

February 9, 2026

## **2026 Proxy Advisory Updates**

The past twelve months have seen a wave of changes to the corporate governance landscape affecting public companies. Many of those changes have affected proxy advisory services. Proxy advisory services have seen their business model come under increased scrutiny from federal and state governments, as well as large institutional stockholders. This memo will highlight some of the updates to proxy advisory services that may be most important to Maryland public companies.

### **1. ISS and Glass Lewis Update Diversity Policies**

As anti-DEI sentiment swept through public company corporate governance in the beginning of 2025, Institutional Stockholder Services Inc. (“ISS”) took the unprecedented step of revising its proxy voting guidelines in the middle of a proxy season. Previously, ISS would (a) “vote against or withhold from the chair of the nominating committee (or other directors on a case-by-case basis) at companies where there are no women on the company’s board,”<sup>1</sup> and (b) “for companies in the Russell 3000 or S&P 1500 indices, generally vote against or withhold from the chair of the nominating committee (or other directors on a case-by-case basis) where the board has no apparent racially or ethnically diverse members.”<sup>2</sup> Now, based on a policy change released February 11, 2025, ISS no longer considers “the gender and racial and/or ethnic diversity of a company’s board when making vote recommendations.”<sup>3</sup>

Glass, Lewis & Co. (“Glass Lewis”) also softened its position on boardroom diversity. Previously, Glass Lewis would “recommend voting against the chair of the nominating committee of a board that is not at least 30 percent gender diverse,”<sup>4</sup> and “recommend against the chair of the nominating committee of a board with fewer than one director from an underrepresented community on the board at companies within the Russell 1000 index.”<sup>5</sup> While Glass Lewis did not formally abandon this practice, it announced that it will “flag all director election proposals at US companies in which our recommendation is based, at least in part, on considerations of gender or underrepresented community diversity...”<sup>6</sup> This policy change made it easier for Glass Lewis clients to ignore voting recommendations that were based on a lack of boardroom diversity.

### **2. Court Overturns SEC’s Attempt to Regulate Proxy Advisory Services**

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<sup>1</sup> ISS, United States Proxy Voting Guidelines Benchmark Policy Recommendations, January 9, 2025, at 12.

<sup>2</sup> *Id.* at 13.

<sup>3</sup> ISS, Press Release, Statement Regarding Consideration of Diversity Factors in U.S. Director Election Assessments, February 11, 2025, available at <https://insights.issgovernance.com/posts/statement-regarding-consideration-of-diversity-factors-in-u-s-director-election-assessments/>.

<sup>4</sup> Glass Lewis, 2025 Benchmark Policy Guidelines, at 40.

<sup>5</sup> *Id.* at 41.

<sup>6</sup> Glass Lewis, Supplemental Statement on Diversity Considerations at U.S. Companies, March 2025, available at <https://resources.glasslewis.com/hubfs/Supplementary%20Guidance/2025%20Supplemental%20Statement%20on%20Diversity%20Consideration%20at%20US%20Companies.pdf>.

On July 22, 2020, the SEC issued final rules (the “2020 Rules”)<sup>7</sup> applicable to proxy advisors, which were then amended on July 13, 2022 (the “Amended Rules”).<sup>8</sup> Under the Amended Rules, proxy advisors, by publishing voting recommendations, are “soliciting proxies” for the purpose of the federal proxy rules. To be exempt from the disclosure and filing requirements normally applicable to proxy solicitors, proxy advisors must disclose conflicts of interest with the subject company of proxy reports. The Amended Rules rescind requirements under the 2020 Rules of proxy advisory firms to timely inform a company of proxy voting advice to which such company is subject and to provide clients with a mechanism to view any response of a company to such reports (the “Notice-And-Awareness-Conditions”).

Several lawsuits challenged the Amended Rule’s partial rescission of the 2020 Rules. Notably, in June 2024, the Fifth Circuit held that the SEC’s rescission of the Notice-And-Awareness-Conditions violated the Administrative Procedure Act (the “APA”) due to being both arbitrary and capricious and lacking adequate justification. The Fifth Circuit found that the SEC failed to adequately explain its decision to disregard prior factual findings that the Notice-And-Awareness-Conditions posed little or no risk to the timeliness and independence of proxy voting advice.<sup>9</sup> In contrast, on September 10, 2024, the U.S. Court of Appeals for the Sixth Circuit upheld the SEC’s partial rescission as neither (i) substantively deficient, because the rescissions were not arbitrary or capricious under the APA and because the SEC analyzed the impact of the rescissions under the Exchange Act, nor (ii) procedurally deficient, because the SEC did not violate the APA’s procedural requirements.<sup>10</sup>

However, the U.S. Court of Appeals for the D.C. Circuit recently held, in relevant part, that proxy voting recommendations are not solicitations under Section 14 of the 1934 Act.<sup>11</sup> This undercuts the mechanism by which the SEC was regulating proxy advisory firms and effectively invalidates the Amended Rules.<sup>12</sup>

