

**AMENDMENT IN THE NATURE OF A SUBSTITUTE
TO H.R. 8286
OFFERED BY MR. STEIL OF WISCONSIN**

Strike all after the enacting clause and insert the following:

1 SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

2 (a) SHORT TITLE.—This Act may be cited as the
3 “Protecting Americans’ Retirement Savings From Politics
4 Act”.

5 (b) TABLE OF CONTENTS.—The table of contents for
6 this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—MANDATORY MATERIALITY REQUIREMENT

Sec. 101. Limitation on disclosure requirements.

TITLE II—PUBLIC COMPANY ADVISORY COMMITTEE

Sec. 201. Public Company Advisory Committee.

TITLE III—PROTECTING U.S. BUSINESS SOVEREIGNTY

Sec. 301. Study on detrimental impact of the Corporate Sustainability Due Diligence Directive and Corporate Sustainability Reporting Directive.

TITLE IV—CORPORATE GOVERNANCE EXAMINATION

Sec. 401. Study of certain issues with respect to proxy advisory firms and the proxy process.

TITLE V—REGISTRATION OF PROXY ADVISORY FIRMS

Sec. 501. Registration of proxy advisory firms.

TITLE VI—LIABILITY FOR CERTAIN FAILURES TO DISCLOSE MATERIAL INFORMATION OR MAKING OF MATERIAL MISSTATEMENTS

Sec. 601. Liability for certain failures to disclose material information or making of material misstatements.

TITLE VII—DUTIES OF INVESTMENT ADVISERS, ASSET MANAGERS, AND PENSION FUNDS

Sec. 701. Duties of investment advisers, asset managers, and pension funds.

TITLE VIII—PROTECTING AMERICANS' SAVINGS

Sec. 801. Requirements related to proxy voting.

TITLE IX—EMPOWERING SHAREHOLDERS

Sec. 901. Proxy voting of passively managed funds.

TITLE X—BEST INTEREST BASED ON PECUNIARY FACTORS

Sec. 1001. Protecting retail investors' savings.

1 **TITLE I—MANDATORY**
2 **MATERIALITY REQUIREMENT**

3 **SEC. 101. LIMITATION ON DISCLOSURE REQUIREMENTS.**

4 (a) SECURITIES ACT OF 1933.—Section 2(b) of the
5 Securities Act of 1933 (15 U.S.C. 77b(b)) is amended—

6 (1) in the subsection heading, by inserting “;
7 LIMITATION ON DISCLOSURE REQUIREMENTS” after
8 “FORMATION”;

9 (2) by striking “Whenever” and inserting the
10 following:

11 “(1) IN GENERAL.—Whenever”; and

12 (3) by adding at the end the following:

13 “(2) LIMITATION.—

14 “(A) IN GENERAL.—Whenever pursuant to
15 this title the Commission is engaged in rule-

1 making regarding disclosure obligations of
2 issuers, the Commission shall expressly provide
3 that an issuer is only required to disclose infor-
4 mation in response to such disclosure obliga-
5 tions to the extent the issuer has determined
6 that such information is material with respect
7 to a voting or investment decision regarding the
8 securities of such issuer.

9 “(B) APPLICABILITY.—Subparagraph (A)
10 shall not apply with respect to the removal of
11 any disclosure requirement with respect to an
12 issuer.

13 “(C) RULE OF CONSTRUCTION.—For the
14 purposes of this paragraph, information is con-
15 sidered material with respect to a voting or in-
16 vestment decision regarding the securities of an
17 issuer if there is a substantial likelihood that a
18 reasonable investor would view the failure to
19 disclose that information as having significantly
20 altered the total mix of information made avail-
21 able to the investor.”.

