

## CLIENT ALERT

# Proxy Voting Advisors Under Pressure: Executive Order Instructs Examination into Proxy Voting Advisor Practices, Duties

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### The Order

On December 11, 2025, the White House issued an executive order directing the Securities and Exchange Commission (the “SEC”), the Federal Trade Commission (the “FTC”), and the Department of Labor (the “DOL”) to initiate various actions relating to proxy voting advisors (the “Order”).<sup>1</sup> The Order instructs the Secretary of Labor and the Chairman of the SEC to review, rescind, or revise rules concerning proxy voting advisors to promote

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<sup>1</sup> Exec. Order No. 14366, 90 Fed. Reg. 58503 (Dec. 11, 2025), available at <https://www.whitehouse.gov/presidential-actions/2025/12/protecting-american-investors-from-foreign-owned-and-politically-motivated-proxy-advisors/>.

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“accountability, transparency, and competition,” while directing the FTC Chairman, alongside the Attorney General, to review actions taken by proxy voting advisors for potential unfair competition or actions.<sup>2</sup>

The Order underscores the current administration’s concerns related to proxy voting advisors’ influence over corporate governance and capital markets, emphasizing that the two largest firms are foreign-owned and control more than 90 percent of the proxy voting advisor market, including shares held through mutual funds and exchange-traded funds.<sup>3</sup> The Order asserts, without citing any particular evidence, that proxy voting advisors use their influence to advance political agendas, particularly “diversity, equity, and inclusion and environmental, social, and governance” policies. The Order posits that proxy voting advisors’ practices raise concerns about conflicts of interest and the quality of the proxy voting advisors’ recommendations, but the Order states “investor returns should be the only priority.”<sup>4</sup>

### **The Order and the SEC**

The Order directs the Chairman of the SEC to review all rules, regulations, guidance, bulletins, and memoranda relating to proxy voting advisors, and consider revising or rescinding those that are inconsistent with the purpose of the Order, especially to the extent that they implicate diversity, equity, and inclusion (“DEI”) and environmental, social, and governance (“ESG”) policies. The SEC Chairman also is directed to enforce the anti-fraud provisions of the federal securities laws regarding material misstatements or omissions in proxy voting advisors’ voting recommendations, and consider revising Rule 14a-8 under the Securities Exchange Act of 1934 (the “Exchange Act”), which sets out requirements for shareholder proposals to be included in, or excluded from, a company’s proxy statement.<sup>5</sup> Most recently, the Director of the Division of Investment Management, Brian Daly, gave a speech that acknowledged the work needed to address the Order, discussed whether an investment adviser must vote client proxies and if an adviser can use a proxy voting advisor, considered where do “we” go from here, and explored what enhancements Artificial Intelligence can provide in this space.<sup>6</sup>

To take actions contemplated by the Order, the Commission must contend with the definition of solicitation and its application to proxy voting advice. Generally, the SEC has deemed proxy voting advice a solicitation subject to the

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<sup>2</sup> See *id.*; see also, Fact Sheet, President Donald J. Trump Protects American Investors from Foreign-Owned and Politically-Motivated Proxy Advisors (Dec. 11, 2025), available at <https://www.whitehouse.gov/fact-sheets/2025/12/fact-sheet-president-donald-j-trump-protects-american-investors-from-foreign-owned-and-politically-motivated-proxy-advisors/>.

<sup>3</sup> Exec. Order No. 14366, 90 Fed. Reg. 58503 (Dec. 11, 2025), available at <https://www.whitehouse.gov/presidential-actions/2025/12/protecting-american-investors-from-foreign-owned-and-politically-motivated-proxy-advisors/>.

<sup>4</sup> *Id.*

<sup>5</sup> See Shareholder Proposals, 17 CFR 240.14a-8.

