

[118H4589]

[DISCUSSION DRAFT]119TH CONGRESS
1ST SESSION**H. R. _____**

To amend the Securities Exchange Act of 1934 to provide for the registration of proxy advisory firms, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

Mr. STEIL introduced the following bill; which was referred to the Committee on _____

A BILL

To amend the Securities Exchange Act of 1934 to provide for the registration of proxy advisory firms, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. REGISTRATION OF PROXY ADVISORY FIRMS.**

4 (a) AMENDMENT.—The Securities Exchange Act of
5 1934 (15 U.S.C. 78a et seq.) is amended by inserting after
6 section 15G the following new section:

1 **“SEC. 15H. REGISTRATION OF PROXY ADVISORY FIRMS.**

2 “(a) CONDUCT PROHIBITED.—It shall be unlawful
3 for a proxy advisory firm to make use of the mails or any
4 means or instrumentality of interstate commerce to pro-
5 vide proxy voting advice, research, analysis, ratings or rec-
6 ommendations to any client, unless such proxy advisory
7 firm is registered under this section.

8 “(b) REGISTRATION PROCEDURES.—

9 “(1) APPLICATION FOR REGISTRATION.—

10 “(A) IN GENERAL.—A proxy advisory firm
11 shall file with the Commission an application
12 for registration, in such form as the Commis-
13 sion shall require, by rule, and containing the
14 information described in subparagraph (B).

15 “(B) REQUIRED INFORMATION.—An appli-
16 cation for registration under this section shall
17 contain—

18 “(i) a certification that the applicant
19 is able to consistently provide proxy advice
20 based on accurate information;

21 “(ii) with respect to clients of the ap-
22 plicant that vote shares held on behalf of
23 shareholders, a certification that the appli-
24 cant—

1 “(I) will provide proxy voting ad-
2 vice only in the best economic interest
3 of those shareholders; and

4 “(II) has the requisite expertise
5 to ensure that voting recommenda-
6 tions are in the best economic interest
7 of those shareholders;

8 “(iii) information on the procedures
9 and methodologies that the applicant uses
10 to ensure that proxy voting recommenda-
11 tions are in the best economic interest of
12 the ultimate shareholders;

13 “(iv) information on the organiza-
14 tional structure of the applicant;

15 “(v) an explanation of whether or not
16 the applicant has in effect a code of ethics,
17 and if not, the reasons therefor;

18 “(vi) a description of any potential or
19 actual conflict of interest relating to the
20 provision of proxy advisory services, includ-
21 ing those arising out of or resulting from
22 the ownership structure of the applicant or
23 the provision of other services by the appli-
24 cant or any person associated with the ap-
25 plicant;

1 “(vii) the policies and procedures in
2 place to publicly disclose and manage con-
3 flicts of interest under subsection (f);

4 “(viii) information related to the pro-
5 fessional and academic qualifications of
6 staff tasked with providing proxy advisory
7 services; and

8 “(ix) any other information and docu-
9 ments concerning the applicant and any
10 person associated with such applicant as
11 the Commission, by rule, may prescribe as
12 necessary or appropriate in the public in-
13 terest or for the protection of investors.

14 “(2) REVIEW OF APPLICATION.—

15 “(A) INITIAL DETERMINATION.—Not later
16 than 90 days after the date on which the appli-
17 cation for registration is filed with the Commis-
18 sion under paragraph (1) (or within such longer
19 period as to which the applicant consents) the
20 Commission shall—

21 “(i) by order, grant registration; or

22 “(ii) institute proceedings to deter-
23 mine whether registration should be de-
24 nied.

25 “(B) CONDUCT OF PROCEEDINGS.—

1 “(i) CONTENT.—Proceedings referred
2 to in subparagraph (A)(ii) shall—

3 “(I) include notice of the grounds
4 for denial under consideration and an
5 opportunity for hearing; and

6 “(II) be concluded not later than
7 120 days after the date on which the
8 application for registration is filed
9 with the Commission under paragraph
10 (1).

