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SEC Takes ISS to Court Over Client Voting Records: What It Means for Public Companies

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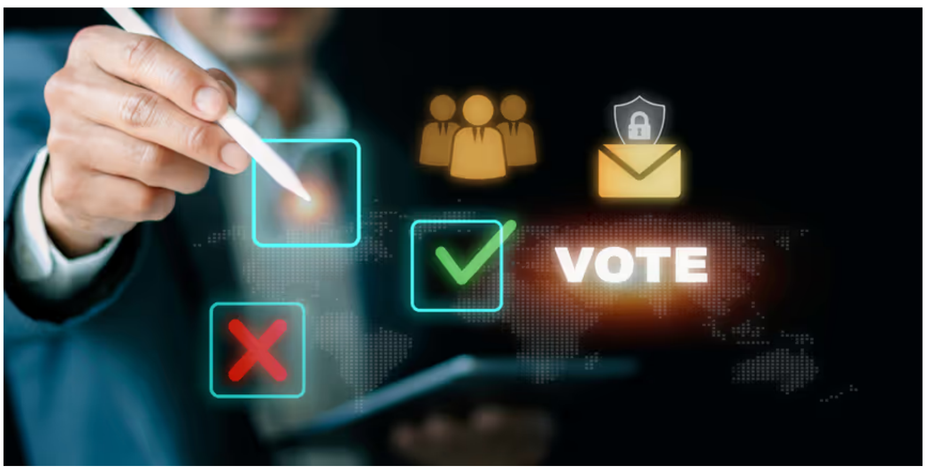

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Securities Litigation

On September 4, 2026, the Securities and Exchange Commission filed an application in the United States District Court for the Eastern District of Pennsylvania seeking to compel Institutional Shareholder Services, Inc. (ISS) to comply with an administrative subpoena. The filing marks a significant escalation in a dispute that has simmered for more than four months, pitting the nation's dominant proxy advisory firm against its federal regulator over access to one of the most sensitive datasets in corporate governance: how institutional shareholders actually vote their shares.

The Core of the Dispute

ISS has been registered with the SEC as an investment adviser since 1997. Together with one other firm, ISS provides nearly all proxy advisory services to institutional investors in the United States. Through its ProxyExchange platform, ISS delivers voting recommendations, executes client votes, and manages the recordkeeping that underpins the proxy voting process for pension funds, mutual funds, hedge funds, and other major institutional asset managers.

The SEC's Division of Examinations launched an examination of ISS in March 2026 and requested data from ProxyExchange, including client names, voting recommendations, and actual votes cast. ISS initially produced sample reports for three clients, but when the SEC requested the same data for all clients covering July 2024 through February 2026, ISS refused, citing burden, confidentiality, and ultimately the First Amendment. On July 20, 2026, the SEC issued a formal order of investigation and the following day served an investigative subpoena. ISS still refused to comply fully, proposing instead to "anonymize" the data through an outside expert — a proposal the SEC rejected as fundamentally incompatible with its oversight mission.

Unusual or Routine?

The SEC routinely examines registered investment advisers and regularly obtains client-specific data in those examinations. What makes this case exceptional is the target and the stakes. ISS and its sole major competitor control more than 90% of the proxy advisory market and wield enormous influence over board elections, executive compensation, and shareholder proposals at thousands of public companies. The SEC's need to go to court to enforce a subpoena against a registrant it has examined four times before — identifying deficiencies in each prior examination — is a notable departure from the cooperative dynamic regulators typically expect.

Adding a political dimension, ISS invoked President Trump's December 2025 Executive Order 14366, which directed the SEC to increase oversight of proxy advisors and expressed concern that firms like ISS may use "their substantial power to advance and prioritize radical politically-motivated agendas." ISS argued the subpoena was retaliatory. The SEC countered that it would be "wholly appropriate" to investigate whether ISS's voting advice is "driven by a particular political or policy aim to the detriment of its clients' interests," as that would constitute a breach of fiduciary duty.

What This Means for Public Companies

If the court compels production, the SEC will gain an unprecedented window into how the proxy advisory industry actually works at the client level — revealing not just what ISS recommends, but whether those recommendations vary among similarly situated clients and whether ISS faithfully executes client-specific voting instructions. For publicly traded companies, this could be consequential. Greater regulatory scrutiny of proxy advisors may lead to increased transparency in how votes on contested board elections, executive compensation plans, and shareholder proposals are shaped and cast.

For issuers, the investigation also highlights an important distinction between a proxy adviser's published benchmark recommendation and the voting policy actually applied on behalf of a particular institutional investor. Because institutional clients may use specialty or customized voting policies, companies should not assume that an adverse ISS benchmark recommendation necessarily predicts how a particular shareholder will vote. The same dynamic reinforces the value of direct engagement with significant institutional shareholders to understand their own governance priorities and voting policies.

Broader Regulatory Context

The subpoena action also sits within a broader reconsideration of the shareholder voting framework. Executive Order 14366 directs the SEC Chairman to review rules and guidance relating to proxy advisers and shareholder proposals, including Rule 14a-8, and to analyze whether, and under what circumstances, proxy advisers may facilitate coordination among investment advisers that could implicate the "group" concepts under Sections 13(d)(3) and 13(g)(3) of the Exchange Act. Although the subpoena proceeding does not resolve those issues, public companies should view the investigation as part of a wider regulatory focus on the mechanisms through which shareholder voting decisions are influenced and implemented as they prepare for the 2027 proxy season.

Practice Tips for Directors and Officers

- **Monitor proxy advisor engagement carefully.** The SEC's investigation signals that regulators are looking closely at whether proxy advisory recommendations reflect genuine client interests or other motivations. Issuers should maintain appropriate engagement with proxy advisory firms while also prioritizing direct engagement with significant institutional shareholders, particularly on matters likely to attract heightened voting scrutiny.
- **Review your company's proxy disclosures.** Enhanced regulatory scrutiny of the proxy advisory chain may expose gaps in issuer disclosures. Officers should revisit proxy statement clarity, particularly around proposals that attract ISS recommendations adverse to management.
- **Understand your shareholders' voting arrangements with ISS.** Approximately 90% of shares processed by ISS globally are tied to customized voting policies, not ISS's published benchmark policy. Directors and officers should not assume a favorable or unfavorable ISS benchmark

recommendation determines the outcome — the reality is far more nuanced. Where practicable, issuers should seek to understand the voting policies and governance priorities of their significant institutional holders rather than treating the benchmark recommendation as a proxy for investor sentiment.

- **Prepare for a shifting regulatory landscape.** Executive Order 14366 and this enforcement action together suggest proxy advisory oversight will intensify. Issuers, in collaboration with securities counsel, should continue monitoring developments in proxy adviser regulation and the shareholder proposal process and consider whether changes in those regimes warrant adjustments to proxy disclosure, shareholder engagement, annual meeting strategy, or planning for transactions requiring shareholder approval.

> "ISS cannot use the existence of SEC oversight and examination as a sword in state cases, then seek to evade that oversight here when the oversight goes to the core of its business."
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