningful efficiencies.¹ Large pension funds often use proxy advisors' reports as one input among others, while other, smaller funds with fewer internal resources make more extensive use of default voting aligned with a proxy advisor's recommendations.²

Regulatory Framework and Evolving Scrutiny

Under the Securities Exchange Act of 1934, the U.S. Securities and Exchange Commission (SEC) regulates the proxy solicitation process and requires public companies to disclose information about matters submitted for shareholder vote.³ Proxy advisory firms historically have not been required to register with the SEC solely because they provide proxy voting advice, and their



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recommendations were not long treated as “[s]olicitations” subject to the proxy rules.⁴

Some proxy advisory firms, however, have voluntarily registered as investment advisors under the Investment Advisers Act of 1940 (Advisers Act).⁵ Registration subjects them to additional disclosure, compliance, and anti-fraud obligations, including duties to disclose business practices and conflicts as well as to adopt written policies reasonably designed to prevent Advisers Act violations.⁶ Of the largest proxy firms, Institutional Shareholder Services (ISS) is registered as an investment advisor, and Glass Lewis has announced its intention to register as well.⁷

Over the last decade, the SEC has periodically revisited how its regulatory schemes apply to proxy advisors and to the investment advisors who use them. For example, in 2019 and 2020, the SEC adopted rules and guidance that treated most proxy voting advice as a form of solicitation and imposed additional disclosure and procedural requirements on proxy advisors.⁸ Those rules were later partially rescinded, and in 2025, the U.S. Court of Appeals for the D.C. Circuit held that proxy voting advice, as typically provided by proxy advisors, does not constitute a “solicitation” under the federal proxy rules.⁹

More recently, a presidential executive order directed the SEC, the Federal Trade Commission (FTC), and the Department of Labor to review their existing guidance and rules relating to proxy advisors, with a particular focus on transparency, competition, and the use of environmental, social, and governance (ESG) and diversity, equity, and inclusion (DEI) consider-

ations in proxy voting.¹⁰ The order reflects the view among some policymakers that voting recommendations based on non-pecuniary considerations may not align with investor financial interests.¹¹ It directs regulators to evaluate whether existing rules adequately address potential conflicts of interest, market concentration, and the transparency of proxy voting recommendations, including whether proxy advisors’ methodologies appropriately focus on investors’ financial interests.¹²



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In particular, the order highlights concerns among some policymakers that voting recommendations may incorporate ESG or DEI considerations that those policymakers believe may not align with investors’ pecuniary interests. However, whether such factors are financially material remains the subject of ongoing debate among regulators, courts, and market participants.¹³ Thus, while it is apparent that federal scrutiny of proxy advisory firms will continue, it is unclear whether ESG and DEI considerations will remain within the scope of such scrutiny.

Other governmental-level scrutiny has also intensified. Media reports indicate that the FTC has examined whether the leading proxy advisors’ practices raise competition concerns.¹⁴ Separately, Texas has enacted legislation that would require proxy advisors to make specific disclosures when their recommendations diverge from management recommendations or are based in whole or in part on non-financial considerations, although enforcement of that statute is currently enjoined pending litigation. Moreover, the Texas Attorney General recently announced an investigation into ISS and Glass Lewis for potentially misleading investors “by issuing voting recommendations that

advance radical political agendas rather than sound financial principles.”¹⁵ The Florida Attorney General made similar claims in a November 2025 lawsuit against those same firms.¹⁶

In this environment, some large financial institutions are now also reassessing their reliance on traditional proxy advisory services. For example, JPMorgan’s asset management division has announced that it will no longer use proxy advisors for shareholder votes and instead will rely on a proprietary, technology-driven system to aggregate and analyze proxy data.¹⁷ Wells Fargo’s wealth and investment management unit recently announced a similar move.¹⁸ While these are but two examples, other market participants could be exploring alternative approaches to proxy research and execution.

Areas of Ongoing Debate

As the proxy advisory industry has grown, so too have criticisms about how their services affect voting outcomes and corporate governance.

Where many institutional investors rely on proxy advisory services, the issue is clearly more nuanced than those articulated criticisms suggest. Several themes recur.

Market Concentration

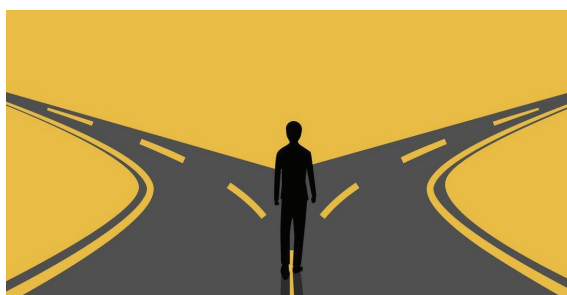
Two firms—ISS and Glass Lewis—account for the vast majority of the proxy advisory market.¹⁹ Some policymakers and corporate groups describe this as an effective duopoly that could give their voting policies outsized influence, especially where institutional investors follow recommendations closely.²⁰ On the other hand, some note that institutional investors differ in how they use proxy advice and frequently customize or depart from benchmark recommendations, which can mitigate the practical impact of market concentration.²¹

Methodology and Transparency

Corporate issuers and some investors have questioned the transparency of proxy advisors’ methodologies and the extent to which their voting guidelines account for company-specific circumstances, such as size, industry, or capital structure.²² Proxy advisors, conversely, emphasize their efforts to engage with investors and issuers, disclose high-level methodologies, and offer both benchmark and customized policies.²³

Accuracy

Some corporate managers report experiencing factual or analytical errors in proxy reports, such as misclassifying peer groups or relying on outdated information.²⁴ However, empirical studies and regulatory reports suggest that, in light of their internal policies, many institutional investors independently review recommendations, allowing those investors not only to bolster their analyses, but also to spot proxy advisor mistakes, if any, prior to making a voting decision.²⁵



