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Thursday, 22 May 2025

The Honorable Ann Wagner
Chair, Subcommittee on Capital Markets
House Committee on Financial Services
U.S. House of Representatives
Washington, D.C. 20515

and

Members of the Sub-Committee on Capital Markets, House Committee on Financial Services

Dear Chair Wagner and Members of the Sub-Committee;

Subject: Legal and Market Considerations on the Regulation of Proxy Advisory Firms
I am writing to provide insights from Minerva Analytics Ltd (Minerva), an independent proxy research firm with extensive experience in global research and vote management solutions. Our perspective may aid your deliberations on the regulation of proxy advisory firms.

Minerva, domiciled in the United Kingdom, has offered global research and vote management solutions since 1995. Following the acquisition of two of our US partners, the Investor Responsibility Research Council (IRRC) and Proxy Governance Inc (PGI) by ISS, we have provided European investors with analysis on circa 800 of the largest corporations in the US. Our clients are varied, including regulators, academics, asset owners, and asset managers. We do not provide consulting or advisory services to issuers and, critically, we do not operate one size fits all policies - all of our clients have fully customized policies. Given this context, Minerva's extensive experience in global research and vote management solutions positions us uniquely to provide valuable insights into the regulation of proxy advisory firms

Institutional investors such as pension funds are critical to the success of markets and industry. They provide much-needed capital invested in corporations that address many of our societies' economic issues. While non-resident ownership of US securities stood at a mere 2% in the 1960s, foreign ownership has tripled since 2000 and now stands at around 20% with European investors owning roughly half that amount. Using data from the Federal Reserve[1] that amounts to U$8.93 trillion of "skin in the game".

[1] Total foreign-held U.S. equities are reported to be in the region of $16.9 trillion, representing 18% of the U.S. equity market. Foreign investors own 21 percent of all U.S. securities outstanding, a share that has remained fairly stable over the last decade (Figure 2). The composition of foreign investors' portfolio of U.S. securities has continued to shift toward equities on strong U.S. equity price increases: the percentage of foreign investors' U.S. portfolios devoted to U.S. equities has risen consistently from 23 percent in 2009 to 55 percent in 2024. By major asset type, foreign investors own 33 percent of U.S. Treasuries, 27 percent of U.S. corporate debt, and 18 percent of U.S. equities outstanding. Source: https://ticdata.treasury.gov/resource-center/data-chart-center/tic/Documents/shl2024r.pdf

Investors are highly supportive of US capital markets. They look to the success of US corporations and their global revenues to support the savings and retirement incomes for millions of citizens over the coming decades. Their exposure to US capital markets and regulation raises some concerns however, particularly in respect of corporate governance, share ownership rights and especially the proposed regulatory interventions in the proxy advisory sector. In the first instance, they (and we) believe that heavy-handed interventions would act against their interests as long-term fiduciaries. Secondly, there is a collective dismay that the ongoing debate is founded on many myths and, importantly, outright untruths. The consequence of this is that where there should be debate about improving the quality of the vote execution 'plumbing', efforts are focused on issues which are objectively not problematic and have been proven to be so by global regulatory investigations over the past thirty years.

We are all concerned to support a healthy and well-functioning shareholder accountability system. However, there appears to be a considerable amount of confusion about where the problems exist, if at all. We contend that the plumbing, the mechanics of how votes are executed is of significantly greater concern as it has, through many decades of tinkering, effectively disenfranchised and disconnected all types of owners from their companies[2].

Having been closely involved in UK, European, Canadian and US policy development, I recognize that it is a challenging responsibility to craft regulations that serve the public interest. To that end, we would welcome the opportunity to engage directly with yourself and the subcommittee, either in person or by remote conference call, but in the meantime, this letter outlines a number of the considerations that we believe should inform policy development in this area.

Market Structure and Competition

We agree that the market for shareholder voting research – or proxy advisory services - is highly concentrated. However, to characterize the market as a "cartel" is misleading. Market dominance does not imply collusion, and high barriers to entry—driven by compliance, infrastructure demands, and client expectations - contribute to the current dynamics.

Legal Definition of a Cartel

Under both US and UK law, a cartel requires evidence of collusion or agreement to fix prices or restrict competition. Section 1 of the Sherman Act prohibits contracts or conspiracies that restrain trade and, under UK competition law (Competition Act 1998 and Enterprise Act 2002), dishonest or coordinated agreements to distort markets are prohibited. Market concentration without coordinated conduct does not meet these thresholds.

Minerva, like Glass Lewis, Institutional Shareholder Services (ISS), Hermes EOS and PIRC are all members of a global, externally monitored Code of Conduct called the Best Practice Principles for Shareholder Voting Research (BPPG). All committee meetings are scrupulously managed to ignore commercial matters and are solely focused on the management of the Code of Conduct.

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[2] The U.S. indirect holding system - introduced in the 1970s to manage high-volume trading - severed the legal link between issuers and beneficial owners. Today, issuers must communicate through intermediaries (custodian banks, brokers), creating inefficiencies, lost votes, and a costly dependency on 3rd party proxy distribution service providers (which are different to proxy advisors). This system persists not due to necessity, but because it generates significant financial benefits for the intermediaries. See Donald, David C., Heart of Darkness: The Problem at the Core of the US Proxy System and its Solution (October, 25 2010). Centre for Financial Regulation and Economic Development Working Paper No. 1/2010, Available at SSRN: https://ssrn.com/abstract=1697606 or http://dx.doi.org/10.2139/ssrn.1697606

Impact of Further Regulation

As in many parts of the financial services industry, in the proxy research industry, the dominant players benefit from network effects, where increased use of their services by investors and issuers enhances the credibility and perceived influence of their recommendations, attracting even more clients and reinforcing their market position. Regulation such as complex disclosure or oversight requirements creates high fixed compliance costs that disproportionately burden new entrants, thereby entrenching incumbents. This would not lead to higher quality services or more competition; it would create additional costs that would ultimately be passed on to investors and their clients.