<sup>6</sup> See Brian Daly, Director of Division of Investment Management, Securities and Exchange Commission, (Re)Empowering Fiduciaries in Proxy Voting, Remarks to the New York City Bar Association (Jan. 8, 2026), available at <https://www.sec.gov/newsroom/speeches-statements/daly-remarks-nycba-proxy-010826>.

proxy rules.<sup>7</sup> The SEC clarified this stance most recently in 2020 and 2022.<sup>8</sup> The proxy rules require proxy voting advisors to disclose conflicts of interest and expose proxy voting advisors to potential liability for material misstatements or omissions of fact.<sup>9</sup> Recent litigation has cast doubt about whether a proxy voting advisor's actions constitute a solicitation, limiting the SEC's ability to exert influence over proxy voting advisors.<sup>10</sup> In July 2025, the United States Court of Appeals for the D.C. Circuit found that the SEC's 2020 categorization of proxy voting advice as a solicitation was not supported by its "statutory context," invalidating the interpretation of proxy voting advice as a solicitation.<sup>11</sup> Without an appeal to the Supreme Court or Congressional action, this interpretation now governs the definition and application of solicitation for proxy voting advisors.

Another question the Order directs the SEC Chairman to consider is whether proxy voting advisors should be required to register as investment advisers. The Order notes that some, but not all, proxy voting advisors are registered as investment advisers and directs the SEC to consider whether they should be. The Investment Advisers Act of 1940 (the "Advisers Act") defines an investment adviser as "any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities, or who, for compensation and as part of a regular business, issues or promulgates analyses or reports concerning securities."<sup>12</sup> The SEC and its staff have long taken the position that whether a person falls within this definition depends on all of the facts and circumstances, and particularly whether the services provided satisfy each of the three elements of the definition: (1) providing advice to others, or issuing reports or analyses, regarding securities; (2) being in the business of providing such services; and (3) providing such services for compensation.<sup>13</sup> The Commission has not previously interpreted this definition to encompass advice regarding the voting of proxies. Notably, the Advisers Act and the

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<sup>7</sup> See Proxy Voting Advice, Rel. Nos. 34-95266, 17 CFR pts. 240 and 276, p. 51, (Jul. 13, 2022), available at <https://www.sec.gov/files/rules/final/2022/34-95266.pdf> ("to the extent that a [proxy voting advisor's] proxy voting advice constitutes a "solicitation" under Rule 14a-1(l)(1)(iii)(A), it is subject to liability under Rule 14a-9 to the same extent that any other solicitation is, or would have been, prior to the 2020 Final Rules."). See *id* at 11 (In 2020, the SEC adopted rules and rule amendments governing proxy voting advisors which codified that proxy voting advice "generally constitutes a solicitation," subjecting proxy voting advisors to new disclosure and procedural requirements as well as heightened review of statements and omissions under existing anti-fraud provisions).

<sup>8</sup> See Press Release, Securities and Exchange Commission, SEC Adopts Rule Amendments to Provide Investors Using Proxy Voting Advice More Transparent, Accurate and Complete Information (Jul. 22, 2020), available at <https://www.sec.gov/newsroom/press-releases/2020-161>. The SEC modified these rules in 2022, removing a specific note regarding anti-fraud liability under Rule 14a-9 but clarifying that the provision continues to apply to all proxy voting advice. Press Release, Securities and Exchange Commission, SEC Adopts Amendments to Proxy Rules Governing Proxy Voting Advice (Jul. 13, 2022), available at <https://www.sec.gov/newsroom/press-releases/2022-120>.

<sup>9</sup> See Proxy Voting Advice, Rel. Nos. 34-95266, 17 CFR Pts. 240 and 276, p. 11 (Jul. 13, 2022), available at <https://www.sec.gov/files/rules/final/2022/34-95266.pdf>.

<sup>10</sup> *Institutional Shareholder Services, Inc. v. SEC*, No. 24-5105 (D.C. Cir. 2025), (available at <https://media.cadc.uscourts.gov/opinions/docs/2025/07/24-5105-2123183.pdf>).

