BCLP. Client Intelligent

BCLPSecCorpGov

PROXY ADVISORS UNDER SCRUTINY: REGULATORY AND LEGAL CHALLENGES FACING ISS AND GLASS LEWIS

Jan 27, 2026

WHAT HAPPENED

As the climate for proxy advisors is becoming more turbulent, public companies may need to adjust their shareholder engagement strategies. Recent developments include:

Federal Regulatory Scrutiny. In December 2025, the Administration issued an executive order directing the SEC to conduct comprehensive reviews of ISS and Glass Lewis, as "foreign-owned proxy advisors," for compliance with anti-fraud, investment advisory, disclosure and conflict of interest requirements, particularly with respect to DEI and ESG matters. The order also directed the FTC to investigate potential unfair competitive or deceptive practices and the DOL to revise fiduciary regulations applicable to ERISA plans' use of proxy advisors. The timing of any rulemaking is unclear, although the agencies may feel some pressure to move expeditiously in light of the Administration's focus.

Emerging State Regulation. Texas SB 2337 was scheduled to become effective last September and subject proxy advisors to substantial disclosure obligations with respect to non-financial matters, such as ESG or DEI. Although preliminarily enjoined in August, a trial on the merits is scheduled to begin early next month. If validated, ISS and Glass Lewis would need to include disclaimers on many recommendations, issue notifications of "materially different" recommendations (including voting contrary to management recommendations) and in some cases publish economic analyses. The law would apply to companies headquartered or domiciled in Texas or proposing to redomicile in Texas.

"Red State" AG Lawsuits. The attorneys general of several "red" states have launched investigations or filed lawsuits challenging ISS and Glass Lewis alleging violations of consumer protection or antitrust laws by favoring ESG or DEI interests over financial performance, harming investor returns. For example:

- In July 2025, the Missouri AG announced an investigation under the state merchandising practices act into the alleged promotion of "radical [ESG] and [DEI] agendas" stating that while ISS and Glass Lewis have presented themselves as neutral advisors, "both companies have used their influence to push far-left DEI and ESG agendas into corporate boardrooms under the guise of impartial investment advice."

- In September 2025, the Texas AG announced an investigation under state consumer protection laws, including prohibitions of nondisclosure of material facts, "for potentially misleading institutional investors and public companies by issuing voting recommendations that advance radical political agendas rather than sound financial principles."

- In November 2025, the Florida AG announced an enforcement action alleging violations of state consumer protection and antitrust laws by "deceiving investors, coordinating their services, and steering corporate governance in ways disconnected from financial performance."

Emerging Rise of Pass-Through Voting. Several large asset managers have launched or plan to explore "pass-through" voting, where institutional or retail clients direct voting of shares of pooled fund portfolio investments, particularly when held by index funds. In some cases, clients direct the fund to cast votes according to third-party policies, board recommendations or consistent with the fund's judgment.

In May 2025, the INDEX Act was introduced in the Senate. The INDEX Act, if it became law, would require certain investment advisors to solicit voting instructions from its investors, and vote its holdings proportionally in accordance with investor instructions. Its prospects remain uncertain; we note that similar bills have been previously introduced but not adopted.

Possible Replacement of Proxy Advisors by AI. In January 2026, news outlets reported that JPMorgan Chase will discontinue use of proxy advisors, relying instead on internal AI resources to evaluate data and make voting decisions for pubic company annual meetings.

Despite these developments, companies should still account for the latest voting policies of proxy advisors, as they'll still apply this season. See Season's Greetings from ISS and Glass Lewis (Dec. 11, 2025). ISS recently updated its voting policy FAQs to reflect these policy changes.

TAKEAWAYS

Although these developments remain fluid, they suggest the influence of proxy advisors may become more fragmented and result in increased variation in proxy voting methodologies. As a result, public companies should consider strengthening their shareholder engagement efforts and utilize appropriate advisors to assist with evaluating voting patterns and conducting proxy solicitations.

As discussed in our Dec 18, 2025 post, recent SEC guidance may deter traditional (non-activist) institutional investors from active engagement. As a result, companies may find they need to adjust their communication strategies and consider enhancing disclosures in proxy and related materials.

With regulatory and market changes, greater focus should be placed on clear communication about the company’s strategy and its responsiveness to shareholder expectations. Key areas include:

- Board composition and practices
- Oversight of critical areas, including cybersecurity and AI
- Peer benchmarking
- Responses to prior shareholder votes, including Say on Pay

RELATED CAPABILITIES

- Securities & Corporate Governance

MEET THE TEAM

R. Randall Wang

Senior Counsel, St. Louis

randy.wang@bclplaw.com
+1 314 259 2149

Andrew S. Rodman

Counsel, New York

andrew.rodman@bclplaw.com
+1 212 541 1197