22 (b) SECURITIES EXCHANGE ACT OF 1934.—Section
23 3(f) of the Securities Exchange Act of 1934 (15 U.S.C.
24 78c(f)) is amended—

1 (1) in the subsection heading, by inserting “;
2 LIMITATION ON DISCLOSURE REQUIREMENTS” after
3 “FORMATION”;

4 (2) by striking “Whenever” and inserting the
5 following:

6 “(1) IN GENERAL.—Whenever”; and

7 (3) by adding at the end the following:

8 “(2) LIMITATION.—

9 “(A) IN GENERAL.—Whenever pursuant to
10 this title the Commission is engaged in rule-
11 making regarding disclosure obligations of
12 issuers, the Commission shall expressly provide
13 that an issuer is only required to disclose infor-
14 mation in response to such disclosure obliga-
15 tions to the extent the issuer has determined
16 that such information is material with respect
17 to a voting or investment decision regarding the
18 securities of such issuer.

19 “(B) APPLICABILITY.—Subparagraph (A)
20 shall not apply with respect to the removal of
21 any disclosure requirement with respect to an
22 issuer.

23 “(C) RULE OF CONSTRUCTION.—For the
24 purposes of this paragraph, information is con-
25 sidered material with respect to a voting or in-

1 vestment decision regarding the securities of an
2 issuer if there is a substantial likelihood that a
3 reasonable investor would view the failure to
4 disclose that information as having significantly
5 altered the total mix of information made avail-
6 able to the investor.”.

7 **TITLE II—PUBLIC COMPANY** 8 **ADVISORY COMMITTEE**

9 **SEC. 201. PUBLIC COMPANY ADVISORY COMMITTEE.**

10 The Securities Exchange Act of 1934 is amended by
11 inserting after section 40 (15 U.S.C. 78qq) the following:

12 **“SEC. 40A. PUBLIC COMPANY ADVISORY COMMITTEE.**

13 “(a) ESTABLISHMENT AND PURPOSE.—

14 “(1) ESTABLISHMENT.—There is established
15 within the Commission the Public Company Advi-
16 sory Committee (referred to in this section as the
17 ‘Committee’).

18 “(2) PURPOSE.—The Committee shall—

19 “(A) provide the Commission with advice
20 on the rules, regulations, and policies of the
21 Commission with regard to the Commission’s
22 mission of protecting investors, maintaining
23 fair, orderly, and efficient markets, and facili-
24 tating capital formation, as they relate to—

1 “(i) existing and emerging regulatory
2 priorities of the Commission;

3 “(ii) issues relating to the public re-
4 porting and corporate governance of public
5 companies;

6 “(iii) issues relating to the proxy proc-
7 ess for shareholder meetings held by public
8 companies;

9 “(iv) issues relating to trading in the
10 securities of public companies; and

11 “(v) issues relating to capital forma-
12 tion;

13 “(B) not provide any advice with respect to
14 any policies, practices, actions, or decisions con-
15 cerning the Commission’s enforcement program;
16 and

17 “(C) submit to the Commission such find-
18 ings and recommendations as the Committee
19 determines are appropriate, including rec-
20 ommendations for proposed regulatory and leg-
21 islative changes.

22 “(b) MEMBERSHIP.—

23 “(1) IN GENERAL.—The membership of the
24 Committee shall be not fewer than 10, and not more

1 than 20, members appointed by the Commission
2 from among individuals who—

3 “(A) are officers, directors, or senior offi-
4 cials of public companies registered with the
5 Commission under the Securities Act of 1933
6 and this Act, except for those public companies
7 that own asset management, fixed income, in-
8 vestment advisory, broker-dealer, or proxy serv-
9 ices businesses;

10 “(B) are executives or other individuals
11 with senior managerial responsibility in busi-
12 ness, professional, trade, and industry associa-
13 tions that represent the interests of such public
14 companies; and

15 “(C) are professional advisers and service
16 providers to such public companies (including
17 attorneys, accountants, investment bankers, and
18 financial advisers).