Existing Regulations

If there is a dominance problem, and the lack of switching by some client segments is certainly as curious as it is disappointing, regulations and laws[3] already exist to address those concerns. As we see it, introducing new regulations to overlay unused existing regulations would add costs and oversight burdens to government without moving us to a more efficient market.

Voting Rights and Fiduciary Responsibility

Voting is an important legal property right attached to share ownership. Exercising that right does not affect trading dynamics, liquidity, or price discovery. It is, however, a core aspect of investor stewardship and downside risk protection.

Although ISS was characterized as a “foreign” firm in comments made in the recent House Financial Services Committee meeting, it was founded by the recently deceased Robert A.G. Monks (“Bob Monks”). Bob Monks was appointed by President Ronald Reagan in 1984 as the Director of the Office of Pension and Welfare Benefit Programs at the US Department of Labor (DOL), now known as the Employee Benefits Security Administration (EBSA). His mandate was to oversee the integrity of private pension plans governed by ERISA, reinforcing fiduciary responsibility and governance standards. His passionate advocacy for active ownership and transparency laid the groundwork for his later role as a founder of ISS in 1985. It was not until 2020 that ISS became part of the Deutsche Börse Group.

Stewardship should not be viewed through a partisan lens. It is not a left- or right-wing issue; it is a fiduciary responsibility rooted in the principles of self-governance and long-term value protection. To that end, institutional investors rely on proxy advisors to help them navigate tens of thousands of resolutions annually. This is no different to their use of tools like Bloomberg, FactSet, or BlackRock’s Aladdin. Voting agencies provide a suite of research, data and administrative tools to streamline a complex and time-intensive process. To illustrate the intensity of the AGM season please note the following graph which represents one year’s shareholder meetings for a typical well-diversified investor.

We do not “solicit” proxies and we are agnostic as to how clients vote. Our objective is to ensure that votes are managed and executed with comprehensive information and efficient administration.

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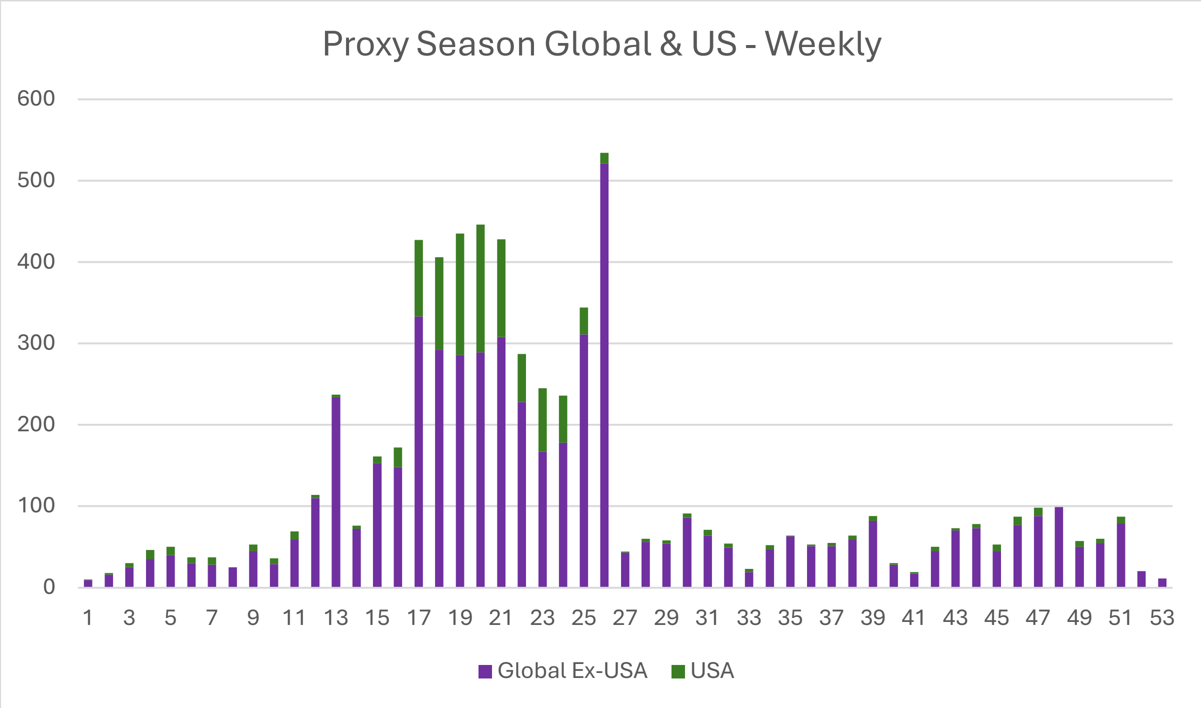
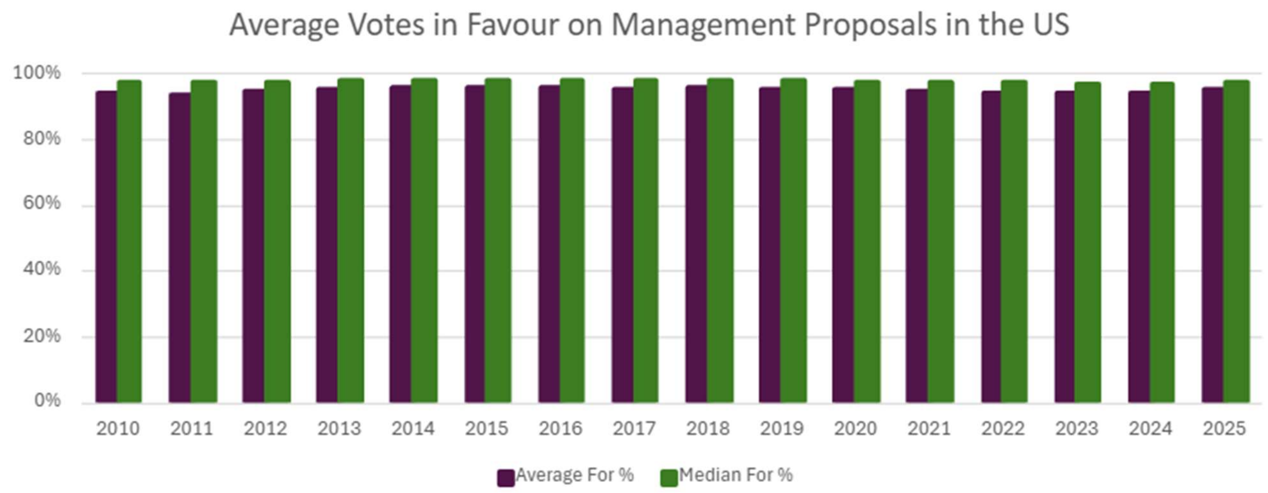
[3] For example, The Sherman Act or The Clayton Act. We note also that the Federal Trade Commission and Department of Justice has directed the heads of federal agencies to compile a list of regulations that they deem "reduce competition, entrepreneurship, and innovation" as part of the US government’s efforts to update US regulations https://www.reuters.com/sustainability/boards-policy-regulation/trump-administration-seeks-id-anticompetitive-regulations-2025-05-05