11 “(ii) DETERMINATION.—At the con-
12 clusion of such proceedings, the Commis-
13 sion, by order, shall grant or deny such ap-
14 plication for registration.

15 “(iii) EXTENSION AUTHORIZED.—The
16 Commission may extend the time for con-
17 clusion of such proceedings for not longer
18 than 90 days, if the Commission finds
19 good cause for such extension and pub-
20 lishes its reasons for so finding, or for such
21 longer period as to which the applicant
22 consents.

23 “(C) GROUNDS FOR DECISION.—The Com-
24 mission shall grant registration under this sub-
25 section—

1 “(i) if the Commission finds that the
2 requirements of this section are satisfied;
3 and

4 “(ii) unless the Commission finds (in
5 which case the Commission shall deny such
6 registration) that—

7 “(I) the applicant has failed to
8 certify to the Commission’s satisfac-
9 tion that it is able to consistently pro-
10 vide proxy advice based on accurate
11 information and to materially comply
12 with the procedures and methodolo-
13 gies disclosed under paragraph (1)(B)
14 and with subsections (f) and (g); or

15 “(II) if the applicant were so reg-
16 istered, its registration would be sub-
17 ject to suspension or revocation under
18 subsection (d).

19 “(3) PUBLIC AVAILABILITY OF INFORMATION.—
20 Subject to section 24, the Commission shall make
21 the information and documents submitted to the
22 Commission by a proxy advisory firm in its com-
23 pleted application for registration, or in any amend-
24 ment submitted under paragraph (1) or (2) of sub-
25 section (c), publicly available on the Commission’s

1 website, or through another comparable, readily ac-
2 cessible means.

3 “(c) UPDATE OF REGISTRATION.—

4 “(1) UPDATE.—Each registered proxy advisory
5 firm shall promptly amend and update its applica-
6 tion for registration under this section if any infor-
7 mation or document provided therein becomes mate-
8 rially inaccurate, except that a registered proxy advi-
9 sory firm is not required to amend the information
10 required to be filed under subsection (b)(1)(B)(i) by
11 filing information under this paragraph, but shall
12 amend such information in the annual submission of
13 the organization under paragraph (2) of this sub-
14 section.

15 “(2) CERTIFICATION.—Not later than 90 cal-
16 endar days after the end of each calendar year, each
17 registered proxy advisory firm shall file with the
18 Commission an amendment to its registration, in
19 such form as the Commission, by rule, may prescribe
20 as necessary or appropriate in the public interest or
21 for the protection of investors—

22 “(A) certifying that the information and
23 documents in the application for registration of
24 such registered proxy advisory firm continue to
25 be accurate in all material respects; and

1 “(B) listing any material change that oc-
2 curred to such information or documents during
3 the previous calendar year.

4 “(d) CENSURE, DENIAL, OR SUSPENSION OF REG-
5 ISTRATION; NOTICE AND HEARING.—The Commission, by
6 order, shall censure, place limitations on the activities,
7 functions, or operations of, suspend for a period not ex-
8 ceeding 12 months, or revoke the registration of any reg-
9 istered proxy advisory firm if the Commission finds, on
10 the record after notice and opportunity for hearing, that
11 such censure, placing of limitations, suspension, or revoca-
12 tion is necessary for the protection of investors and in the
13 public interest and that such registered proxy advisory
14 firm, or any person associated with such an organization,
15 whether prior to or subsequent to becoming so associ-
16 ated—

17 “(1) has committed or omitted any act, or is
18 subject to an order or finding, enumerated in sub-
19 paragraph (A), (D), (E), (H), or (G) of section
20 15(b)(4), has been convicted of any offense specified
21 in section 15(b)(4)(B), or is enjoined from any ac-
22 tion, conduct, or practice specified in subparagraph
23 (C) of section 15(b)(4), during the 10-year period
24 preceding the date of commencement of the pro-

1 ceedings under this subsection, or at any time there-
2 after;

3 “(2) has been convicted during the 10-year pe-
4 riod preceding the date on which an application for
5 registration is filed with the Commission under this
6 section, or at any time thereafter, of—