19 “(2) QUALIFICATIONS.—At least 50 percent of
20 the Committee membership shall be drawn from in-
21 dividuals who would qualify for membership under
22 paragraph (1)(A).

23 “(3) TERM.—Each member of the Committee
24 appointed under paragraph (1) shall serve for a
25 term of 4 years. Vacancies among the members,

1 whether caused by the resignation, death, removal,
2 expiration of a term, or otherwise, shall be filled con-
3 sistent with the Commission's procedures then in ef-
4 fect.

5 “(4) STAGGERED TERMS.—The members of the
6 Committee shall serve staggered terms, with half of
7 the initial members of the Committee each serving
8 for 2 years and half serving for 4 years.

9 “(5) MEMBERS NOT ON OTHER ADVISORY COM-
10 MITTEES.—Public companies and other organiza-
11 tions that are currently represented on any other
12 Commission Advisory Committee are not eligible to
13 have representatives also serve on the Public Com-
14 pany Advisory Committee.

15 “(6) MEMBERS NOT COMMISSION EMPLOY-
16 EES.—Members appointed under paragraph (1) shall
17 not be considered to be employees or agents of the
18 Commission solely because of membership on the
19 Committee.

20 “(c) CHAIR; VICE CHAIR; SECRETARY; ASSISTANT
21 SECRETARY.—

22 “(1) IN GENERAL.—The members of the Com-
23 mittee shall elect, from among the members of the
24 Committee—

25 “(A) a Chair;

1 “(B) a Vice Chair;

2 “(C) a Secretary; and

3 “(D) an Assistant Secretary.

4 “(2) TERM.—Each member elected under para-
5 graph (1) shall serve for a term of 2 years in the
6 capacity the member was elected under paragraph
7 (1).

8 “(3) SUBCOMMITTEES.—The Chair may create
9 subcommittees that hold public or non-public meet-
10 ings and provide recommendations to the full Com-
11 mittee.

12 “(d) MEETINGS.—

13 “(1) FREQUENCY OF MEETINGS.—The Com-
14 mittee shall meet—

15 “(A) not less frequently than twice annu-
16 ally, at the call of the chair of the Committee;
17 and

18 “(B) from time to time, at the call of the
19 Commission.

20 “(2) NOTICE.—The Chair of the Committee
21 shall give the members of the Committee written no-
22 tice of each meeting, not later than 2 weeks before
23 the date of the meeting.

1 “(e) STAFF.—The Commission shall make available
2 to the Committee such staff as the Chair of the Committee
3 determines are necessary to carry out this section.

4 “(f) REVIEW BY COMMISSION.—The Commission
5 shall—

6 “(1) review the findings and recommendations
7 of the Committee; and

8 “(2) each time the Committee submits a finding
9 or recommendation to the Commission, promptly
10 issue a public statement—

11 “(A) assessing the finding or recommenda-
12 tion of the Committee; and

13 “(B) disclosing the action, if any, the Com-
14 mission intends to take with respect to the find-
15 ing or recommendation.

16 “(g) COMMITTEE FINDINGS.—Nothing in this section
17 shall require the Commission to agree to or act upon any
18 finding or recommendation of the Committee.

19 “(h) NONAPPLICABILITY OF THE FEDERAL ADVI-
20 SORY COMMITTEE ACT.—Chapter 10 of part I of title 5,
21 United States Code, shall not apply to the Committee and
22 the activities of the Committee.”.

1 **TITLE III—PROTECTING U.S.**
2 **BUSINESS SOVEREIGNTY**

3 **SEC. 301. STUDY ON DETRIMENTAL IMPACT OF THE COR-**
4 **PORATE SUSTAINABILITY DUE DILIGENCE DI-**
5 **RECTIVE AND CORPORATE SUSTAINABILITY**
6 **REPORTING DIRECTIVE.**

7 (a) **STUDY.**—The Securities and Exchange Commis-
8 sion shall conduct a study to examine and evaluate—

9 (1) the detrimental impact and potential detri-
10 mental impact of each of the Directives on—

11 (A) United States companies, consumers,
12 and investors; and

13 (B) the economy of the United States;

14 (2) the extent to which each of the Directives
15 aligns with international conventions and declara-
16 tions on human rights and environmental obliga-
17 tions; and

18 (3) the legal basis for the extraterritorial reach
19 of each of the Directives.