### **3. Regulation of Proxy Advisors in Texas**

On June 20, 2025, Texas SB 2337 was signed into law. It governs proxy advisory services regarding publicly traded companies that are organized in Texas or have their principal office in Texas. It requires significant action from proxy advisors whenever the advisor gives advice or makes a recommendation that is “not provided solely in the financial interest of shareholders.” This is defined broadly to include, essentially, any consideration of ESG principles. The law is also triggered anytime a proxy advisor recommends in favor of a stockholder proposal, recommends against a company-nominated director or gives different recommendations to different clients. Whenever the law is triggered, the proxy advisory service must, among other things, disclose (a) to each client, (b) to the company and (c) on its website, that the advice is not

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<sup>7</sup> SEC, Final Rules, Exemptions from the Proxy Rules for Proxy Voting Advice, available at <https://www.sec.gov/files/rules/final/2020/34-89372.pdf>.

<sup>8</sup> SEC, Amended Rules, available at <https://www.sec.gov/files/rules/final/2022/34-95266.pdf>.

<sup>9</sup> National Association of Manufacturers v. SEC, Fifth Circuit June 2024.

<sup>10</sup> Chamber of Commerce v. SEC, Sixth Circuit September 2024.

<sup>11</sup> ISS v. SEC, 142 F.4th 757 (D.C. Cir. 2025).

<sup>12</sup> Congressional Research Service, Proxy Advisor Regulation: Recent Litigation, State Law Developments, and Federal Legislation, September 4, 2025.

“being provided solely in the financial interest of shareholders.” The proxy advisor must include a detailed written economic analysis anytime it supports a shareholder proposal.<sup>13</sup>

ISS and Glass Lewis sued the State of Texas over Texas SB 2337, arguing that it (a) violates the First and Fourteenth Amendments, in that it is content-based regulation of speech and viewpoint discrimination and (b) is unconstitutionally vague, as its definition of non-financial factors is so broad that a proxy advisor could run afoul of its definition no matter how it oriented its research. On August 29, 2025, the U.S. District Court for the Western District of Texas issued a preliminary injunction prohibiting the Texas Attorney General from enforcing the law. A trial on the merits is scheduled for February 2026.<sup>14</sup>

#### **4. Glass Lewis Abandons “House Policy” Proxy Paper**

On October 15, 2025, Glass Lewis announced a substantial change to the way it delivers proxy voting advice. By proxy season 2027, will stop offering its standard “Proxy Paper” for each public company and, instead,

shift to providing multiple perspectives that reflect the varied viewpoints of clients. While still under development, the spectrum of perspectives could range from one that leans toward management and others that reflect more governance fundamentals. Beginning in 2027, clients will be able to access any or all of these perspectives to inform their proxy voting decisions.<sup>15</sup>

This shift recognizes that the “traditional one-size-fits-all model of proxy advice no longer meets the needs of a diverse client base.”<sup>16</sup>

#### **5. Florida Attorney General’s Office Files Suit against ISS and Glass Lewis**

In November 2025, the Office of the Attorney General for the State of Florida filed a complaint in the Circuit Court of the Fourteenth Judicial Circuit in Gulf County, Florida, against ISS and Glass Lewis, citing violations of Florida’s deceptive and unfair trade practices and antitrust statutes.<sup>17</sup> The complaint alleges that ISS and Glass Lewis violated Florida laws by using their influence to “push their own dogmatic agenda, one that seeks to require publicly traded companies to strictly adhere to highly controversial—and, in some cases, illegal—policies.”<sup>18</sup> The complaint alleges that ISS and Glass Lewis have deceived Florida consumers by convincing consumers that their recommendations maximize shareholder value while also infusing those recommendations with the advisors’ own political goals.

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<sup>13</sup> Texas Business Organizations Code, Chapter 6A.

<sup>14</sup> Institutional Shareholder Services Inc. v. Paxton, 1:25-cv-01160 WD Texas; Glass, Lewis & Co. v. Paxton, 1:25-cv-01153 WD Texas.

<sup>15</sup> Glass Lewis, Press Release, Glass Lewis Leads Change in Proxy Voting Practices, October 15, 2025, available at <https://www.glasslewis.com/news-release/glass-lewis-leads-change-in-proxy-voting-practices>.

<sup>16</sup> *Id.*

<sup>17</sup> Florida v. Institutional Shareholder Services Inc, No. 236237226, Compl. (Fla. Cir. Ct. filed Nov. 20, 2025), available at <https://www.myfloridalegal.com/sites/default/files/complaint.pdf>.

<sup>18</sup> *Id.*

The Florida Attorney General claims that ISS and Glass Lewis omitted material information to consumers, provided statements that are false and misleading to consumers, engaged in deceptive and unfair practices and colluded in an agreement to prevent other competition for proxy advisory services.

