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OPINION REVIEW & OUTLOOK Follow

Proxy Advisers and Double Standards

A new study by the American Council for Capital Formation shows Glass Lewis and ISS make material errors in their recommendations to investors.

By The Editorial Board Follow

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Securities and Exchange Commission Chairman Gary Gensler PHOTO: TING SHEN/BLOOMBERG NEWS

Gary Gensler has brought down the hammer on public companies that have allegedly misled investors. But when proxy advisers have done the same, the Securities and Exchange Commission Chairman looks the other way, as a new report by the American Council for Capital Formation (ACCF) documents.

Glass Lewis and Institutional Shareholder Services provide asset managers, pension funds and university endowments with recommendations on how to vote on corporate proxy resolutions. They can assist institutional investors that lack in-house resources to conduct due diligence before voting on thousands of ballot measures. Together they make up about 90% of the proxy advisory market, and it's a profitable business.

However, the two companies that are in essence a duopoly often make material analytic and factual mistakes in their voting recommendations. Even when public companies have notified the firms and the SEC of the errors, the proxy advisers have failed to correct them or change their voting recommendation.

During the 2023 proxy season, at least 64 complaints about inaccurate proxy adviser recommendations were filed with the SEC, up from 50 in 2021 and 40 in 2020. As the ACCF report notes, these complaints are likely the tip of the iceberg "because companies—unlike proxy advisers—must assume legal liability to submit a filing" to the SEC.

The ACCF documents proxy advisers' numerous errors, which stem from a combination of sloppiness and one-size-fits-all voting guidelines that "fail to capture the nuance" about specific company issues.

Take Monolithic Power Systems, which said that Glass Lewis incorrectly concluded this year that the value of stock-price based equity awards was more than 40% higher than the value of cancelled performance-based awards. Glass Lewis nonetheless failed to change its recommendation against the company's executive compensation plan.

ISS withheld its recommendation for a director at Finward Bancorp this year because its bylaws allowed only the board of directors—not shareholders—to change its bylaws. But Finward explained that only a corporation's board can amend or repeal its bylaws under the statutory default in Indiana where the bank is headquartered.

Proxy advisers claim they engage with companies before making recommendations, but the myriad errors identified by ACCF suggests they often don't. Yet Mr. Gensler hasn't rapped them. Former SEC Chairman Jay Clayton required that proxy advisers notify their investor customers of company statements alleging errors in voting recommendations.

Mr. Gensler scrapped the Clayton rules, saying they imposed undue "burdens on proxy voting advice businesses." Since when has Mr. Gensler cared about burdening businesses? The manifest reason that Glass Lewis and ISS enjoy a government-protected duopoly is because they promote the progressive agenda against corporate America.

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