20 (b) **REPORT.**—Not later than 1 year after the date
21 of the enactment of this Act, the Securities and Exchange
22 Commission shall submit to the Committee on Banking,
23 Housing, and Urban Affairs of the Senate, the Committee
24 on Financial Services of the House of Representatives, the
25 Secretary of State, the Secretary of Commerce, and the

1 United States Trade Representative a report that in-
2 cludes—

3 (1) the results of the study conducted under
4 this section; and

5 (2) recommendations for policymakers and rel-
6 evant stakeholders on potential mitigating measures,
7 alternative approaches, or modifications to each of
8 the Directives that would address any concerns iden-
9 tified in the study.

10 (c) ACCESS TO INFORMATION.—The Securities and
11 Exchange Commission may request from private entities
12 such relevant data and information as the Securities and
13 Exchange Commission determines necessary to carry out
14 the study required under this section and such private en-
15 tities shall provide such requested data and information
16 to the Securities and Exchange Commission.

17 (d) DIRECTIVES DEFINED.—In this section the term
18 “Directives” means—

19 (1) Directive (EU) 2024/1760 of the European
20 Parliament and of the Council of 13 June 2024 on
21 corporate sustainability due diligence;

22 (2) Directive (EU) 2022/2464 of the European
23 Parliament and of the Council of 14 December 2022
24 on corporate sustainability reporting; and

1 (3) any directive of the European Parliament
2 and of the Council that amends, supplements, re-
3 places, or otherwise modifies a directive described in
4 paragraph (1) or (2), including Directive (EU)
5 2026/470 of the European Parliament and of the
6 Council of 26 February 2026.

7 **TITLE IV—CORPORATE**
8 **GOVERNANCE EXAMINATION**

9 **SEC. 401. STUDY OF CERTAIN ISSUES WITH RESPECT TO**
10 **PROXY ADVISORY FIRMS AND THE PROXY**
11 **PROCESS.**

12 Section 4 of the Securities Exchange Act of 1934 (15
13 U.S.C. 78d) is amended by adding at the end the fol-
14 lowing:

15 “(k) STUDY OF CERTAIN ISSUES WITH RESPECT TO
16 PROXY ADVISORY FIRMS AND THE PROXY PROCESS.—

17 “(1) IN GENERAL.—Not later than 180 days
18 after the date of the enactment of this subsection,
19 and every 5 years thereafter, the Commission shall
20 conduct a comprehensive study on proxy advisory
21 firms and the proxy process.

22 “(2) SCOPE OF STUDY.—The studies required
23 under paragraph (1) shall cover—

24 “(A) the previous 10 years, with respect to
25 the initial study; and

1 “(B) the previous 5 years, with respect to
2 each other study.

3 “(3) CONTENTS.—Each study required under
4 paragraph (1) shall address the following issues:

5 “(A) The financial and other incentives
6 and obligations of all groups involved in the
7 proxy process.

8 “(B) A consideration of whether financial
9 and other incentives have created a process that
10 no longer serves the economic interests of retail
11 investors.

12 “(C) An analysis of whether regulations
13 and financial incentives have created and pro-
14 tected the outsized influence of proxy advisors
15 or a duopoly in proxy advice, and if so, what
16 are the benefits and costs of that outsized influ-
17 ence or duopoly.

18 “(D) The costs incurred by issuers in re-
19 sponding to politically-, environmentally-, or so-
20 cially-motivated shareholder proposals.

21 “(E) An analysis of the impact that share-
22 holder proposals have on discouraging private
23 companies from going public.