7 “(A) any crime that is punishable by im-
8 prisonment for 1 or more years, and that is not
9 described in section 15(b)(4)(B); or

10 “(B) a substantially equivalent crime by a
11 foreign court of competent jurisdiction;

12 “(3) is subject to any order of the Commission
13 barring or suspending the right of the person to be
14 associated with a registered proxy advisory firm;

15 “(4) fails to furnish the certifications required
16 under subsections (b)(2)(C)(ii)(I) and (c)(2);

17 “(5) has engaged in one or more prohibited acts
18 enumerated in paragraph (1);

19 “(6) fails to maintain adequate financial and
20 managerial resources to consistently offer advisory
21 services to clients that vote shares held on behalf of
22 shareholders consistent with the best economic inter-
23 est of those shareholders, including by failing to
24 comply with subsection (f) or (g);

1 “(7) fails to maintain adequate expertise to en-
2 sure that proxy advisory services for clients that vote
3 shares held on behalf of shareholders are tied to the
4 best economic interest of those shareholders; or

5 “(8) engages in a prohibited act enumerated in
6 subsection (j).

7 “(e) TERMINATION OF REGISTRATION.—

8 “(1) VOLUNTARY WITHDRAWAL.—A registered
9 proxy advisory firm may, upon such terms and con-
10 ditions as the Commission may establish as nec-
11 essary in the public interest or for the protection of
12 investors, which terms and conditions shall include
13 at a minimum that the registered proxy advisory
14 firm will no longer conduct such activities as to
15 bring it within the definition of proxy advisory firm
16 in section 3(a)(81), withdraw from registration by
17 filing a written notice of withdrawal to the Commis-
18 sion.

19 “(2) COMMISSION AUTHORITY.—In addition to
20 any other authority of the Commission under this
21 title, if the Commission finds that a registered proxy
22 advisory firm is no longer in existence or has ceased
23 to do business as a proxy advisory firm, the Com-
24 mission, by order, shall cancel the registration under
25 this section of such registered proxy advisory firm.

1 “(f) MANAGEMENT OF CONFLICTS OF INTEREST.—

2 “(1) ORGANIZATION POLICIES AND PROCE-
3 DURES.—Each registered proxy advisory firm shall
4 establish, maintain, and enforce written policies and
5 procedures reasonably designed, taking into consid-
6 eration the nature of the business of such registered
7 proxy advisory firm and associated persons, to pub-
8 licly disclose and manage any conflicts of interest
9 that arise or would reasonably be expected to arise
10 from such business.

11 “(2) COMMISSION AUTHORITY.—The Commis-
12 sion shall, within one year of enactment, issue final
13 rules to prohibit, or require the management and
14 public disclosure of, any conflicts of interest relating
15 to the offering of proxy advisory services by a reg-
16 istered proxy advisory firm, including, without limi-
17 tation, conflicts of interest relating to—

18 “(A) the manner in which a registered
19 proxy advisory firm is compensated by the cli-
20 ent, any affiliate of the client, or any other per-
21 son for providing proxy advisory services;

22 “(B) business relationships, ownership in-
23 terests, or any other financial or personal inter-
24 ests between a registered proxy advisory firm,
25 or any person associated with such registered

1 proxy advisory firm, and any client, or any af-
2 filiate of such client;

3 “(C) the formulation of proxy voting poli-
4 cies;

5 “(D) the execution, or assistance with the
6 execution, of proxy votes if such votes are based
7 upon recommendations made by the proxy advi-
8 sory firm in which a person other than the
9 issuer is a proponent; and

10 “(E) any other potential conflict of inter-
11 est, as the Commission deems necessary or ap-
12 propriate in the public interest or for the pro-
13 tection of investors.

14 “(3) DISCLOSURE ON FACTORS INFLUENCING
15 RECOMMENDATIONS.—Each registered proxy advi-
16 sory firm shall annually disclose to the Commission
17 and make publicly available the economic and other
18 factors that a reasonable investor would expect to in-
19 fluence the recommendations of such proxy advisory
20 firm, including the ownership composition of such
21 proxy advisory firm and any meetings with, or feed-
22 back received from, outside entities.

