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

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

April 29, 2025

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

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

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

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

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

The Society's Public Policy Goals

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

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

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

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

Background on Proxy Advisory Firms

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The Need for Common-Sense Regulation of Proxy Advisory Firms

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

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

SEC Jurisdiction

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

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

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

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

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

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

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

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

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

¹⁰ *Id.*

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

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

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

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

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

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

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

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

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

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

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

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

¹⁵ *Id.* at 5-7.

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

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

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

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

¹⁷ *Id.* at 10.

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

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

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

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

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

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

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

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

The Benefits of Increased Disclosure

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

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

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

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

Automated Voting

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

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

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

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

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

²⁴ *Id.*

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

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

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

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

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

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

²⁶ *Id.* at 66,520.

Legislation to Address Proxy Advisory Firm Issues

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

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

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

Conclusion

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