

**Congress of the United States**  
Washington, DC 20510

May 10, 2024

Secretary Janet Yellen  
U.S. Department of the Treasury  
1500 Pennsylvania Avenue N.W.  
Washington, D.C. 20220

Dear Secretary Yellen:

We write to draw your attention to national security concerns arising from the Deutsche Börse Group's ("Deutsche Börse") acquisition of Institutional Shareholder Services Inc. ("ISS"). As discussed below, Deutsche Börse made this acquisition to advance its "commitment to ESG."<sup>1</sup> Since the acquisition, ISS has persistently used its substantial market power to push American companies to reduce their greenhouse gas emissions in line with the "net zero" goals of the Paris Agreement. Net zero pathways require shutting down America's existing natural gas and coal plants and replacing them with net-zero-aligned technologies for which China controls 70%–80% of the supply chain. As explained below, ISS's net-zero agenda threatens to undermine our nation's energy independence, make our critical infrastructure dependent on China, weaken our national defense, and jeopardize our food security. These issues implicate national security and warrant review under Section 721 of the Defense Production Act.<sup>2</sup> Accordingly, we request that the Committee on Foreign Investment in the United States ("CFIUS") conduct a thorough review of ISS's foreign acquisition and take appropriate remedial action to protect our national security.

## **I. Background**

ISS is a proxy advisory firm that plays a pivotal role in influencing the corporate voting decisions of institutional investors. Together with Glass Lewis, ISS forms part of a duopoly that controls at least 90% of the proxy advisory market.<sup>3</sup> Given its enormous market power, ISS's policies and recommendations have a significant impact on the outcomes of shareholder proposals and other important voting decisions at publicly traded companies. According to one

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<sup>1</sup> Deutsche Börse, *Deutsche Börse Successfully Completes Acquisition of ISS, Strengthening the Focus on Sustainable Investing* (hereinafter, "*Deutsche Börse Successfully Completes Acquisition*") (Feb. 26, 2021), <https://deutsche-boerse.com/dbg-en/media/press-releases/Deutsche-B-rse-successfully-completes-acquisition-of-ISS-strengthening-the-focus-on-sustainable-investing-2555110>.

<sup>2</sup> See 50 U.S.C. § 4565(b)(1)(A).

<sup>3</sup> Jan Krahn et al., *The Controversy Over Proxy Voting: The Role of Asset Managers and Proxy Advisors* (Jan. 30, 2023), <https://corpgov.law.harvard.edu/2023/01/30/the-controversy-over-proxy-voting-the-role-of-asset-managers-and-proxy-advisors/>; Paul Rose, *Proxy Advisors and Market Power: A Review of Institutional Investor Robovoting*, MANHATTAN INSTITUTE (Apr. 2021), at 4 and 5, <https://media4.manhattan-institute.org/sites/default/files/proxy-advisors-market-power-review-investor-robovoting-PR.pdf>.

study, “[i]n the 2020 proxy season alone, 114 institutional investors with over \$5 trillion in assets under management voted in line with ISS and Glass Lewis guidance on 99.5% or more of proposals.”<sup>4</sup> Because proxy voting outcomes directly affect corporate governance, ISS’s influence as a proxy advisor shapes corporate behavior on a national scale.<sup>5</sup> This is especially true because corporate directors understand that ISS may recommend voting for their removal as board members if those members do not comply with ISS’s favored proposals.<sup>6</sup>

In 2021, Deutsche Börse completed an “81% majority stake acquisition” of ISS.<sup>7</sup> Deutsche Börse is a foreign entity, and its acquisition of ISS “could result in foreign control” of a business that is “engaged in interstate commerce in the United States.”<sup>8</sup> Accordingly, Deutsche Börse’s acquisition of ISS is a “covered transaction” that is subject to CFIUS’s review.<sup>9</sup>

In the press release accompanying its acquisition of ISS, Deutsche Börse announced that the “acquisition . . . is a logical step in our ESG growth strategy.”<sup>10</sup> Deutsche Börse also noted that it would use the acquisition to “strengthen[] the focus on sustainable investing,” to support “investment decisions with a particular view on sustainability criteria,” to “fully realise opportunities for future growth in ESG-based investing globally, and to “demonstrat[e]” its “commitment to ESG.”<sup>11</sup>

Consistent with Deutsche Börse’s stated intent, ISS has diligently pushed over the last several years to advance ESG policies regarding climate change and greenhouse gas (“GHG”) emissions, and those efforts pose a serious risk to national security. For example, when evaluating shareholder proposals relating to GHG emissions, ISS expressly considers whether “the company has set emissions reductions targets that are aligned with Paris Agreement goals of limiting warming to well below 2 degrees C,” and whether “the company has realistic strategies

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<sup>4</sup> Letter from 22 State Financial Officials to ISS (May 15, 2023), at 2, <https://treasurer.utah.gov/wp-content/uploads/Proxy-Voting-Letter-to-Proxy-Advisory-Firms.pdf#page=14> (second emphasis added) (citing Rose, *supra* note 3, at 10).