23 “(g) RELIABILITY OF PROXY ADVISORY FIRM SERV-
24 ICES.—

1 “(1) IN GENERAL.—Each registered proxy advi-
2 sory firm shall—

3 “(A) have staff and other resources suffi-
4 cient to produce proxy voting recommendations
5 that are based on accurate and current infor-
6 mation and designed for clients that vote shares
7 held on behalf of shareholders to advance the
8 best economic interest of those shareholders;

9 “(B) implement procedures that permit
10 issuers that are the subject of proxy voting rec-
11 ommendations—

12 “(i) access in a reasonable time to
13 data and information used to make rec-
14 ommendations; and

15 “(ii) a reasonable opportunity to pro-
16 vide meaningful comment and corrections
17 to such data and information, including
18 the opportunity to present (in person or
19 telephonically) details to the person re-
20 sponsible for developing such data and in-
21 formation prior to the publication of proxy
22 voting recommendations to clients;

23 “(C) employ an ombudsman to receive
24 complaints about the accuracy of information
25 used in making recommendations from the com-

1 panies that are the subject of the proxy advi-
2 sory firm’s voting recommendations and seek to
3 resolve those complaints in a timely fashion and
4 prior to the publication of proxy voting rec-
5 ommendations to clients; and

6 “(D) if the ombudsman is unable to re-
7 solve a complaint to a company’s satisfaction
8 prior to the publication of proxy voting rec-
9 ommendations to clients, include in the final re-
10 port of the firm to clients—

11 “(i) a statement detailing the com-
12 pany’s complaints, if requested in writing
13 by the company; and

14 “(ii) a statement explaining why the
15 proxy voting recommendation is in the best
16 economic interest of shareholders.

17 “(2) DEFINITIONS.—In this subsection:

18 “(A) DATA AND INFORMATION USED TO
19 MAKE RECOMMENDATIONS.—The term ‘data
20 and information used to make voting rec-
21 ommendations’—

22 “(i) means the financial, operational,
23 or descriptive data and information on an
24 issuer used by proxy advisory firms and

1 any contextual or substantive analysis im-
2 pacting the recommendation; and

3 “(ii) does not include the entirety of
4 the proxy advisory firm’s final report to its
5 clients.

6 “(B) REASONABLE TIME.—The term ‘rea-
7 sonable time’—

8 “(i) means not less than 1 week be-
9 fore the publication of proxy voting rec-
10 ommendations for clients; and

11 “(ii) shall not otherwise interfere with
12 a proxy advisory firm’s ability to provide
13 its clients with timely access to accurate
14 proxy voting research, analysis, or rec-
15 ommendations.

16 “(h) PRIVATE RIGHT OF ACTION WITH RESPECT TO
17 ILLEGAL RECOMMENDATIONS.—Any proxy advisory firm
18 that endorses a proposal that is not supported by the
19 issuer but is approved and subsequently found by a court
20 of competent jurisdiction to violate State or Federal law
21 shall be liable to the applicable issuer for the costs associ-
22 ated with the approval of such proposal, including imple-
23 mentation costs and any penalties incurred by the issuer.

24 “(i) DESIGNATION OF COMPLIANCE OFFICER.—Each
25 registered proxy advisory firm shall designate an indi-

1 vidual who reports directly to senior management as re-
2 sponsible for administering the policies and procedures
3 that are required to be established pursuant to subsections
4 (f) and (g), and for ensuring compliance with the securi-
5 ties laws and the rules and regulations thereunder, includ-
6 ing those promulgated by the Commission pursuant to this
7 section.