24 “(F) A thorough assessment of the eco-
25 nomic analysis, if any, conducted by proxy advi-

1 sory firms and institutional shareholders when
2 recommending or voting in favor of shareholder
3 proposals.

4 “(G) A review of the extent to which insti-
5 tutional investors, who owe fiduciary duties,
6 rely on proxy advisory firm recommendations.

7 “(H) An assessment of whether, in light of
8 their significant influence on corporate actions
9 and vote outcomes, proxy advisors are subject
10 to sufficient and effective regulation to ensure
11 that their policies and recommendations are ac-
12 curate, free of conflicts, and benefit the best
13 economic interest of shareholders at large.

14 “(4) REPORT.—At the completion of each study
15 required under paragraph (1) the Commission shall
16 issue a report to the Committee on Banking, Hous-
17 ing, and Urban Affairs of the Senate and the Com-
18 mittee on Financial Services of the House of Rep-
19 resentatives that includes the results of the study.”.

20 **TITLE V—REGISTRATION OF** 21 **PROXY ADVISORY FIRMS**

22 **SEC. 501. REGISTRATION OF PROXY ADVISORY FIRMS.**

23 (a) AMENDMENT.—The Securities Exchange Act of
24 1934 (15 U.S.C. 78a et seq.) is amended by inserting after
25 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;

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

9 “(III) does not violate State or
10 Federal law;

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

16 “(iv) information on the organiza-
17 tional structure of the applicant;

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

21 “(vi) a description of any potential or
22 actual conflict of interest relating to the
23 provision of proxy advisory services, includ-
24 ing those arising out of or resulting from
25 the ownership structure of the applicant or

1 the provision of other services by the appli-
2 cant or any person associated with the ap-
3 plicant;

4 “(vii) the policies and procedures in
5 place to publicly disclose and manage con-
6 flicts of interest under subsection (f);

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

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

17 “(2) REVIEW OF APPLICATION.—

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

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

1 “(ii) institute proceedings to deter-
2 mine whether registration should be de-
3 nied.

4 “(B) CONDUCT OF PROCEEDINGS.—

5 “(i) CONTENT.—Proceedings referred
6 to in subparagraph (A)(ii) shall—

7 “(I) include notice of the grounds
8 for denial under consideration and an
9 opportunity for hearing; and

10 “(II) be concluded not later than
11 120 days after the date on which the
12 application for registration is filed
13 with the Commission under paragraph
14 (1).

15 “(ii) DETERMINATION.—At the con-
16 clusion of such proceedings, the Commis-
17 sion, by order, shall grant or deny such ap-
18 plication for registration.

19 “(iii) EXTENSION AUTHORIZED.—The
20 Commission may extend the time for con-
21 clusion of such proceedings for not longer
22 than 90 days, if the Commission finds
23 good cause for such extension and pub-
24 lishes its reasons for so finding, or for such

1 longer period as to which the applicant
2 consents.

3 “(C) GROUNDS FOR DECISION.—The Com-
4 mission shall grant registration under this sub-
5 section—

6 “(i) if the Commission finds that the
7 requirements of this section are satisfied;
8 and

9 “(ii) unless the Commission finds (in
10 which case the Commission shall deny such
11 registration) that—

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

20 “(II) if the applicant were so reg-
21 istered, its registration would be sub-
22 ject to suspension or revocation under
23 subsection (d).

24 “(3) PUBLIC AVAILABILITY OF INFORMATION.—
25 Subject to section 24, the Commission shall make

1 the information and documents submitted to the
2 Commission by a proxy advisory firm in its com-
3 pleted application for registration, or in any amend-
4 ment submitted under paragraph (1) or (2) of sub-
5 section (c), publicly available on the Commission’s
6 website, or through another comparable, readily ac-
7 cessible means.