## **6. Proxy Advisors Face FTC Antitrust Probe**

In November of 2025, the Federal Trade Commission (“FTC”) began investigating whether ISS and Glass Lewis breached U.S. antitrust laws by engaging in unfair methods of competition.<sup>19</sup> The probe, described as being in early stages, is focused on how both ISS and Glass Lewis advise their clients on climate and socially related shareholder proposals.<sup>20</sup> A spokesperson from Glass Lewis stated, “[t]his non-public investigation does not mean the [FTC] is suggesting Glass Lewis has acted unlawfully. With complete confidence in our longstanding commitment to high ethical standards, Glass Lewis is fully cooperating with the FTC’s document request.”<sup>21</sup>

## **7. Executive Order Targets Proxy Advisors**

On December 11, 2025, the President issued an executive order titled “Protecting American Investors From Foreign-Owned and Politically Motivated Proxy Advisors” (the “Order”), directing the SEC, FTC and the Department of Labor (“DOL”) to increase oversight on proxy advisors and “take action to restore public confidence in the proxy advisor industry, including by promoting accountability, transparency, and competition.”<sup>22</sup> The Order refers to Glass Lewis and ISS as two foreign-owned proxy advisors who control 90 percent of the proxy advisor market, and wield enormous influence over corporate governance matters and regularly prioritize DEI and ESG matters, even though investor returns should be the only priority.

The Order empowers the SEC and its chairman, consistent with the APA, to consider revising or rescinding rules, regulations, guidance and other documents that are inconsistent with the Order, if they implicate DEI and ESG policies, or if related to shareholder proposals. The Order empowers the SEC chairman to (i) enforce federal securities laws anti-fraud provisions with respect to material misstatement or omissions, in proxy advisory voting recommendations, (ii) assess whether proxy advisors should be registered as Registered Investment Advisors under the Investment Advisors Act of 1940, (iii) consider requiring proxy advisors to provide increased transparency, especially regarding DEI and ESG factors, (iv) analyze whether proxy advisors serve as a vehicle for investment advisors to form a group for purposes of section 13(d)(3) and 13(g)(3) of the Securities Exchange Act of 1934, and (v) direct SEC staff to examine whether registered investment advisors engaging proxy advisors to advise on non-pecuniary factors, such as DEI and ESG, is inconsistent with their fiduciary duties.

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<sup>19</sup> Jack Pitcher, Proxy Advisers ISS and Glass Lewis Are Facing Antitrust Probes, The Wall Street Journal (November 12, 2025), available at <https://www.wsj.com/finance/regulation/proxy-advisers>.

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

<sup>21</sup> *Id.*

<sup>22</sup> Exec. Order No. 14366, *Protecting American Investors From Foreign-Owned and Politically-Motivated Proxy Advisors*, 90 Fed. Reg. 58503 (Dec. 16, 2025), available at <https://www.whitehouse.gov/presidential-actions/2025/12/protecting-american-investors-from-foreign-owned-and-politically-motivated-proxy-advisors/>.

The Order also empowers the Chairman of the FTC, under the powers of the Federal Trade Commission Act (“FTC Act”) and in consultation with the Attorney General, to investigate whether proxy advisors engage in unfair methods of competition or other pacts that harm consumers by (1) conspiring or colluding to diminish the value of consumer investments, (2) inadequately disclosing conflicts of interest, (3) providing misleading or inaccurate information, (4) undermining the ability of consumers to make informed decisions, or (4) otherwise violating antitrust laws under 15 U.S.C. 12(a) or section 5 of the FTC Act. Finally, the Order empowers the Secretary of Labor, consistent with the APA, to take steps to revise regulations and guidance regarding the fiduciary status of individuals who manage or advise the rights of plans under the ERISA, strengthen the fiduciary standards of pension and retirement plans under ERISA and enhance transparency regarding the use of proxy advisors, especially regarding DEI and ESG practices.

## **8. JPMorgan Ends Use of Third-Party Proxy Advisory Services**

JPMorgan Chase’s asset management division no longer plans to use proxy advisors in the U.S.<sup>23</sup> In a memo, the firm stated that it no longer needs third-party data collection or voting recommendations in the U.S., and it plans to rely on a new, artificial intelligence-powered in-house tool, called “Proxy IQ,” which aggregates and analyzes proprietary data from more than 3,000 annual company meetings.<sup>24</sup> JPMorgan Chase plans to transition to Proxy IQ during the first quarter of 2026. JPMorgan Chase’s memo stated, “[b]y harnessing advanced AI, we no longer need third-party data collection or voting recommendations in the U.S.”

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As always, our colleagues and we are available at any time to discuss these or other matters.

Jim Hanks  
Mike Sheehan  
Sam Jonjo

*This memorandum is provided for information purposes only and is not intended to provide legal advice. Such advice may be provided only after analysis of specific facts and circumstances and consideration of issues that may not be addressed in this document.*

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<sup>23</sup> Manya Saini, JPMorgan's Asset Management Arm to End Use of Proxy Advisers in US, Memo Shows, Reuters (January 7, 2026), available at <https://www.reuters.com/business/finance/jpmorgan-chase-cuts-ties-with-proxy-advisory-firms-wsj-reports-2026-01-07/>.

<sup>24</sup> *Id.*