8 “(j) PROHIBITED CONDUCT.—

9 “(1) PROHIBITED ACTS AND PRACTICES.—Not
10 later than one year after the date of enactment of
11 this section, the Commission shall issue final rules
12 to prohibit any act or practice relating to the offer-
13 ing of proxy advisory services by a registered proxy
14 advisory firm that the Commission determines to be
15 unfair, coercive, or abusive, including any act or
16 practice relating to—

17 “(A) advisory or consulting services (of-
18 fered directly or indirectly, including through
19 an affiliate) related to corporate governance
20 issues; or

21 “(B) modifying a voting recommendation
22 or otherwise departing from its adopted system-
23 atic procedures and methodologies in the provi-
24 sion of proxy advisory services, based on wheth-
25 er an issuer, or affiliate thereof, subscribes or

1 will subscribe to other services or product of the
2 registered proxy advisory firm or any person as-
3 sociated with such organization.

4 “(2) RULE OF CONSTRUCTION.—Nothing in
5 paragraph (1), or in any rules or regulations adopt-
6 ed thereunder, may be construed to modify, impair,
7 or supersede the operation of any of the antitrust
8 laws (as defined in the first section of the Clayton
9 Act, except that such term includes section 5 of the
10 Federal Trade Commission Act, to the extent that
11 such section 5 applies to unfair methods of competi-
12 tion).

13 “(k) STATEMENTS OF FINANCIAL CONDITION.—
14 Each registered proxy advisory firm shall, on a confiden-
15 tial basis, file with the Commission, at intervals deter-
16 mined by the Commission, such financial statements, cer-
17 tified (if required by the rules or regulations of the Com-
18 mission) by an independent public auditor, and informa-
19 tion concerning its financial condition, as the Commission,
20 by rule, may prescribe as necessary or appropriate in the
21 public interest or for the protection of investors.

22 “(l) ANNUAL REPORT.—

23 “(1) IN GENERAL.—Each registered proxy advi-
24 sory firm shall, not later than 90 calendar days after
25 the end of each fiscal year, file with the Commission

1 and make publicly available an annual report in such
2 form as the Commission, by rule, may prescribe as
3 necessary or appropriate in the public interest or for
4 the protection of investors.

5 “(2) CONTENTS.—Each annual report required
6 under paragraph (1) shall include, at a minimum,
7 disclosure by the registered proxy advisory firm of
8 the following:

9 “(A) A list of shareholder proposals the
10 staff of the registered proxy advisory firm re-
11 viewed in the prior fiscal year.

12 “(B) A list of the recommendations made
13 in the prior fiscal year.

14 “(C) The economic analysis conducted to
15 determine that final recommendations provided
16 in the prior fiscal year (other than rec-
17 ommendations relating to an issuer-sponsored
18 proposal or recommendations consistent with
19 that of a board of directors composed of a ma-
20 jority of independent directors) delivered to cli-
21 ents that vote shares held on behalf of share-
22 holders were in the best economic interest of
23 those shareholders.

1 “(D) The staff who reviewed and made
2 recommendations on such proposals in the prior
3 fiscal year.

4 “(E) The qualifications of such staff to en-
5 sure that each of the recommendations for cli-
6 ents that vote shares held on behalf of share-
7 holders were tied to the best economic interest
8 of those shareholders.

9 “(F) The recommendations made in the
10 prior fiscal year where the proponent of such
11 recommendation was a client of or received
12 services from the proxy advisory firm.

13 “(G) A certification by the chief executive
14 officer, chief financial officer, and the primary
15 executive responsible for overseeing the compila-
16 tion and dissemination of proxy voting advice
17 that the final recommendations (other than rec-
18 ommendations relating to an issuer-sponsored
19 proposal or recommendations consistent with
20 that of a board of directors composed of a ma-
21 jority of independent directors) delivered to cli-
22 ents that vote shares held on behalf of share-
23 holders in the last fiscal year—

24 “(i) were based on internal controls
25 and procedures that are designed to ensure

1 accurate information and that such inter-
2 nal controls and procedures are effective;

3 “(ii) do not violate applicable State or
4 Federal law; and

5 “(iii) were based on the best economic
6 interest of those shareholders.

7 “(H) The economic and other factors that
8 a reasonable investor would expect to influence
9 the recommendations of such proxy advisory
10 firm, including the ownership composition of
11 such proxy advisory firm.