8 “(c) UPDATE OF REGISTRATION.—

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

20 “(2) CERTIFICATION.—Not later than 90 cal-
21 endar days after the end of each calendar year, each
22 registered proxy advisory firm shall file with the
23 Commission an amendment to its registration, in
24 such form as the Commission, by rule, may prescribe

1 as necessary or appropriate in the public interest or
2 for the protection of investors—

3 “(A) certifying that the information and
4 documents in the application for registration of
5 such registered proxy advisory firm continue to
6 be accurate in all material respects; and

7 “(B) listing any material change that oc-
8 curred to such information or documents during
9 the previous calendar year.

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

23 “(1) has committed or omitted any act, or is
24 subject to an order or finding, enumerated in sub-
25 paragraph (A), (D), (E), (H), or (G) of section

1 15(b)(4), has been convicted of any offense specified
2 in section 15(b)(4)(B), or is enjoined from any ac-
3 tion, conduct, or practice specified in subparagraph
4 (C) of section 15(b)(4), during the 10-year period
5 preceding the date of commencement of the pro-
6 ceedings under this subsection, or at any time there-
7 after;

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

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

15 “(B) a substantially equivalent crime by a
16 foreign court of competent jurisdiction;

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

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

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

24 “(6) fails to maintain adequate financial and
25 managerial resources to consistently offer advisory

1 services to clients that vote shares held on behalf of
2 shareholders consistent with the best economic inter-
3 est of those shareholders, including by failing to
4 comply with subsections (f) or (g);

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

9 “(8) engages in a prohibited act enumerated in
10 subsection (j).

11 “(e) TERMINATION OF REGISTRATION.—

12 “(1) VOLUNTARY WITHDRAWAL.—A registered
13 proxy advisory firm may, upon such terms and con-
14 ditions as the Commission may establish as nec-
15 essary in the public interest or for the protection of
16 investors, which terms and conditions shall include
17 at a minimum that the registered proxy advisory
18 firm will no longer conduct such activities as to
19 bring it within the definition of proxy advisory firm
20 in section 3(a)(82), withdraw from registration by
21 filing a written notice of withdrawal to the Commis-
22 sion.

23 “(2) COMMISSION AUTHORITY.—In addition to
24 any other authority of the Commission under this
25 title, if the Commission finds that a registered proxy

1 advisory firm is no longer in existence or has ceased
2 to do business as a proxy advisory firm, the Com-
3 mission, by order, shall cancel the registration under
4 this section of such registered proxy advisory firm.

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

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

15 “(2) COMMISSION AUTHORITY.—The Commis-
16 sion shall, within one year of the date of enactment
17 of this section, issue final rules to prohibit, or re-
18 quire the management and public disclosure of, any
19 conflicts of interest relating to the offering of proxy
20 advisory services by a registered proxy advisory firm,
21 including, without limitation, conflicts of interest re-
22 lating to—

23 “(A) the manner in which a registered
24 proxy advisory firm is compensated by the cli-

1 ent, any affiliate of the client, or any other per-
2 son for providing proxy advisory services;

3 “(B) business relationships, ownership in-
4 terests, or any other financial or personal inter-
5 ests between a registered proxy advisory firm,
6 or any person associated with such registered
7 proxy advisory firm, and any client, or any af-
8 filiate of such client;

9 “(C) the formulation of proxy voting poli-
10 cies;

11 “(D) the execution, or assistance with the
12 execution, of proxy votes if such votes are based
13 upon recommendations made by the proxy advi-
14 sory firm in which a person other than the
15 issuer is a proponent; and

16 “(E) any other potential conflict of inter-
17 est, as the Commission deems necessary or ap-
18 propriate in the public interest or for the pro-
19 tection of investors.