<sup>5</sup> See, e.g., SEC Release No. 34-89372, *Exemptions from the Proxy Rules for Proxy Voting Advice* (July 22, 2020), at 121–22, <https://www.sec.gov/files/rules/final/2020/34-89372.pdf> (noting that proxy advisory firms “are uniquely situated to influence the voting decisions of institutional investors, which hold an increasingly significant portion of shares in U.S. public companies”).

<sup>6</sup> See ISS, *U.S. Proxy Voting Guidelines, Benchmark Policy Recommendations* (hereinafter, “*U.S. Proxy Voting Guidelines*”) (Jan. 2024), at 9, <https://www.issgovernance.com/file/policy/active/americas/US-Voting-Guidelines.pdf> (stating that directors “should respond” to shareholder proposals (including “non-binding” proposals) that receive “significant support”; and recommending voting on director nominees based on their “[r]esponsiveness” to such proposals).

<sup>7</sup> Deutsche Börse, *Deutsche Börse Successfully Completes Acquisition*, *supra* note 1.

<sup>8</sup> See 50 U.S.C. § 4565(a)(4)(B)(i), (a)(13).

<sup>9</sup> See *id.* § 4565(a)(4)(A)(i), (b)(1)(A).

<sup>10</sup> Deutsche Börse, *Deutsche Börse Successfully Completes Acquisition*, *supra* note 1.

<sup>11</sup> *Id.*; Deutsche Börse, *Deutsche Börse Acquires Leading Governance, ESG Data and Analytics Provider ISS* (Nov. 17, 2020), <https://www.deutsche-boerse.com/dbg-en/media/press-releases/Deutsche-B-rse-acquires-leading-governance-ESG-data-and-analytics-provider-ISS-2343868>. To the extent that the acquisition included any sort of “non-interference policies,” such policies are irrelevant because the controlling statute calls for review by CFIUS whenever an “acquisition . . . could result in control” of a U.S. business by a foreign person. See 50 U.S.C. § 4565(a)(4)(B)(i) (emphasis added); see also 31 C.F.R. § 800.301(a) (emphasis added) (stating that a covered transaction is one which “could result” in foreign control, “irrespective of the actual arrangements for control provided for in the terms of the transaction”).

and incentives in place to achieve those targets.”<sup>12</sup> ISS also examines whether a company’s “disclosures and strategies [are] related to direct emissions, emissions from electricity, and emissions related to the company’s products and supply chain.”<sup>13</sup>

For companies that are “significant GHG emitters,” ISS generally recommends voting against the relevant directors unless the companies have adopted “[a]ppropriate GHG emissions reduction targets,” which include targets to achieve “Net Zero . . . by . . . 2050.”<sup>14</sup> ISS considers a company to be a “significant GHG emitter” if it is on the Climate Action 100+ (“CA100+”) “focus” list.<sup>15</sup> CA100+ is an organization of asset managers that have pledged to pressure portfolio companies to reduce GHG emissions in alignment “with the Paris Agreement’s goal of limiting global average temperature increase to well below 2°C above pre-industrial levels.”<sup>16</sup> To that end, CA100+ has compiled a list of “170 focus companies [that] have been selected for engagement” on the issue of “driving the global net zero emissions transition.”<sup>17</sup> The focus list targets more than a dozen of the largest power companies in the United States (including Duke, Ameren, American Electric Power, Constellation, and FirstEnergy), along with the nation’s largest oil & gas companies (including ExxonMobil, Chevron, ConocoPhillips, Marathon, and Valero).<sup>18</sup>

Regarding the power sector in particular, CA100+ seeks to ensure that “[e]missions from electricity generation . . . reach net zero by 2040 globally and by 2035 in advanced economies, with a reduction of more than 50% by 2030.”<sup>19</sup> This plan requires the “[r]apid retirement of coal and gas assets,” along with the corresponding “phasing out” of electricity generation from coal and natural gas.<sup>20</sup> To attain these ambitious goals, CA100+ members “[e]ngage with power companies to establish credible net zero transition plans . . . including emissions targets.”<sup>21</sup> If a power company is “unresponsive” to these engagements, then asset managers are directed to use

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<sup>12</sup> ISS, *U.S. Procedures and Policies (Non-Compensation), Frequently Asked Questions* (July 25, 2023), at 41, <https://www.issgovernance.com/file/policy/active/americas/US-Procedures-and-Policies-FAQ.pdf?v=2>.

