

Congress of the United States
Washington, DC 20515

April 17, 2024

Mr. Gary Retelny
President & CEO
Institutional Shareholder Services (ISS)
1177 Avenue of the Americas, 14th Floor
New York, New York 10036

Mr. Retelny,

We are writing to seek information and documents regarding public remarks made by Lorraine Kelly, Head of Governance Solutions at Institutional Shareholder Services (ISS). During an interview on CNBC on March 11, 2024, Ms. Kelly made several statements that raise concerns about ISS's proxy advisory services.

With respect to ESG proposals, Ms. Kelly stated: "Investors, as well, are not voting for many of these or supporting many of these because they are not good for—not linked to long-term shareholder value." The acknowledgment that many ESG proposals are "not linked to long-term shareholder value" is difficult to reconcile with ISS's predominant recommendation that institutional shareholders support such proposals. In fact, Ms. Kelly's admission raises serious questions about whether ISS is breaching its fiduciary duties under the Investment Advisers Act.

Furthermore, when asked directly about the link between ISS vote recommendations and long-term shareholder value, Ms. Kelly stated, "The investment thesis is something we leave to the investors." Institutional investors, which owe fiduciary duties to the beneficial owners of the securities, hire proxy advisors such as ISS specifically to advise them how to vote, in alignment with their fiduciary duties; if ISS does not conduct an economic analysis with respect to shareholder proposals and presumes that investors will undertake it, then none of the parties involved are discerning what is in the best economic interest of the company and its shareholders.

Finally, Ms. Kelly stated that ISS adopts a "centrist" stance in its benchmark views. However, data reviewed by our staff confirms that this claim is indefensible. An analysis of ISS's vote recommendations reveals that in 2023, ISS backed a majority of environmental, social, and political shareholder proposals submitted by left-leaning proponents, while supporting none of the environmental, social, and political proposals submitted by right-leaning proponents.¹

ISS's dominant market position allows it to exert extraordinary influence over proxy voting, corporate governance, and the long-term returns of American investors. Therefore, we are seeking explanations and documentation necessary to clarify the accuracy and implications of

¹ Based on a review on the ISS Voting Analytics platform of environmental, social, and political shareholder proposals submitted to a vote at Russell 3000 companies between January 1, 2023 and July 25, 2023. Proposals submitted by right-leaning proponents are those characterized by ISS Voting Analytics as "Anti-ESG."

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Ms. Kelly's statements. We request responses to the following questions and requests by no later than April 30, 2024:

1. Please explain what, if any, economic analyses are conducted with respect to shareholder proposals on which ISS provides vote recommendations and how such analysis, or the absence thereof, is consistent with ISS's fiduciary duties under the Investment Advisors Act.
2. ISS voting guidelines state that the firm's recommendations should enhance or protect shareholder value.² How does the firm determine whether a particular environmental, social or political proposal is in the best economic interest of shareholders? Please describe all relevant processes and analyses that the firm undertakes to ensure that the firm's recommendations enhance shareholder value, and provide all internal policies and guidelines designed to ensure that the firm's recommendations enhance shareholder value.
3. If your firm is focused solely on the best economic interest of shareholders, please explain the past discrepancy in your firm's track record in recommending left-leaning versus right-leaning shareholder proposals.³
4. Does your firm consider factors other than the best economic interest of shareholders when recommending a vote on shareholder proposals? If so:
 - a. What other factors do you consider?
 - b. How do you determine that those factors are relevant?
 - c. How do you weigh those non-economic factors relative to the economic factors?
 - d. Do you have practices and processes in place to ensure that your vote recommendations do not discourage legal activities (e.g., fossil fuels, for-profit/private prisons, gun manufacturing, tobacco, etc.) for non-economic reasons? If so, please describe them.
 - e. Please also provide all internal and external documents relevant to these questions.

² See Institutional Shareholder Services, *United States Proxy Voting Guidelines Benchmark Policy Recommendations* (Jan. 2024), <https://www.issgovernance.com/file/policy/active/americas/US-Voting-Guidelines.pdf> at 66 ("While a variety of factors goes into each analysis, the overall principle guiding all vote recommendations focuses on how the proposal may enhance or protect shareholder value in either the short or long term.").

³ Known right-leaning shareholder proponents include National Legal and Policy Center (NLPC), National Center for Public Policy Research (NCPFR), Steven Milloy, Bahnsen Group, David Bahnsen, Inspire Investing and William Hild. See Paul Washington & Merel Spierings, "2023 Proxy Season: More Proposals, Lower Support," Harv. L. Sch. F. on Corp. Governance (June 1, 2023), available at <https://corpgov.law.harvard.edu/2023/06/01/2023-proxy-season-more-proposals-lower-support/>. All other shareholder proponents are assumed to be left-leaning.

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5. As part of your firm's proxy vote recommendation process, does ISS consider whether a particular vote recommendation could influence the public company at issue to change its business practices? If so:
 - a. What practices and processes does ISS follow to ensure that such a potential change in business practices would be beneficial to shareholders' economic interests? In addition to your descriptive response, please provide all internal and external documents relevant to this question.

6. What processes do you follow to ensure that your judgments are more sound than those of independent boards of directors—which also owe fiduciary duties to shareholders—when your firm's recommendations are inconsistent with the recommendations of such boards? As part of these processes, does your firm evaluate each of the arguments made in the board's statement of opposition as to why a shareholder proposal is not in the best interest of the company's shareholders? In addition to your descriptive responses, please provide all internal and external documents relevant to these questions.

Sincerely,



Bill Hagerty
United States Senator



Bryan Steil
United States Representative