<sup>11</sup> *Id.* at 14-15. In interpreting the Exchange Act's definition of solicitation, the Court rejected the argument that proxy voting advisors solicit the votes of the shareholders whom they advise, but instead held that the statute was not "intended to reach those entities that merely advise others how to vote, without themselves seeking votes or acting on behalf of those who do."

<sup>12</sup> See 15 U.S.C. § 80b-2(11).

<sup>13</sup> See Rel. No. IA-1092, Securities and Exchange Commission, Applicability of the Investment Advisers Act to Financial Planners, Pension Consultants, and Other Persons Who Provide Investment Advisory Services as a Component of Other Financial Services (Oct. 8, 1987), available at <https://www.sec.gov/files/rules/interp/1987/ia-1092.pdf>.

rules thereunder are not designed to address most of the concerns expressed in the Order or in the SEC's previous guidance,<sup>14</sup> nor do they currently permit the registration of a proxy voting advisor that does not have assets under management.

The Order likewise directs the SEC Chairman to:

- Consider requiring greater disclosure by proxy voting advisors regarding their recommendations, methodology and conflicts;
- Analyze whether proxy voting advisors serve as a vehicle for investment advisers to coordinate their voting decisions resulting in the formation of a group for purposes of the beneficial ownership reporting provisions of Section 13(d) and (g);<sup>15</sup> and
- Direct the SEC staff to examine whether investment advisers are acting within their fiduciary duty if they engage a proxy voting advisor to advise them regarding "non-pecuniary factors" in investing.

### **The Order and the DOL**

The Order also instructs the Secretary of Labor to "revise all regulations and guidance regarding the fiduciary status" of proxy voting advisors, including whether "any individual who has a relationship of trust and confidence" is an investment advice fiduciary under the Employee Retirement Income Security Act of 1974 ("ERISA").<sup>16</sup> The DOL does not directly regulate proxy voting advisory firms, but it does regulate ERISA fiduciaries, i.e., parties who manage or provide regular, ongoing investment advice with respect to the assets of ERISA-covered plans. The DOL's "longstanding position" has been that the ERISA fiduciary duty to manage ERISA plan assets that are shares of stock includes the management of shareholder rights appurtenant to those shares, such as the right to vote proxies.<sup>17</sup> Further, the DOL has indicated that it may propose new rulemaking in 2026 defining which persons and entities are "fiduciaries" for purposes of providing various investment advice to ERISA plans.

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<sup>14</sup> See Proxy Voting Advice, Rel. Nos. 34-95266, 17 CFR Pts. 240 and 276, p. 11 (Jul. 13, 2022), available at <https://www.sec.gov/files/rules/final/2022/34-95266.pdf>.

<sup>15</sup> See 17 CFR § 240.13d-3; Sections 13(d)(3) and 13(g)(3) establish that "when two or more persons act as a...group for purposes of acquiring, holding, or disposing of securities of an issuer," they are treated as a single person for purposes of determining beneficial ownership, subjecting such persons to greater reporting requirements and, depending on the facts and circumstances, restrictions. Extending group status to investment advisers simply because they use the same proxy voting advisors would result in a greater number of advisers being required to file reports on Schedules 13D and 13G, and potentially subject their reports to greater scrutiny by the SEC. See also Compliance and Disclosure Interpretation, Securities and Exchange Commission, Exchange Act Sections 13(d) and 13(g) and Regulation 13D-G Beneficial Ownership Reporting (Jul. 11, 2025), available at: <https://www.sec.gov/rules-regulations/staff-guidance/compliance-disclosure-interpretations/exchange-act-sections-13d-13g-regulation-13d-g-beneficial-ownership-reporting>.

<sup>16</sup> Exec. Order No. 14366, 90 FR 58503 (Dec. 11, 2025), available at <https://www.whitehouse.gov/presidential-actions/2025/12/protecting-american-investors-from-foreign-owned-and-politically-motivated-proxy-advisors/>.