<sup>13</sup> *Id.*

<sup>14</sup> ISS, *U.S. Proxy Voting Guidelines*, *supra* note 6, at 17–18 & n.10.

<sup>15</sup> *Id.* at 17. n.10.

<sup>16</sup> CA100+, *The Three Goals*, <https://www.climateaction100.org/the-three-goals/>. Similar goals are shared by other large networks of asset managers. For example, members of the Net Zero Asset Managers initiative (“NZAM”) pledge to “help deliver the goals of the Paris Agreement” by (among other things) “[i]mplementing a stewardship and engagement strategy, with a clear escalation and voting policy, that is consistent with [the] ambition for all assets under management to achieve net zero emissions by 2050 or sooner.” NZAM, *Commitment*, <https://www.netzeroassetmanagers.org/commitment/>.

<sup>17</sup> CA100+, *Companies*, <https://www.climateaction100.org/whos-involved/companies/>.

<sup>18</sup> *See id.*

<sup>19</sup> CA100+, *Global Sector Strategies: Investor Interventions to Accelerate Net Zero Electric Utilities* (hereinafter, “*Global Sector Strategies for Electric Utilities*”) (Oct. 2021), at 10 (footnote omitted), <https://www.climateaction100.org/wp-content/uploads/2021/10/Global-Sector-Strategy-Electric-Utilities-IIGCC-Oct-21.pdf>.

<sup>20</sup> *Id.* at 12, 18, and 23; *see also* Janina Magdanz & Punkhuri Kumar, *Fighting Climate Change: A Battle of the Sovereigns*, ISS ESG (Sept. 9, 2021), at 3, <https://www.issgovernance.com/file/publications/iss-esg-fighting-climate-change.pdf> (ISS report stating that “large corporations” share in the “responsibility” to keep “fossil fuel reserves . . . in the ground”).

<sup>21</sup> *Global Sector Strategies for Electric Utilities*, *supra* note 17, at 15.

“escalation strategies,” such as “shareholder resolution[s]” and “vote[s] on directors.”<sup>22</sup> CA100+’s phase out strategy is reflected in an International Energy Agency (“IEA”) chart that shows, in order to achieve net zero by 2050, electricity generation from coal and natural gas will have to be virtually eliminated and replaced by “[r]enewables” like solar and wind power.<sup>23</sup>

The former chair of the Federal Energy Regulatory Commission has cautioned that “[i]ntermittent renewable resources like wind and solar are simply incapable, by themselves, of ensuring the stability of the bulk electric system.”<sup>24</sup> As a result, the forced retirement of America’s natural gas and coal plants could destabilize the nation’s power system and ultimately lead to “a catastrophic reliability event.”<sup>25</sup>

## II. Threats to Energy Independence and Critical Infrastructure

ISS’s ESG-aligned climate policies threaten the national security of the United States. They weaken our nation’s energy independence and make our critical infrastructure and energy supply dependent on foreign adversaries—especially China. The United States is the world’s number one producer of oil and natural gas.<sup>26</sup> Yet ISS’s policies force America’s largest companies—including power and energy companies—to abandon our nation’s own bountiful resources and instead switch to “green” technologies that produce lower GHG emissions in line with the net-zero agenda. The supply chain for those technologies is dominated by China, which, as the Biden Administration has acknowledged, “seeks to make the world more dependent on [China] while reducing its own dependence on the world.”<sup>27</sup> In particular, China aims “to become the world’s leading power” by “using its technological capacity and increasing influence over international institutions . . . to mold global technology use and norms to privilege its [own] interests and values.”<sup>28</sup>

## III. Threat to National Defense

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<sup>22</sup> *Id.*; see also *id.* at 6 (stating that, in order to attain net zero in the power sector, it is “vital to ensure full accountability of boards of directors”).

<sup>23</sup> For the year 2020, the chart reflects that 67% of the world’s total electricity supply came from coal (43%) and natural gas (24%), while only 17% came from “[r]enewables.” IEA, *Net Zero by 2050, A Roadmap for the Global Energy Sector* (Oct. 2021), at 195, [https://iea.blob.core.windows.net/assets/deebef5d-0c34-4539-9d0c-10b13d840027/NetZeroBy2050-ARoadmapfortheGlobalEnergySector\\_CORR.pdf#page=196](https://iea.blob.core.windows.net/assets/deebef5d-0c34-4539-9d0c-10b13d840027/NetZeroBy2050-ARoadmapfortheGlobalEnergySector_CORR.pdf#page=196). In the net-zero-by-2050 scenario, the total electricity supply from coal and natural gas is reduced to 3% (with 1% coming from natural gas and 2% coming from coal), while “[r]enewables” account for 77% of electricity generation worldwide. *Id.* (“CCUS” refers to the use of “carbon capture, utilisation and storage, while “unabated” coal and natural gas means the use of those products “without CCUS.” *Id.* at 193.)