20 “(3) DISCLOSURE ON FACTORS INFLUENCING
21 RECOMMENDATIONS.—Each registered proxy advi-
22 sory firm shall annually disclose to the Commission
23 and make publicly available the economic and other
24 factors that a reasonable investor would expect to in-
25 fluence the recommendations of such proxy advisory

1 firm, including the ownership composition of such
2 proxy advisory firm and any meetings with, or feed-
3 back received from, outside entities.

4 “(g) RELIABILITY OF PROXY ADVISORY FIRM SERV-
5 ICES.—

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

8 “(A) have staff and other resources suffi-
9 cient to produce proxy voting recommendations
10 that are based on accurate and current infor-
11 mation and designed for clients that vote shares
12 held on behalf of shareholders to advance the
13 best economic interest of those shareholders un-
14 less otherwise specified;

15 “(B) implement procedures that permit
16 issuers that are the subject of proxy voting rec-
17 ommendations—

18 “(i) access in a reasonable time to
19 data and information used to make rec-
20 ommendations; and

21 “(ii) a reasonable opportunity to pro-
22 vide meaningful comment and corrections
23 to such data and information, including
24 the opportunity to present (in person or
25 telephonically) details to the person re-

1 sponsible for developing such data and in-
2 formation prior to the publication of proxy
3 voting recommendations to clients;

4 “(C) employ an ombudsman to receive
5 complaints about the accuracy of information
6 used in making recommendations from the com-
7 panies that are the subject of the proxy advi-
8 sory firm’s voting recommendations and seek to
9 resolve those complaints in a timely fashion and
10 prior to the publication of proxy voting rec-
11 ommendations to clients; and

12 “(D) if the ombudsman is unable to re-
13 solve a complaint to a company’s satisfaction
14 prior to the publication of proxy voting rec-
15 ommendations to clients, include in the final re-
16 port of the firm to clients—

17 “(i) a statement detailing the com-
18 pany’s complaints, if requested in writing
19 by the company; and

20 “(ii) a statement explaining why the
21 proxy voting recommendation is in the best
22 economic interest of shareholders.

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

24 “(A) DATA AND INFORMATION USED TO
25 MAKE RECOMMENDATIONS.—The term ‘data

1 and information used to make voting rec-
2 ommendations’—

3 “(i) means the financial, operational,
4 or descriptive data and information on an
5 issuer used by proxy advisory firms and
6 any contextual or substantive analysis im-
7 pacting the recommendation; and

8 “(ii) does not include the entirety of
9 the proxy advisory firm’s final report to its
10 clients.

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

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

16 “(ii) shall not otherwise interfere with
17 a proxy advisory firm’s ability to provide
18 its clients with timely access to accurate
19 proxy voting research, analysis, or rec-
20 ommendations.

21 “(h) PRIVATE RIGHT OF ACTION WITH RESPECT TO
22 ILLEGAL RECOMMENDATIONS.—Any proxy advisory firm
23 that endorses a proposal that is not supported by the
24 issuer but is approved and subsequently found by a court
25 of competent jurisdiction to violate State or Federal law

1 shall be liable to the applicable issuer for the costs associ-
2 ated with the approval of such proposal, including imple-
3 mentation costs and any penalties incurred by the issuer,
4 and any issuer seeking to enforce such liability may sue
5 at law or in equity in any court of competent jurisdiction.

6 “(i) DESIGNATION OF COMPLIANCE OFFICER.—Each
7 registered proxy advisory firm shall designate an indi-
8 vidual who reports directly to senior management as re-
9 sponsible for administering the policies and procedures
10 that are required to be established pursuant to subsections
11 (f) and (g), and for ensuring compliance with the securi-
12 ties laws and the rules and regulations thereunder, includ-
13 ing those promulgated by the Commission pursuant to this
14 section.