<sup>17</sup> Department of Labor, Fiduciary Duties Regarding Proxy Voting and Shareholder Rights, 29 CFR Pts. 2509 and 2550 (Dec. 16, 2020), available at <https://www.federalregister.gov/documents/2020/12/16/2020-27465/fiduciary-duties-regarding-proxy-voting-and-shareholder-rights>.

The Order also directs the Secretary of Labor to assess “whether proxy voting advisors act solely in the financial interests of plan participants” and to “enhance transparency” regarding proxy voting advisors’ consideration of DEI and ESG factors.<sup>18</sup> In 2020, the DOL promulgated a regulation clarifying that asset managers are subject to ERISA fiduciary duties when voting proxies for ERISA-covered plans and that they should do so “prudently and solely in the interests of the plan participants and beneficiaries.”<sup>19</sup> This rule likewise determined that fiduciaries should make investment decisions based solely on pecuniary factors, “financial considerations that have a material effect on the risk and/or return of an investment.”<sup>20</sup> This rule was amended in 2022 to allow fiduciaries to consider factors such as ESG and climate change, in addition to traditional pecuniary factors.<sup>21</sup> However, the DOL has signaled that it intends to revise the 2022 regulation, perhaps suggesting a return to the more stringent requirements of the 2020 regulation.

### The Order and the FTC

Finally, the Order directs the FTC in consultation with the Attorney General (as appropriate) to: (1) “review ongoing State antitrust investigations into proxy voting advisors;” and (2) “determine whether there is a probable link between conduct underlying those investigations and violations of Federal antitrust laws” and investigate whether proxy voting advisors have engaged in unfair methods of competition or unfair or deceptive acts or practices.

Both Florida and Texas launched relevant investigations in the past year. In March 2025, Florida Attorney General James Uthmeier announced an investigation into proxy voting advisors Glass Lewis & Co. (“Glass Lewis”) and Institutional Shareholder Services Inc. (“ISS”).<sup>22</sup> That was followed in September 2025 by an announcement from Texas Attorney General Ken Paxton that he was issuing Civil Investigative Demands to the same two companies.<sup>23</sup> About two months later, in November 2025, the Florida Attorney General filed an enforcement action charging the companies with violations of Florida’s consumer protection and antitrust laws.<sup>24</sup>

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<sup>18</sup> Exec. Order No. 14366, 90 Fed. Reg. 58503 (Dec. 11, 2025), available at <https://www.whitehouse.gov/presidential-actions/2025/12/protecting-american-investors-from-foreign-owned-and-politically-motivated-proxy-advisors/>.

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> Department of Labor, Prudence and Loyalty in Selecting Plan Investments and Exercising Shareholder Rights, 29 CFR Pt. 2550 (Dec. 1, 2022), available at <https://www.federalregister.gov/documents/2022/12/01/2022-25783/prudence-and-loyalty-in-selecting-plan-investments-and-exercising-shareholder-rights>.

<sup>22</sup> Florida Office of Attorney General, *Attorney General James Uthmeier Announces Investigation into Glass Lewis & Co. and Institutional Shareholder Services Inc. for ESG and DEI Policies* (Mar. 20, 2025), available at <https://www.myfloridalegal.com/newsrelease/attorney-general-james-uthmeier-announces-investigation-glass-lewis-co-and>.

<sup>23</sup> Texas Office of Attorney General, *Attorney General Ken Paxton Investigates Proxy voting advisors Glass Lewis and ISS for Misleading Public Companies to Push Radical Agenda* (Sep. 16, 2025), available at <https://www.texasattorneygeneral.gov/news/releases/attorney-general-ken-paxton-investigates-proxy-advisors-glass-lewis-and-iss-misleading-public>.