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Conflicts of Interest

Commentators also have focused on potential conflicts when proxy advisory firms provide both voting recommendations to investors and certain corporate facing services. For example, ISS offers proxy voting research and analysis to institutional investors while, through an affiliate, also providing corporate governance consulting services to issuers on topics similar to those addressed in its voting guidelines.²⁶ Proxy advisors counter this criticism, stating that they maintain internal controls and disclosure practices to address these conflicts. SEC guidance also emphasizes that investment advisors, as part of their fiduciary oversight, should evaluate conflict disclosure.²⁷

Debates about ESG and DEI frequently intersect with these themes. Critics argue that some proxy advisors

support ESG-oriented proposals that may not maximize financial returns, while proxy advisors and many institutional investors respond that they consider ESG factors in their policies to the extent they believe those factors are financially material over the long term. This discord underscores the importance of clear disclosure and alignment between advisors and the institutions they advise regarding how such considerations are incorporated into proxy voting.

Conclusion

Proxy advisors remain an integral part of the proxy voting ecosystem for pension plans and other institutional investors, providing tools and analysis that can help investors discharge their voting responsibilities efficiently and consistently. The developments described above only serve to reinforce that. Legal, regulatory, and market scrutiny of proxy advisors has increased and is likely to continue evolving. Fiduciaries should continue to proactively reassess how they employ proxy advisors, ensure alignment between proxy voting practices and documented policies, strengthen oversight and documentation, and remain attentive to further regulatory developments and market innovations.

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Endnotes

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³ 17 C.F.R. § 240.14a-2 (2025).

⁴ *Id.*

⁵ Investment Advisers Act of 1940, 54 Stat. 847 (1940) (codified as amended at 15 U.S.C. § 80b-1 *et seq.*).

⁶ 15 U.S.C. § 80b-3.

⁷ Glass Lewis & Co., *A Personal Commitment to Change Proxy Voting Practices* (Nov. 25, 2025), <https://www.glasslewis.com/article/personal-commitment-change-proxy-voting-practices>.

⁸ Press Release, SEC, SEC Proposes Rule Amendments to Improve Accuracy and Transparency of Proxy Voting Advice (Nov. 5, 2019), <https://www.sec.gov/newsroom/press-releases/2019-231>.

⁹ *ISS v. SEC*, 142 F.4th 757 (D.C. Cir. 2025).

¹⁰ Exec. Order No. 14366, 90 Fed. Reg. 58503, *Protecting American Investors from Foreign-Owned and Politically*

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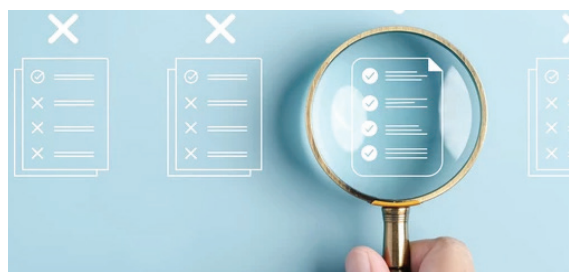
¹¹ *Id.*

¹² *Id.*

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This discord underscores the importance of clear disclosure and alignment between advisors and the institutions they advise regarding how such considerations are incorporated into proxy voting.

¹⁶ Press Release, Fla. Att’y Gen., Attorney General James Uthmeier Sues Proxy Advisory Giants For Deceiving Investors and Manipulation Corporate Governance (Nov. 20, 2025), <https://www.myflorida-legal.com/newsrelease/attorney-general-james-uthmeier-sues-proxy-advisory-giants-deceiving-investors-and>.

¹⁷ Michelle Fox, *JPMorgan’s asset management will no longer use controversial proxy advisors for shareholder votes*, CNBC (Jan. 7, 2026), <https://www.cnbc.com/2026/01/07/jpmorgan-wont-use-controversial-proxy-advisors-for-shareholder-votes.html>.

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¹⁹ Chong Shu, *The Proxy Advisory Industry: Influencing and Being Influenced*, 154 J. Fin. Econ., Apr. 2024, at 5-6.

²⁰ Larcker, David F. and Tayan, Brian, *Seven Questions about Proxy Advisors* (Rock Center for Corporate Governance at Stanford University, Working Paper, 2024), available at <https://www.gsb.stanford.edu/sites/default/files/publication/pdfs/cgri-closer-look-104-seven-questions-proxy-advisors.pdf>.

²¹ See *supra*, note 1.

²² See GAO Proxy Advisor Report, *supra* note 2; *The Proxy Advisor Duopoly’s Anticompetitive Conduct: Hearing Before the Subcomm. on the Admin. State, Regul. Reform & Antitrust of the H. Comm. on the Judiciary*, 119th Cong. 26 (2025) (statement of Charles Crain Managing Vice President, Policy, National Association of Manufacturers).

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²⁴ Michael Cappucci, *The Proxy War Against Proxy Advisors*, 16 N.Y.U. J.L. & Bus. 579, 580 (2020).

²⁵ See GAO Proxy Advisor Report, *supra* note 2.

²⁶ Dan Daskal, Note, *ISS and Other Proxy Advisory Firms’ Conflicts of Interest: Analyzing the Insufficiency of New Securities and Exchange Commission Rules and Guidance*, 2021 Colum. Bus. L. Rev. 1487, 1498 (2022).

²⁷ See, e.g., Institutional Shareholder Services, Inc., *Code of Ethics* (Nov. 2023), <https://www.issgovernance.com/file/duediligence/code-of-ethics-nov-2023.pdf>.