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OPINION

On Wall Street

Assault on proxy advisers is an attack on the rights of asset owners

Pressure seeks to censor independent analysis and neuter shareholder oversight

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The firms that advise big shareholders on corporate governance matters and help them vote are under siege. A simmering backlash over the activities of proxy advisory firms has mutated into an all-out assault in the US from multiple directions.

The attacks have included congressional hearings, legal actions, regulatory pressure and recent comments by JPMorgan chief executive Jamie Dimon who reportedly called them a "cancer".

The proxy advisory firms are accused of cartel-like behaviour and ideological over-reach in their corporate governance advice with critics treating the fiduciaries who manage money with disdain, painting them as manipulated victims.

This should all be seen for what it is — a rejection of democratic accountability in the financial system by attempting to neuter shareholder oversight. The criticism misrepresents what proxy agents actually do in helping to execute votes for shareholders and providing research, parsing the dense and complex disclosures of thousands of listed companies.

The clients are sophisticated institutional investors — pension funds, sovereign wealth funds, insurance companies and asset managers, including ones owned by JPMorgan. Investors have their own voting policies and decide how votes are cast. Proxy analysts help put those voting preferences into action. And yes, that might include votes on what some see as politically contentious environmental, social and governance issues and climate-change risk factors.

Critics have compared proxy advisers to credit rating agencies which, in the aftermath of the global financial crisis, were accused of excessive market influence. Yet, instead of increasing diversity and transparency, the regulatory response entrenched the dominance of the "Big Three" rating agencies and enshrined an issuer-pays model, which only exacerbated conflicts of interest.

We are now witnessing a similar dynamic in shareholder voting research — unsupported claims of undue sway, followed by misguided regulatory proposals that risk undermining independence and objectivity.

So, what is different? Unlike in credit ratings, there is no evidence of systemic failure in proxy research. The European Securities and Markets Authority, after extensive investigation, concluded the market was doing its job. Esma rejected the need for intrusive regulation, instead supporting the industry code of conduct. The EU and UK both recognise what seems to be ignored in Washington — proxy research is commissioned by sophisticated capital providers to address the issues that they want to know about, not an ideology that is imposed upon them.

In the US, however, there are attempts to force free pre-disclosure of research to companies ahead of clients, to classify research as "proxy solicitation", or to introduce politically-motivated constraints on ESG criteria. These are not neutral regulatory improvements. They are efforts to shift power from shareholders to corporate management, insulating boards from scrutiny and muting dissent.

Europe, by contrast, moved in the opposite direction. Through the Shareholder Rights Directive and related disclosure regulations, the EU has reinforced the rights of shareholders to engage on material risks, including those related to sustainability. The EU does not treat proxy advisers as a problem to be solved, but as an information instrument integral to healthy market functioning and accountability.

A stark example of this transatlantic divergence lies in the European Commission's recent case against Italy for violating the Shareholder Rights Directive. At issue is the Italians' practice of allowing companies to appoint a single, exclusive proxy to represent all shareholders at annual meetings, in effect bypassing independent voting.

The commission, quite rightly, argues that such a system undermines the directive's core aim: to strengthen the rights of shareholders to exercise meaningful corporate governance oversight. It strikes at the heart of the very concept of property law — that owners have the absolute right to choose how they exercise their rights.

Overall, this assault on proxy agencies is a test of whether liberal capitalist democracies still believe in the right of asset owners to govern the capital they provide. The question that remains is both simple and telling: why are corporate issuers so afraid of their owners? Why do they fear scrutiny from the very capital providers who fund their operations, bear their risks and ultimately underwrite their licence to operate?

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