Your Sub-Committee raised important questions about the potential problems caused by “Robo-Voting”. It may indeed exist, and it is worthy of further investigation to get to the facts of the situation, but it is just as likely that “set and forget” voting is created by intermediaries outside the proxy advisory space - for example, custodian banks and their service providers who do not perform any research functions. Critics of the industry who suggest that we are the proxies or are vote gathering to act in concert demonstrate a fundamental lack of understanding of the mechanics of shareholder voting administration and logistics. Our vote management platforms consolidate investors’ instructions which are transmitted with their authorization to vote tabulators. It is invariably the chairman of the meeting who acts as the proxy.

The use of pre-set voting policy frameworks and automation does not replace judgment; rather, used wisely they offer essential support. Proxy disclosures are notoriously complex, densely written and are error prone (issuers and auditors are also known to make mistakes). Our analysts take these complex documents and make them consistent, streamlined and more readily understandable. Importantly, they highlight the issues that our clients tell us matter to them. If we did not flag the issues, we would fail to meet our contractual obligations. As the data shows, however, the majority of shareholders support management proposals, with median support of over 97% annually since 2010.



Source: Minerva Analytics, Data as @ 22 May 2025

Many studies purport to show a strong correlation between proxy advisor recommendations and shareholder voting outcomes typically framed as e.g., an ISS "against" recommendation leads to ~20%lower support[4]. pirever, interpreting this as causal influence, risks several logical fallacies, or more bluntly “may contain lies”[5]:

1. **Reverse causality**: Proxy advisors may issue negative recommendations in response to already apparent investor sentiment or company behavior, not vice versa.

2. **Omitted variable bias**: Both advisors and investors may independently respond to poor governance signals (e.g. excessive CEO pay), making their alignment reflect shared evaluation criteria rather than advisor influence.

3. **Selection bias**: Institutional investors who use proxy research may do so because their governance monitoring policy preferences already align, not because they are swayed by recommendations.

Robust causality claims require stringent methodological controls to disentangle influence from alignment. Most studies targeting proxy advisor “reform” fail to establish this rigorously, thus overstating the direct causal power of our research.

The majority of institutional investors have well established policies for publishing their voting policies. They are widely accessible and are generally published on their websites as part of very detailed stewardship disclosures. These policies articulate how investors approach key governance issues and align with their fiduciary commitments. Investors commission research to flag and identify issues that meet these strict criteria and expectations. It should not be a surprise that when presented with the information requested, investors respond. Nor should negative votes come as a surprise to issuers or their advisors when they have had many opportunities to review and engage with these frameworks whilst preparing for shareholder meetings.

[4] For example: Copland, Larcker, Tayan, Proxy Advisory Firms: Empirical Evidence and the Case for Reform, The Manhattan Institute (May 21st, 2018)Available at https://manhattan.institute/article/proxy-advisory-firms-empirical-evidence-and-the-case-for-reform | Shu, Chong, The Proxy Advisory Industry: Influencing and Being Influenced (February 8, 2024). Journal of Financial Economics, Forthcoming, Available at SSRN: https://ssrn.com/abstract=3614314 or http://dx.doi.org/10.2139/ssrn.3614314

[5] Edmans, A., 2025. *May Contain Lies: How Stories, Statistics, and Studies Exploit Our Biases—And What We Can Do about It*. Berkeley: University of California Press.

