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BLOG

New Executive Order Targets Proxy Advisory Firms: Key ERISA Implications

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On December 11, 2025, President Trump issued an executive order (the Order) targeting the two dominant proxy advisory firms, Institutional Shareholder Services, Inc. (ISS) and Glass Lewis. The Order characterizes those firms as foreign-owned entities controlling over 90% of the proxy-advisor market and asserts they often prioritize political agendas—such as diversity, equity, and inclusion (DEI) and environmental, social, and governance (ESG) initiatives—over investor returns when influencing votes on corporate governance matters.

The Order itself does not immediately change any laws or rules. Instead, the Order signals heightened federal oversight and potential future rulemaking by the Securities and Exchange Commission (SEC), Federal Trade Commission (FTC), and Department of Labor (DOL), as follows:

- The SEC is directed to review and consider revising all rules and guidance relating to shareholder proposals (such as Rule 14a-8) to ensure they align with the Order's focus on investor returns over political objectives.
- The SEC also must consider steps to tighten oversight of proxy advisors, including (i) enforcing anti-fraud prohibitions against misleading voting recommendations, (ii) evaluating whether proxy advisors should register as investment advisors, (iii) increasing transparency about methodologies and conflicts of interest, (iv) analyzing whether proxy advisors enable investment advisors to coordinate votes in a way that could form a "group" under federal securities laws, and (v) examining whether advisors' reliance on proxy advice about nonpecuniary factors (including DEI/ESG) is consistent with fiduciary duties.
- The FTC, in consultation with the Attorney General, is instructed to assess ongoing state antitrust investigations and investigate whether proxy advisors engage in unfair, deceptive, or anticompetitive practices. This directive follows a reported FTC antitrust investigation into ISS and Glass Lewis, scrutinizing whether the firms have leveraged their market dominance to impose specific governance positions or unduly restrict clients' voting independence.
- The DOL is directed to revisit ERISA regulations to: (i) evaluate whether proxy advisors should be classified as investment-advice fiduciaries; (ii) reinforce that fiduciary actions must be solely in the financial interests of plan participants; and (iii) enhance transparency regarding the use of proxy advisors and DEI/ESG-related practices.

In response to these pressures, ISS has defended its independence and research rigor, while Glass Lewis announced significant changes. In October 2025, Glass Lewis committed to increased transparency and stakeholder engagement. By December 2025, it had updated its methodology to favor customized client voting frameworks over standardized ‘benchmark’ policies, signaling a move away from a one-size-fits-all approach.

KEY TAKEAWAYS FOR PLAN FIDUCIARIES

The Order is part of a broader policy shift to limit the consideration of ESG and DEI factors in ERISA investment decisions and proxy voting. It aligns with the administration’s stated intent to replace the current ESG rule to ensure fiduciaries base decisions “only on financial considerations relevant to the risk-adjusted economic value of a particular investment, and not to advance social causes.”

Plan fiduciaries should monitor the potential reclassification of proxy advisors as ERISA fiduciaries. Such a change would require proxy advisors to demonstrate that their recommendations are based solely on participants’ financial interests, potentially increasing their compliance and litigation risks. This uncertainty may also accelerate the trend of companies, such as JPMorgan Chase & Co., developing in-house proxy analysis solutions to replace external advisors.

As federal agencies consider reforms, the Order’s practical impact will become clear. In the interim, we recommend that investment committees continue to require investment managers for ERISA plan assets to attest that all proxy voting is performed solely in the financial interest of plan participants and beneficiaries and complies with all applicable DOL guidance.

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