Litigation to Prevent the Chill of Proxy Advisers' Protected Speech

ROCKVILLE, Md. (Oct. 31, 2019) – Institutional Shareholder Services Inc. (ISS), a leading provider of corporate governance and responsible investment solutions to financial market participants, today announced the filing of a lawsuit against the U.S. Securities and Exchange Commission (SEC) seeking injunctive and declaratory relief in response to Commission-level "guidance" put forward on Aug. 21, 2019.

The complaint, filed in the U.S. District Court for the District of Columbia, contends that the SEC has inappropriately altered the regulatory regime applicable to the voting advice provided by proxy advisory firms and that the Aug. 21 "guidance" is unlawful for the following reasons:

- The guidance exceeds the SEC's statutory authority under Section 14(a) of The Securities Exchange Act of 1934 and is contrary to the plain language of the statute; the provision of proxy advice is not a proxy solicitation and cannot be regulated as such.
- The guidance is procedurally improper because it is a substantive rule that the SEC failed to promulgate pursuant to the notice-and-comment procedures of the Administrative Procedure Act.
- The guidance is arbitrary and capricious because, even though it marks a significant change in the regulatory regime applicable to proxy advice, the SEC has denied that it is changing its position at all. The agency has thus flouted the basic requirement of reasoned decision-making that it at least display awareness that it is changing its position.

"After careful review of the August guidance, we are deeply concerned that it will be used or interpreted in a way that could impede our ability to deliver our data, research, and analyses in an independent and timely manner," said ISS President & CEO, Gary Retelny. "We believe litigation to be necessary to prevent the chill of proxy advisers' protected speech and to ensure the timeliness and independence of the advice that shareholders rely on to make decisions with regards to the governance of their publicly traded portfolio companies."

ISS and other organizations seeking to ensure shareholders have their rightful voice in the manner by which public companies are governed have expressed a variety of concerns with the August guidance. The net effect of the guidance will be to not only diminish important investor protections but also impair what is now a balanced, independent, transparent, and well-functioning relationship between proxy advisers and their clients that over recent decades has resulted in an efficient and effective system for proxy voting.

Since our founding, ISS has worked with a broad cross-section of stakeholders to provide expert guidance and solutions that help shareholders manage portfolio company governance risk and drive long-term value. Today, institutional investors, who are responsible for safeguarding and growing the retirement savings of tens of millions of Americans, rely on proxy advisory firms like ISS for independent and transparent research, data, and analysis, as well as operational support and workflow management.