Despite the growing focus on shareholder engagement, there is a notable absence of rigorous academic research into the nature, frequency, and effectiveness of issuers' pre-AGM engagement with shareholders, if indeed there is any at all. Most studies emphasize voting outcomes and proxy advisor influence, while overlooking the substantive, often bilateral discussions that precede these decisions. This gap limits our understanding of how corporate messaging, responsiveness to investor concerns, and relationship dynamics shape final voting behavior. Consequently, vital components of shareholder democracy are left underexplored.

It is also important to note that most of research into proxy advisor influence has been commissioned not by investors, but by stakeholders advocating for tighter regulation, notably corporate issuers industry associations. This raises concerns about confirmation bias, as such studies may selectively emphasize findings that support a narrative of undue influence while downplaying conflicting evidence or unexamined variables, such as investor discretion or issuer:investor engagement. Consequently, the regulatory discourse is being shaped by an evidence base that is neither neutral nor comprehensive.

While concerns about proxy advisor influence may warrant consideration, the argument that we are "unduly dominant" overlooks the agency and sophistication of institutional investors, who daily steward trillions of dollars and vote according to independently developed policies that are aligned to their fiduciary duties. This framing implies, quite implausibly, that such investors lack the capacity to interpret research and advice critically. This oversimplification of the investment and governance ecosystem would appear to advance regulatory proposals that serve narrow corporate or political interests rather than addressing demonstrable harms.

Given the limited research into issuers' pre-AGM engagement and the complex factors influencing investor voting, the presumption that proxy advisors "unduly sway outcomes" is analytically unsound. Without accounting for how issuers communicate with shareholders, how investors apply their own voting policies, or the shared informational context between advisors and investors, attributing causality solely to proxy advice ignores key explanatory variables. As such, regulatory actions premised on proxy advisor "guilt" risk misdiagnosing the drivers of investor behavior and overlook more nuanced mechanisms of corporate governance. Importantly, the subjective and skewed lobbying risks the creation of expensive and burdensome rules that reflect biased narratives and narrow preferences rather than supporting objective, welfare-maximizing outcomes[6].

To be clear, we have no agenda in how clients should vote other than that the vote should be informed by timely, accurate and relevant analysis that meets our clients' needs. It is also important to note that it is the same research process which results in overwhelming support for management that results in a small percentage of negative votes. It's unclear to us how a research process could be right for some resolutions and wrong and error-ridden for others when it is the same process. Differences of opinion may be based on incorrect data, but in our experience, they are just differences of opinion. Within a stock market trading environment there are buyers and sellers who on the same day will receive the same information but come to different conclusions, this is the basis of open markets.

[6] Oskari Juurikkala, The Behavioral Paradox: Why Investor Irrationality Calls for Lighter and Simpler Financial Regulation, 18 Fordham J. Corp. & Fin. L. 33 (2012). Available at: https://ir.lawnet.fordham.edu/jcfl/vol18/iss1/3

Wherever there are human processes there will be errors, obviously. But the reality is that significant errors that would have changed a voting outcome are a) vanishingly small b) disclosed to our clients c) rectified promptly and d) publicly discussed in our annual BPPG reports[7] which are externally and independently verified by a multi-stakeholder committee that includes issuer representatives.

It is worth contrasting that approach with the harms that investors have directly suffered arising from securities fraud, accounting irregularities, and governance failures in recent years. Over the past decade alone, shareholder class action settlements in the US have resulted in disbursements totaling approximately U$40–50 billion[8] with the SEC recording ~U$25–26 billion in penalties[9]. Equally concerning is that notwithstanding the losses arising from these cases, the Public Company Accounting Oversight Board (PCAOB) has levied fines of over U$76 million over the same period, which suggests to us that investors face significant risks from ineffective governance oversight. When set against the U$58.5 trillion of global retirement investments at risk[10], shareholder voting is logically, ethically and economically a very low-cost monitoring tool.

Systemic Risk Issues and Investor Stewardship

Despite many highly dubious investment promotions down the years, there has yet to be a singular investing recipe for successfully "maximizing shareholder return". Investors are not a homogeneous group rigidly following a singular approach. Some are short-term – perhaps a matter of 4 or 5 minutes, others have 40 or 50 year time horizons. Investing is as much art as it is science, and investors may choose to apply values-based investment principles overlay, for example Catholic values screening[11], human rights due diligence[12], or modern slavery risk mitigation[13]. These are not political stances, but expressions of legal and ethical obligations embedded in stewardship mandates and supply chain transparency requirements. As investment managers such as BlackRock and others would attest, they are significant pecuniary risk factors[14].