<sup>24</sup> James P. Danly, Commissioner, Federal Energy Regulatory Commission, *Written Testimony Before the Committee on Energy & Natural Resources*, United States Senate (May 4, 2023), at 2, <https://www.energy.senate.gov/services/files/0A896B12-2895-4F68-A367-74009F2975C4>.

<sup>25</sup> See *id.*

<sup>26</sup> U.S. Energy Information Administration (“EIA”), *United States Produces More Crude Oil Than Any Country, Ever* (Mar. 11, 2024), <https://www.eia.gov/todayinenergy/detail.php?id=61545>; EIA, *Frequently Asked Questions (FAQs), What Countries Are the Top Producers and Consumers of Oil?*, <https://www.eia.gov/tools/faqs/faq.php?id=709&t>; EIA, *International Energy Outlook 2023*, <https://www.eia.gov/outlooks/aeo/data/browser/#/?id=41-IEO2023> (showing natural gas production).

<sup>27</sup> President, *National Security Strategy* (Oct. 2022), at 23, <https://www.whitehouse.gov/wp-content/uploads/2022/10/Biden-Harris-Administrations-National-Security-Strategy-10.2022.pdf>.

<sup>28</sup> *Id.* (emphasis added).

ISS's efforts to undermine our nation's energy independence also threaten our national defense. America's military capabilities require "assured access to sufficient and secure supplies of energy."<sup>29</sup> ISS's ESG-aligned climate policies have the effect of driving our military's critical energy supply away from the United States and into the hands of our most powerful adversary. Moreover, by pushing U.S. companies to constrict the secure production of oil and gas here at home, the same policies also threaten to deprive our military of the critical fossil fuels that it relies on to protect our nation. Despite recent talk of reducing the military's "carbon footprint" by converting to "climate-friendly" technologies,<sup>30</sup> a secure supply of carbon-emitting fossil fuels remains critical to our national defense. The Department of Defense is the "single largest consumer of energy in the US, and in fact, the world's single largest institutional consumer of petroleum."<sup>31</sup> If left unchecked, the artificial suppression of America's independent energy production "would have a debilitating impact on national security."<sup>32</sup>

#### IV. Possible Threat to Food Security

Finally, ISS's net-zero policies may threaten national security by weakening our nation's agriculture production and food security. As previously stated, ISS implements CA100+'s list of "focus" companies by incorporating it into ISS's benchmark policies and voting recommendations.<sup>33</sup> The focus list is central to CA100+'s plan to "ensure [that] the world's largest corporate greenhouse gas emitters take necessary action" to "reduce greenhouse gas emissions across the value chain."<sup>34</sup> Because agriculture production is a significant "source[] of GHG emissions across the value chain,"<sup>35</sup> CA100+ promotes the use of "targets . . . reducing the impact of emissions related to agriculture."<sup>36</sup>

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<sup>29</sup> U.S. Department of Defense ("DOD"), *Operational Energy Strategy* (May 2023), at 1, <https://www.acq.osd.mil/eie/Downloads/OE/2023%20Operational%20Energy%20Strategy.pdf>; see also DOD, *Operational Energy*, <https://www.acq.osd.mil/eie/oe/index.html> ("Energy is an essential enabler of military capability, and the Department depends on energy-resilient forces and weapon systems to achieve its mission.").

<sup>30</sup> DOD, *Statement by Secretary of Defense Lloyd J. Austin III on Tackling the Climate Crisis at Home and Abroad* (Jan. 27, 2021), <https://www.defense.gov/News/Releases/Release/Article/2484504/statement-by-secretary-of-defense-lloyd-j-austin-iii-on-tackling-the-climate-cr/>; see also Department of the Army, Office of the Assistant Secretary of the Army for Installations, Energy and Environment, *U.S. Army Climate Strategy* (Feb. 2022), at 5, [https://www.army.mil/e2/downloads/rv7/about/2022\\_army\\_climate\\_strategy.pdf](https://www.army.mil/e2/downloads/rv7/about/2022_army_climate_strategy.pdf) (setting climate goals that include "net-zero Army GHG emissions by 2050").