<sup>24</sup> Florida Office of Attorney General, *Attorney General James Uthmeier Sues Proxy voting advisory Giants for Deceiving Investors and Manipulating Corporate Governance* (Nov. 20, 2025), available at <https://www.myfloridalegal.com/newsrelease/attorney-general-james-uthmeier-sues-proxy-advisory-giants-deceiving-investors-and>.

The State Attorneys General assert that the two companies have used their putative control of almost the entire proxy advisory industry to “inject” ESG demands into “nearly every voting recommendation.”<sup>25</sup> According to the Florida Attorney General, this was inconsistent with the companies’ representations to investors that their recommendations “were objective and evidence-based,” and therefore was a violation of Florida’s consumer protection laws.<sup>26</sup> In addition, says the Florida Attorney General, the two companies “acted in lockstep, standardized their products, and denied consumers any meaningful alternative in a market they dominate,” constituting a violation of Florida’s antitrust statute.<sup>27</sup> The two companies deny any wrongdoing.

The FTC, which similarly has both consumer protection and antitrust enforcement authority, launched a similar probe of the two companies in November 2025.<sup>28</sup> This latest Order underscores the Administration’s interest in these issues and its intention that the federal agencies work with state enforcers in their investigation of the companies’ conduct.

### What Happens Next

While any eventual impact depends on the focus and contours of the associated rulemaking, the administration has emphasized investor returns in its various pronouncements. For example, in August 2025, the White House issued an Executive Order directing the Secretary of Labor to examine access to alternative assets within 401(k) plan retirement accounts in order to facilitate diversification, access to investment opportunities, and higher returns.<sup>29</sup> Similarly, the Order reflects the administration’s desire to remove perceived barriers to investor returns, including in the retirement plan space. The Order suggests that the DOL may impose fiduciary standards on proxy voting advisors in an effort to deter proxy voting activities.

For the SEC’s part, Chairman Paul Atkins previously has indicated an interest in reforming the shareholder proposal process to “make IPOs great again” through “de-politicizing shareholder meetings.”<sup>30</sup> The SEC staff has changed its process for considering requests for no-action relief by issuers seeking to exclude shareholder proposals.<sup>31</sup> We can expect the SEC to continue efforts to reform the proxy voting process and to consider ways to increase regulation of proxy voting advisors through rulemaking, either under the Exchange Act proxy rules or the Advisers

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<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> Bloomberg Law, *FTC Wields Unique Tools for Antitrust Probe of Glass Lewis, ISS* (November 20, 2025), available at <https://news.bloomberglaw.com/antitrust/ftc-wields-unique-tools-for-antitrust-probe-of-glass-lewis-iss>.

<sup>29</sup> Exec. Order No. 14330, 90 Fed. Reg. 38921 (Aug. 7, 2025), available at <https://www.whitehouse.gov/presidentialactions/2025/08/democratizing-access-to-alternative-assets-for-401k-investors/>.

<sup>30</sup> Speech, Securities and Exchange Commission Chairman Paul Atkins, Revitalizing America’s Markets at 250 (Dec. 2, 2025), available at <https://www.sec.gov/newsroom/speeches-statements/atkins-120225-revitalizing-americas-markets-250>.

<sup>31</sup> See SEC Division of Corporation Finance, Statement Regarding the Division of Corporation Finance’s Role in the Exchange Act Rule 14a-8 Process for the Current Proxy Season (Nov. 17, 2025), available at <https://www.sec.gov/newsroom/speeches-statements/statement-regarding-division-corporation-finances-role-exchange-act-rule-14a-8-process-current-proxy-season>.

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Act, and to make it more challenging for registered investment advisers to employ the services of proxy voting advisors.

While neither the SEC nor the DOL has as of yet released proposed rulemaking, the Order's themes of "accountability, transparency, and competition" provide a clear roadmap. Proxy voting advisors and related parties should prepare for greater scrutiny into their recommendations and potential investigation into their practices as they plan for the current and future proxy seasons.

If you have any questions regarding this client alert, please contact the following attorneys or the Willkie attorney with whom you regularly work.

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