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[7] bppgrp.info/wp-content/uploads/2024/11/BPP-Oversight-Committee-2024-Annual-Report.pdf
[8] Source: Cornerstone Research https://www.cornerstone.com/wp-content/uploads/2025/03/Securities-Class-Action-Settlements-2024-Review-and-Analysis.pdf
[9] Sources: SEC Enforcement Activity against Public Company Defendants: Fiscal Years 2010-2015 and https://www.reuters.com/markets/us/us-sec-obtained-record-financial-remedies-fiscal-2024-agency-says-2024-11-22
[10] Source: Global Pension Assets Study – 2025 Thinking Ahead Institute https://www.thinkingaheadinstitute.org/research-papers/global-pension-assets-study-2025
[11] CATH excludes companies involved in activities perceived to be inconsistent with Catholic values as set out by the U.S. Conference of Catholic Bishops, including screens for weaponry and child labor. S&P 500 Catholic Values ETF (CATH)
[12] Investors often associate human rights with issues related to poor working conditions, such as inadequate wages, unsafe working environments or exploitative labor practices. Many companies address these issues by publishing modern slavery statements and by implementing labor-practice codes of conduct along their supply chains. Source: Human Rights and Portfolio Risk: Why Investors Should Think Big | AB
[13] https://2021-2025.state.gov/what-is-modern-slavery/
[14] BlackRock's policy makes it official that its sole motive for engaging companies on human rights is to deliver value for its clients. This singular motive leads the firm to prescribe that, beyond serving their shareholders, "companies should also consider their other key stakeholders." Such concerns matter to BlackRock because a company's "poor relationships" with stakeholders "may create adverse impacts that expose a company to legal, regulatory, operational, and reputational risks and jeopardize their social license to operate." [Source: Rogge, Malcolm, What BlackRock Inc. Gets Right in its Newly Minted Human Rights Engagement Policy (April 24, 2021). Harvard Law School Forum on Corporate Governance, May 5, 2021, Source: SSRN: https://ssrn.com/abstract=3833467 or http://dx.doi.org/10.2139/ssrn.3833467

For many investors, investment is a strongly ethical act motivated by deeply held beliefs, as demonstrated by, for example, the Quakers[15]. Their investment and stewardship programs are not charitable giving, but grounded in the principle that capital should be deployed not only for financial return but also in alignment with enduring values and social responsibilities. In modern fiduciary practice, this means integrating a range risk decision factors into their stock selection and voting decisions. Today approximately U$30 trillion is invested according to some form of screening.[16]

The term *stewardship* itself originates from the biblical tradition, where stewards were entrusted by their masters to manage resources wisely and accountably. As described in the Gospel of Luke (12:42–48), the faithful steward is one who prudently cares for what has been entrusted, knowing they will ultimately have to give an account. This scriptural foundation shapes a long-standing view for many that investment is not morally neutral - it carries ethical obligations toward the wider community.

Contemporary stewardship practices globally reflect this ethos through long-term engagement with companies, attention to systemic risks like high quality employment, environmental risks or human rights, together with a commitment to transparency to clients and beneficiaries. This is demonstrated by the spread of global stewardship codes and associated disclosures[17]. Far from being ideological, these practices are expressions of conscientious oversight consistent with legal duties and, for many, spiritual traditions that prioritize integrity, responsibility, and care for others.

Ethical stewardship is thus both a philosophical and practical mandate. It enables investors to fulfil their role as responsible owners - acting not in opposition to market freedom, but as guardians of its long-term legitimacy and trust. However, we recognize that not all investors share this belief or choose to take this approach; nevertheless, we support all of our clients in delivering on their individual choices on a non-discriminatory basis. This is consistent with our belief that proxy advisors are not themselves the stewards. We have no ownership in the votes or their outcome, nor should we. Rather, we support our investment fiduciary clients by providing the research and data inputs necessary for them to act on their principles across complex global portfolios.

Attempting to curtail such analysis would not only hinder investor discretion, but undermine accountability on widely accepted corporate governance issues, many of which are a legal, regulatory or contractual obligation for some investors.

[15] "*The Quaker businesses remind us that vision, character, wealth, responsibility and a concern for society do not need to be separated from a wealth-creating, efficient business enterprise. Indeed in the model villages and in many of the provisions for social welfare with which they were associated, the Quaker leaders demonstrated that the application of commercial principles – which differs from profit maximization; though certain involves profit satisfaction, and perhaps the maximisation of shared rather than simply shareholder value – was often the best way to ensure the most effective social support for those in need. In this way aspiration, self-help, independence and appropriate charitable assistance could often be harnessed to greatest effect*" Source: Quaker Capitalism - Lessons for Today
[16] Global Sustainable Investment Review finds US$30 trillion invested in sustainable assets
[17] "*..enlightened stewardship is a pragmatic and transformative force for fostering long-term sustainable value creation, shaping a future where financial success and societal progress are inextricably linked*". Katelouzou, Dionysia, The Purpose of Investor Stewardship (December 19, 2024). *Victoria University of Wellington Law Review (Forthcoming)*, European Corporate Governance Institute - Law Working Paper No. 831/2025, Available at SSRN: https://ssrn.com/abstract=5103781 or http://dx.doi.org/10.2139/ssrn.5103781

Dysfunction in Vote Execution and Investor Disenfranchisement

While recent reform proposals have focused on regulating proxy advisors, the structural weaknesses in the proxy plumbing system have received far less attention. The current vote execution process is fragmented and lacks transparency, leading to issues such as ballot reconciliation discrepancies, lost or uncounted votes, and inconsistent confirmation for beneficial owners.

Retail shareholders are particularly affected by these inefficiencies, often finding themselves disenfranchised due to complex access mechanisms, broker discretion, and a lack of transparency. To truly strengthen shareholder democracy, it is essential to address these foundational issues within the voting infrastructure.