<sup>31</sup> Neta C. Crawford, *Pentagon Fuel Use, Climate Change, and the Costs of War* (June 12, 2019), at 4, <https://watson.brown.edu/costsofwar/files/cow/imce/papers/2019/Pentagon%20Fuel%20Use.%20Climate%20Change%20and%20the%20Costs%20of%20War%20Final.pdf>.

<sup>32</sup> See 50 U.S.C. § 4565(a)(5); see also *id.* § 4565(f)(1)–(2) (citing national security concerns relating to the "domestic production needed for projected national defense requirements," along with the "capability and capacity of domestic industries to meet [those] requirements").

<sup>33</sup> See ISS, *U.S. Proxy Voting Guidelines*, *supra* note 6, at 17 n.10.

<sup>34</sup> CA100+, <https://www.climateaction100.org/>; CA100+, *The Three Goals*, *supra* note 14.

<sup>35</sup> CA100+, *Global Sector Strategies: Recommended Investor Expectations for Food and Beverage* (hereinafter, "*Global Sector Strategies for Food & Beverage*") (Aug. 2021), at 5 and 8, <https://www.climateaction100.org/wp-content/uploads/2021/08/Global-Sector-Strategies-Food-and-Beverage-Ceres-PRI-August-2021.pdf>.

<sup>36</sup> CA100+, *Climate Action 100+ Sets New Decarbonisation Expectations for Food and Beverage Industry in Line With Paris Agreement Goals* (Aug. 24, 2021), <https://www.climateaction100.org/news/climate-action-100-sets-new-decarbonisation-expectations-for-food-and-beverage-industry-in-line-with-paris-agreement-goals/>.

These “targets” are used to pressure agriculture producers from various angles. For example, CA100+ members push food-and-beverage companies to reduce their indirect “Scope 3 emissions” by enforcing emission-reduction targets against the companies’ suppliers in the agriculture sector (that is, farmers and ranchers).<sup>37</sup> Along the same lines, CA100+ calls on asset managers to engage banks “to mitigate their *financed emissions*,” which may include emissions resulting from financial services that are offered to agriculture producers.<sup>38</sup> In practice, banks may be forced to reduce their financed emissions by cutting off vital financial services and credit to agriculture producers, thus harming food production and food security.<sup>39</sup>

Moreover, meeting CA100+’s GHG reduction targets calls for a radical overhaul of farming infrastructure, including switching to organic fertilizers and “zero emissions on-farm machinery.”<sup>40</sup> These and other dubious farming practices threaten to destabilize American agriculture and undermine our nation’s food security. Indeed, CA100+ expressly acknowledges that reducing emissions in agriculture may be a “tradeoff[]” that “come[s] at the expense of food security.”<sup>41</sup> By incorporating CA100+’s climate agenda, ISS’s voting policies pose a national security risk that could endanger our nation’s food security.<sup>42</sup>

## V. Conclusion

Given the foregoing concerns, we urge CFIUS to review Deutsche Börse’s acquisition of ISS to determine the effects on national security.

Thank you for your attention to this matter.

Sincerely,

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<sup>37</sup> See CA100+, *Global Sector Strategies for Food & Beverage*, *supra* note 40, at 13–15; see also *id.* at 9 (emphasis added) (“Upstream and midstream companies, including *crop and livestock producers* . . . may lose contracts or see lower credit ratings . . . as their downstream buyers [that is, food-and-beverage companies,] seek to align with net zero” and offer “alternatives to meat and dairy products.”); Green Century Funds, *Release: Green Century Shareholder Proposal Prompts Costco[] Commitment to Set New Climate Emissions Reduction Targets* (Nov. 16, 2022), <https://www.greencentury.com/release-green-century-shareholder-proposal-prompts-costco-commitment-to-set-new-climate-emissions-reduction-targets/> (discussing successful shareholder proposal for Costco to “set[] climate emissions reduction targets for its full value chain,” including the Scope 3 emissions “from its producers”).

<sup>38</sup> CA100+, *Global Sector Strategies for Food & Beverage*, *supra* note 40, at 28 (emphasis added).

<sup>39</sup> See *id.* (recognizing that financial institutions may “play a key role in providing credit to agricultural commodity producers”).

<sup>40</sup> *Id.* at 23 and 28.

<sup>41</sup> CA100+, *Global Sector Strategies for Food & Beverage*, *supra* note 40, at 31 n.27.

<sup>42</sup> See Exec. Order No. 14083, 87 Fed. Reg. 57370 (Sept. 15, 2022) (addressing national security risks relating to “food security” and the “agriculture industrial base”).



Andy Barr  
Member of Congress



Bryan Steil  
Member of Congress