

'Solicit' Ruling Offers Proxy Advisers Compliance Relief

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On July 1, the U.S. Court of Appeals for the District of Columbia Circuit held that the U.S. Securities and Exchange Commission and the securities industry were effectively separated by a common language.

Giving heed to the plain-meaning rule when interpreting legislative intent, the court in Institutional Shareholder Services Inc. v. SEC, affirmed a February 2024 order of the U.S. District Court for the District of Columbia granting summary judgment to plaintiff ISS, holding that the SEC's definition of the term "solicit" went beyond the meaning Congress contemplated when enacting Section 14(a) of the Securities and Exchange Act.

The decision analyzed the SEC's 2020 amendment to its rules regulating proxy advice to define the term "solicit"/"solicitation" to include the provision of client-requested proxy voting advice. The D.C. Circuit struck down the 2020 rule as unlawful, reasoning that the meaning of "solicit" as Congress intended when it enacted the Exchange Act is to actively seek to obtain proxy authority or votes.

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