Oversight and Monitoring as Fiduciary Duties

Fiduciary responsibility does not end with vote execution. Asset owners and managers must also monitor how votes are cast on their behalf and whether their service providers, including proxy advisors, meet clear standards of quality, independence, and responsiveness.

Proxy advisors are subject to ongoing client oversight and review, and firms that fail to align with client expectations lose mandates accordingly. This accountability mechanism already functions within a competitive marketplace, reinforcing best practices without the need for excessive regulatory intervention.

Minerva and our contemporaries provide analysis to regulated clients who retain full discretion over whether and how to vote. As service providers, we are agnostic about the outcomes of any vote; our role is to equip clients with information and context aligned to their individual mandates and policies. Clients often diverge in their voting decisions, even when relying on the same underlying research. This is clear evidence that proxy advice supports, rather than dictates, investor decision-making and respects institutional diversity of thought.

First Amendment and Research Integrity

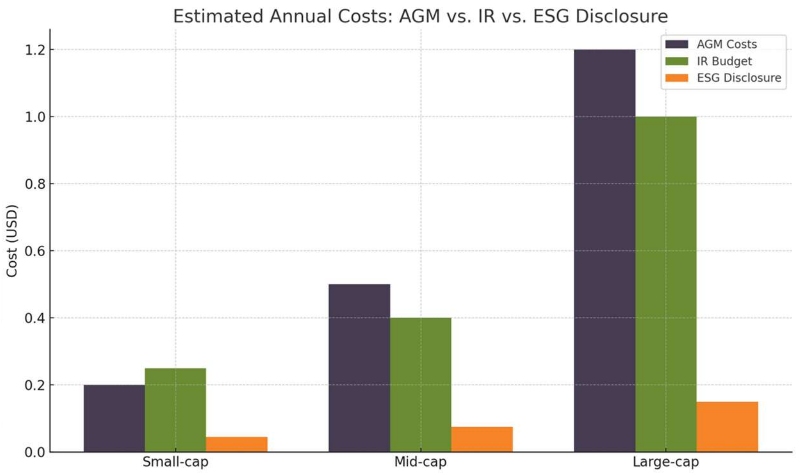
Proxy research and proxy ballot management services are not proxy solicitation. Research is, we believe, a form of protected opinion and analysis, developed independently and provided to clients who are under no obligation to follow it. As established in *Miami Herald v. Tornillo*[18] government may not compel private entities to include or modify editorial content. Mandating issuer rebuttals or requiring content review would infringe on the independence of research and undermine the constitutional rights of both providers and investors. Compelling proxy advisors to provide free research to issuers undermines the contractual relationship with our clients who pay for our research. Moreover, attempting to regulate or penalize "unfavorable" proxy research outcomes does not protect free speech or promote viewpoint diversity - rather it equates to "shooting the messenger". The remedy for disagreement is, we believe, more dialogue and better disclosure, not restrictions on opinion or editorial independence.

[18] Summary: Pat Tornillo, a candidate for the Florida House, was criticized in two editorials by the *Miami Herald*. Under Florida law (Statute § 104.38), he demanded space for his replies; the *Herald* refused. The Florida courts diverged: trial court held the law unconstitutional, but the Florida Supreme Court upheld it. The US Supreme Court granted certiorari and reviewed the case https://supreme.justia.com/cases/federal/us/418/241/

Issuer representatives often present themselves as overwhelmed by proxy advice or burdened by ESG-related costs. The data tells a different story. US corporations spend an average of U$800,000[19], annually on Investor Relations (IR), excluding the significant additional costs of hosting AGMs. ESG disclosure costs, by contrast, represent only a small fraction of overall issuer budgets.

Despite the proliferation of corporate advisors and the industry's tendency to frame engagement as a reputational risk, the rise of a "crisis management" mindset - and its associated costs - has attracted little scrutiny. Based on a conservative estimate of U$500,000 annually across 5,000 issuers, aggregate spending on IR exceeds U$2.5 billion. Meanwhile, U.S. companies spend an estimated U$80 billion on outsourced legal services[20].

By comparison, investors spend just U$200 million on proxy research - a mere 8% of what issuers spend on IR and a miniscule 0.25% of corporate legal spend. This disparity raises a simple but important question: **who actually needs protection**?



Source: Minerva Analytics as @ May 2025

While shareholder funds underwrite billions in unregulated IR activity, there is zero oversight of the IR industry. Rather than increasing the regulatory ratchet over the proxy research industry, we believe that a review of the activities of the IR and proxy solicitor community is long overdue. Why is that? We believe that there are four compelling reasons to act.

1. The IR Industry Shapes Market-Sensitive Communications

IR consultants craft and disseminate forward-looking statements, earnings guidance, ESG disclosures, and proxy messaging that can materially influence stock prices. Yet, unlike broker-dealers, proxy advisors, or credit rating agencies, they operate without formal regulatory obligations - despite their role in curating the information environment for investors.

2. The IR Industry Can Obstruct Stewardship

In proxy contests and ESG campaigns, IR consultants often act as tactical advisors to management, shaping narratives to deflect or dilute investor engagement. Their influence on how shareholder resolutions are framed, opposed, or withdrawn can significantly affect the outcome of corporate governance processes - often with little transparency.