12 “(m) TRANSPARENT POLICIES.—Each registered
13 proxy advisory firm shall file with the Commission and
14 make publicly available its methodology for the formula-
15 tion of proxy voting policies and voting recommendations
16 to clients that vote shares held on behalf of shareholders
17 and how that methodology ensures that the firm’s voting
18 recommendations are in the best economic interest of
19 those shareholders.

20 “(n) RULES OF CONSTRUCTION.—Registration under
21 and compliance with this section does not constitute a
22 waiver of, or otherwise diminish, any right, privilege, or
23 defense that a registered proxy advisory firm may other-
24 wise have under any provision of State or Federal law,
25 including any rule, regulation, or order thereunder.

1 “(o) REGULATIONS.—

2 “(1) NEW PROVISIONS.—Such rules and regula-
3 tions as are required by this section or are otherwise
4 necessary to carry out this section, including the ap-
5 plication form required under subsection (a)—

6 “(A) shall be issued by the Commission,
7 not later than 180 days after the date of enact-
8 ment of this section; and

9 “(B) shall become effective not later than
10 1 year after the date of enactment of this sec-
11 tion.

12 “(2) REVIEW OF EXISTING REGULATIONS.—Not
13 later than 270 days after the date of enactment of
14 this section, the Commission shall—

15 “(A) review its existing rules and regula-
16 tions which affect the operations of proxy advi-
17 sory firms; and

18 “(B) amend or revise such rules and regu-
19 lations in accordance with the purposes of this
20 section, and issue such guidance as the Com-
21 mission may prescribe as necessary or appro-
22 priate in the public interest or for the protec-
23 tion of investors.

1 “(p) APPLICABILITY.—This section, other than sub-
2 section (n), which shall apply on the date of enactment
3 of this section, shall apply on the earlier of—

4 “(1) the date on which regulations are issued in
5 final form under subsection (o)(1); or

6 “(2) 270 days after the date of enactment of
7 this section.

8 “(q) BEST ECONOMIC INTEREST DEFINED.—In this
9 section, the term ‘best economic interest’ means decisions
10 that seek to maximize investment returns over a time hori-
11 zon consistent with the investment objectives and risk
12 management profile of the fund in which the shareholders
13 are invested.”.

14 (b) CONFORMING AMENDMENT.—Section 17(a)(1) of
15 the Securities Exchange Act of 1934 (15 U.S.C.
16 78q(a)(1)) is amended by inserting “proxy advisory firm,”
17 after “nationally recognized statistical rating organiza-
18 tion,”.

19 (c) PROXY ADVISORY FIRM DEFINITIONS.—Section
20 3(a) of the Securities Exchange Act of 1934 (15 U.S.C.
21 78c(a)) is amended by adding at the end the following:

22 “(82) PROXY ADVISORY FIRM.—The term
23 ‘proxy advisory firm’—

24 “(A) means any person who is primarily
25 engaged in the business of providing proxy vot-

1 ing advice, research, analysis, ratings, or rec-
2 ommendations to clients, which conduct con-
3 stitutes a solicitation within the meaning of sec-
4 tion 14; and

5 “(B) does not include any person that is
6 exempt under law or regulation from the re-
7 quirements otherwise applicable to persons en-
8 gaged in such a solicitation.

9 “(83) PERSON ASSOCIATED WITH A PROXY AD-
10 VISORY FIRM.—With respect to a proxy advisory
11 firm—

12 “(A) a person is ‘associated’ with the
13 proxy advisory firm if the person is—

14 “(i) a partner, officer, or director of
15 the proxy advisory firm (or any person oc-
16 cupying a similar status or performing
17 similar functions);

18 “(ii) a person directly or indirectly
19 controlling, controlled by, or under com-
20 mon control with the proxy advisory firm;

21 “(iii) an employee of the proxy advi-
22 sory firm; or

23 “(iv) a person the Commission deter-
24 mines by rule is controlled by the proxy
25 advisory firm; and

1 “(B) a person is not ‘associated’ with the
2 proxy advisory firm if the person only performs
3 clerical or ministerial functions with respect to
4 a proxy advisory firm.”.