SEC Files Subpoena Enforcement Action Against ISS

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> "It is wholly appropriate for the SEC to look into whether ISS's investment advice to clients on proxy voting is driven by a particular political or policy aim to the detriment of its clients' interests. If it is, then ISS is breaching its fiduciary duties and violating the law."
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> —*SEC Memorandum of Law, September 4, 2026*

On September 4, 2026, the SEC filed a subpoena enforcement action against proxy advisory firm ISS in the U.S. District Court for the Eastern District of Pennsylvania, seeking a court order compelling ISS to comply with an outstanding administrative subpoena issued by the SEC's Division of Enforcement. The dispute traces back to March 2026, when the SEC's Division of Examinations opened an examination of ISS and requested data on ISS's proxy recommendations and client votes, maintained on its ProxyExchange platform—"the core of ISS's business"—to assess ISS's compliance with the federal securities laws, including its fiduciary duty as a registered investment adviser to act in clients' best interests. ISS has been registered with the SEC as an investment adviser under the Investment Advisers Act of 1940 since 1997, which is the basis for the SEC's authority to examine and pursue enforcement against the firm.

When ISS did not fully produce the requested information, the Enforcement Division opened its own inquiry and issued a "narrowly tailored" administrative subpoena on

July 21, 2026; the SEC says more than four months have now elapsed with only partial compliance despite extended deadlines.

The subpoena covers three categories of documents over a roughly four-year period:

- **Request 1** — Documents sufficient to identify ISS's clients.
- **Request 2** — Vote authorization registration agreements, which set forth whether a client uses ISS's "Implied Consent" model (under which ISS executes votes per its recommendations unless the client overrides them) or "Mandatory Signoff" (under which ISS will not vote without specific client instruction).
- **Request 3** — An electronic export of ProxyExchange recommendation and voting data for the same four-year period.

ISS agreed to produce documents responsive to Requests 1 and 2, but has refused to produce Request 3 in its native form. ISS proposed, but never delivered, an anonymized version of ProxyExchange data.

The SEC emphasizes this remains a "fact-finding investigation" and that it has not concluded that ISS or anyone else violated the federal securities laws.

For context, ISS has a history of exam deficiencies. The SEC's Examinations Division has examined ISS five times since 2006 (2006, 2012, 2015, 2022 and 2026) and, excluding this year's ongoing exam, identified compliance deficiencies in each of the four prior reviews.

ISS Response and First Amendment Pushback

ISS says it remains committed to cooperating with the SEC but argues: (i) the data's high sensitivity, given clients share "confidential voting strategies, priorities, and voting decisions…with an expectation of confidentiality, just as American voters cast their ballots in the privacy of voting booths"; (ii) First Amendment concerns, framing the subpoena as risking "retaliatory actions" for protected speech; and (iii) potential chilling effects on freedom of association, since clients might "choose not to associate with ISS" if voting data were disclosed.

Broader Regulatory Context

The litigation appears to stem directly from President Trump's December 11, 2025 executive order, which directed the SEC chair to have staff examine "whether the practice of Registered Investment Advisers engaging proxy advisors to advise on (and following the recommendations of such proxy advisors with respect to) non-pecuniary factors in investing, including, as appropriate, [DEI] and [ESG] factors, is inconsistent with their fiduciary duties." The SEC's current examination of ISS—focused on whether ISS's recommendations satisfy its own fiduciary obligations to clients—mirrors that directive. The order also more broadly instructed the SEC chair to curb proxy advisers such as ISS and Glass Lewis (which together control more than 90% of the proxy advisory market) from providing DEI- or ESG-related guidance and to enforce anti-fraud provisions against material misstatements or omissions in proxy voting recommendations.

Glass Lewis, however, is not currently an SEC-registered investment adviser (having withdrawn that status in 2005), and no parallel SEC subpoena enforcement action against Glass Lewis has been reported. Glass Lewis does not appear to have issued any statement on the ISS matter. It nonetheless remains a co-target of the broader legal and regulatory campaign against the proxy advisory industry at both the federal and state levels.

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