[19] Global Investor Relations Practice Report 2024 – North America - IR Impact
[20] U.S. Legal Services Market Size & Share | Report, 2030

3. The IR Industry is Paid to Manage Perceptions, Not Facts

Unlike proxy advisors who are contractually bound fiduciaries to regulated institutional investors, IR consultants are agents of the issuer. Their objective is to manage investor sentiment - a goal that can lead to selective disclosure, strategic omission (or spin), particularly in high-stakes events like M&A or activist interventions.

4. The IR Industry Escapes Accountability While Interfacing with Regulated Actors

IR operatives routinely interact with investment analysts, institutional investors, and proxy voting firms. Yet they are neither required to disclose conflicts of interest nor bound by conduct standards akin to those in the proxy advisory or auditing professions. Given their access to material non-public information, their role in shaping market-moving disclosures, and their ability to influence capital allocation and governance outcomes, IR consultants occupy a regulatory blind spot. Minimum standards of transparency, disclosure, and conflict management would align their influence with the accountability expected elsewhere in the capital markets ecosystem.

Operational Complexity and Cost Implications

If issuers are concerned about the costs of IR generally or ESG specifically, proposals to introduce mandatory issuer research review or rebuttal rights do not appear to have considered the practical complexity of proxy season, when thousands of US companies hold their AGMs in a compressed timeframe. Adding a formal review step will introduce significant delays, increase operational burdens, and incur significant legal risks. Would issuers be required to treat all advisors the same or would they prioritize only the largest, thereby perpetuating the oligopoly position and eliminating the opportunity for much needed competition and diversity?

Moreover, the costs of compliance with additional regulatory steps - whether borne by proxy advisors, issuers, or institutional investors - will ultimately be passed along to end beneficiaries. This would undermine operational efficiency and introduce even more friction into a system that, while imperfect, operates with a high level of transparency and accountability.

Intellectual Property and Competitive Fairness

Advisory research constitutes proprietary intellectual property. Proposals that compel proxy advisors to provide this research to issuers without consent or compensation risk constituting a 'regulatory taking', that is where the government authorizes the use of private property for the benefit of a third party without just compensation. Forcing disclosure of commercially valuable research without remuneration diminishes the owner's exclusive control and economic interest, potentially violating settled constitutional protections.

While not tantamount to theft in a criminal sense, the compelled sharing of paid research products would erode the economic foundation of independent advisory businesses.

Following the 2008 financial crisis, regulatory efforts to reform the credit rating industry were driven by a desire for greater transparency. These reforms included mandating the broad and often free dissemination of credit ratings and embedding regulatory reliance on a small group of Nationally Recognized Statistical Rating Organizations (NRSROs). While well-intentioned, these measures weakened the industry they aimed to improve.

By commodifying credit ratings and compelling open access, regulators eroded the ability of agencies to monetize their research, undermining business models that had relied on subscription revenues[21].

This shift entrenched the "issuer-pays" model, deepening conflicts of interest and diminishing the independence of ratings[22]. Academic research has consistently shown that issuer-paid ratings are more likely to be inflated and less reliable than investor-paid alternatives[23]. At the same time, regulatory reliance on a narrow group of firms suppressed competition and stifled methodological innovation, concentrating systemic risk in the process.[24]

We believe that this recent regulatory history offers a cautionary tale against similar interventions in the proxy advisory industry. Proposals that would compel proxy advisors to share their proprietary research with issuers for free risk repeating these same mistakes:

1. Eroding commercial viability thereby weaking competition;
2. Amplifying conflicts of interest, and
3. Weakening the independence and diversity of institutional analysis.

What may appear pro-transparency in form could, in substance, compromise the integrity and resilience of the very market infrastructure it seeks to improve.

International Considerations

Under European law (e.g., Shareholder Rights Directive II, SFDR), fiduciaries are required to integrate a wide range of risk factors into their voting and investment decisions. European investors managing trillions in US equities rely on proxy advisors to meet these obligations. Limiting analysis through regulation would hinder compliance and increase cross-border legal friction, particularly for US based asset managers with European clients who are already starting to lose valuable mandates[25].

The Myth of Non-regulation

It is asserted that proxy advisors are not regulated. That is simply not correct. ISS is already a registered investment adviser with the SEC, subject to fiduciary duties and oversight under the Investment Advisers Act of 1940. This includes obligations around conflicts of interest, disclosure, and the maintenance of robust internal controls. Additionally, Glass Lewis and firms like ours operate under long-established contractual and compliance frameworks with our institutional clients, who themselves are regulated fiduciaries under ERISA or the Investment Company Act.

In Europe, the regulatory framework is even more explicit. Directive (EU) 2017/828 (SRD II) mandates that proxy advisors must disclose their methodologies, conflicts management policies, and whether they apply a code of conduct.

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[21] 1. Partnoy, F., Overdependence on credit ratings was a primary cause of the crisis (University of San Diego School of Law, 2009) https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1430653 [Accessed 21 May 2025].
[22] 2. Mathis, J., McAndrews, J. and Rochet, J.C., 'Rating the raters: Are reputation concerns powerful enough to discipline rating agencies?' (2009) Journal of Monetary Economics 56(5), 657–674.
[23] 3. Coffee, J.C., 'Ratings Reform: The Good, the Bad, and the Ugly' (2011) Harvard Business Law Review 1, 231–278.
[24] BIS, The Impact of Credit Rating Agencies on Sovereign Debt Markets (BIS Working Paper No. 391, 2011).
[25] European and UK pension funds drive transatlantic split on sustainable investing; Number of mandates under review over asset managers' record is growing, consultants say. Source: https://on.ft.com/4keOeyH

The UK Stewardship Code (2020) further reinforces the responsibilities of institutional investors and their service providers—explicitly naming proxy advisors—to act transparently, manage conflicts, and support effective stewardship outcomes.

The Best Practice Principles for Shareholder Voting Research are closely aligned with the Shareholder Rights Directive and a number of global stewardship codes. The key requirements of being a party to the BPPG Principles are as follows:

Topic	BPPG (2019)	SRD II (EU Directive 2017/828)
Legal Status	Voluntary, industry-led (comply or explain)	Mandatory disclosure regime for proxy advisors in the EU and adherence to a Code of Conduct.
Disclosure of Methodology	Required: explain research approach, policy frameworks	Must disclose voting policies, analysis methods, and data sources
Conflict of Interest Management	Robust internal policies + disclosure of material conflicts	Required: public disclosure of conflicts and steps to mitigate them
Engagement with Issuers	Disclose engagement approach	Not mandated, but engagement process must be disclosed
Accuracy & Quality Control	Emphasis on Quality Assurance procedures and qualified analysts	Must disclose steps to ensure voting recommendations are accurate
Annual Compliance Statement	Yes, public “statement of adherence”	Required annual public report if subject to SRD II
Monitoring & Enforcement	Monitored by BPPG Oversight Committee	Enforced by national competent authorities (e.g., ESMA in EU)

The **BPPG Oversight Committee** is designed to ensure independent monitoring and accountability within the voluntary Best Practice Principles framework [26]. In effect, the Committee blends investor, issuer, and independent voices to maintain confidence in the BPPG regime thereby providing transparent market accountability underpinned by a statutory requirement (SRD II).

Key elements include:

- **Members (11 total):**
    - 1 Independent Chair (currently Prof. Konstantinos Sergakis, University of Glasgow)
    - 6 Institutional-Investor Representatives (reflecting diverse investment styles and geographies).
    - **3 Issuer/Corporate Representatives**
    - 2 Independent Members (e.g., academics)

[26] See https://corpgov.law.harvard.edu/2019/08/12/best-practice-principles-for-shareholder-voting-research-analysis/

- **Mandate:**
  - Annual independent review of both compliance monitoring and signatories' public reports.
  - Open public forum to review the independent review.
  - Ratification of new signatories and, where necessary, sanctioning non-compliant participants, including potential removal from the Principles framework.
  - Oversight of complaint handling, maintenance of stakeholder engagement forums, and minor updates outside the main review cycle.

These frameworks together constitute a multi-layered system of regulation that governs proxy advisors through both statutory duties and contractual accountability mechanisms. This is a far cry from the accusations levied against the industry.

Conclusion

The missing thread in this debate is plausibility.

Is it truly credible to claim that institutional investors, entrusted with the stewardship of approximately 34% of US household financial assets - and supported by sophisticated investment and governance teams - are being systematically misled by a small handful of proxy research analysts? This narrative collapses under scrutiny.

By contrast, the 3,000 or so US investor relations operatives[27], keen to justify their ongoing existence and backed by significant resources, are focused on year-round shaping and influencing of both board and investor opinion.

Institutional investors engage regularly with issuers, conduct their own analysis, and follow tailored voting frameworks. To suggest that they blindly defer to proxy advisors is to disregard their expertise and reduces a complex, deliberative process to caricature. Worse, such a narrative encourages unwarranted fear and doubt in the minds of corporate boards, fostering suspicion of and antagonism towards shareholders rather than promoting constructive dialogue and engagement.

In conclusion, we respectfully suggest that there is no compelling legal, economic, or fiduciary rationale for new proxy advisor regulation. Such a mandate:

1. **Undermines Intellectual Property Rights**

   Proxy advice is commercially valuable intellectual capital, produced under contract for institutional investors. Forcing free research distribution to issuers effectively compels the transfer of private property for third-party benefit without compensation, raising serious Fifth Amendment concerns as a regulatory taking.

2. **Conflicts with Fiduciary Duties**

   Proxy advisors are agents of their clients, not regulators or corporate arbiters. Our duty is to deliver timely, unconflicted advice based on institutional investor policies - not to pre-clear or expose that analysis to the very issuers being assessed. Prior disclosure could compromise analytical integrity or lead to lobbying, delay, or self-censorship.

[27] Who We Are - NIRI

3. **Distorts Market Incentives**

   Mandating free issuer prior access disincentivizes innovation and degrades the value of research. It erodes business models, particularly for smaller or independent firms, and shifts power toward well-resourced issuers rather than preserving analytical diversity and independence.

4. **Undermines Investor Confidence**

   Institutional investors rely on comprehensive objective proxy research. Allowing issuers to preview or influence reports before clients receive them undermines trust in the process and risks converting a fiduciary tool into a PR-managed exercise.

In short, demands for proxy advisor regulation subordinate shareholder interests to corporate and advisor convenience, weaken transparency, undermine fiduciary integrity, and expose the system to constitutional and competitive vulnerabilities.

With these considerations in mind, we respectfully urge the Sub-Committee to preserve investor choice, uphold shareholder protections, and avoid regulatory measures that would undermine competition, fiduciary accountability, and long-term stewardship.

Should you have any questions or observations about our comments we would be very happy to discuss those with you directly.

Respectfully,

Sarah Wilson

Chief Executive Officer