15 “(j) PROHIBITED CONDUCT.—

16 “(1) PROHIBITED ACTS AND PRACTICES.—Not
17 later than one year after the date of enactment of
18 this section, the Commission shall issue final rules
19 to prohibit any act or practice relating to the offer-
20 ing of proxy advisory services by a registered proxy
21 advisory firm that the Commission determines to be
22 unfair, coercive, or abusive, including any act or
23 practice relating to—

24 “(A) advisory or consulting services (of-
25 fered directly or indirectly, including through

1 an affiliate) related to corporate governance
2 issues; or

3 “(B) modifying a voting recommendation
4 or otherwise departing from its adopted system-
5 atic procedures and methodologies in the provi-
6 sion of proxy advisory services, based on wheth-
7 er an issuer, or affiliate thereof, subscribes or
8 will subscribe to other services or product of the
9 registered proxy advisory firm or any person as-
10 sociated with such organization.

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

20 “(k) ANNUAL REPORT.—

21 “(1) IN GENERAL.—Each registered proxy advi-
22 sory firm shall, not later than 90 calendar days after
23 the end of each fiscal year, file with the Commission
24 and make publicly available an annual report in such
25 form as the Commission, by rule, may prescribe as

1 necessary or appropriate in the public interest or for
2 the protection of investors.

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

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

10 “(B) A list of the recommendations made
11 in the prior fiscal year.

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

22 “(D) The staff who reviewed and made
23 recommendations on such proposals in the prior
24 fiscal year.

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

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

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

21 “(i) were based on internal controls
22 and procedures that are designed to ensure
23 accurate information and that such inter-
24 nal controls and procedures are effective;
25 and

1 “(ii) were based on the best economic
2 interest of those shareholders unless other-
3 wise specified.

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

9 “(3) REPORT FORMAT.—Each annual report re-
10 quired under paragraph (1) shall be made available
11 in a structured, machine-readable format, consistent
12 with existing electronic reporting standards.

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

21 “(m) RULES OF CONSTRUCTION.—Registration
22 under and compliance with this section does not constitute
23 a waiver of, or otherwise diminish, any right, privilege, or
24 defense that a registered proxy advisory firm may other-

1 wise have under any provision of State or Federal law,
2 including any rule, regulation, or order thereunder.

3 “(n) REGULATIONS.—

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

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

11 “(B) shall become effective not later than
12 1 year after the date of enactment of this sec-
13 tion.

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

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

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

1 “(o) APPLICABILITY.—This section, other than sub-
2 section (m), 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 (n)(1); or

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

8 “(p) 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—

22 (1) by redesignating the second paragraph (80)
23 (relating to funding portal) as paragraph (81); and

24 (2) by adding at the end the following:

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

3 “(A) means any person that—

4 “(i) makes a recommendation to a se-
5 curity holder as to the security holder’s
6 vote, consent, or authorization on a specific
7 matter for which security holder approval
8 is solicited;

9 “(ii) markets the person’s expertise as
10 a provider of such proxy voting advice sep-
11 arately from other forms of investment ad-
12 vice; and

13 “(iii) sells such proxy voting advice
14 for a fee; and

15 “(B) does not include—

16 “(i) a registered investment adviser;
17 or

18 “(ii) any person that is exempt under
19 law or regulation from the requirements
20 otherwise applicable to persons engaged in
21 such a solicitation.

22 “(83) PERSON ASSOCIATED WITH A PROXY AD-
23 VISORY FIRM.—With respect to a proxy advisory
24 firm—

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

3 “(i) a partner, officer, or director of
4 the proxy advisory firm (or any person oc-
5 cupying a similar status or performing
6 similar functions);

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

10 “(iii) an employee of the proxy advi-
11 sory firm; or

12 “(iv) a person the Commission deter-
13 mines by rule is controlled by the proxy
14 advisory firm; and

15 “(B) a person is not ‘associated’ with the
16 proxy advisory firm if the person only performs
17 clerical or ministerial functions with respect to
18 a proxy advisory firm.”.

1 **TITLE VI—LIABILITY FOR CER-**
2 **TAIN FAILURES TO DISCLOSE**
3 **MATERIAL INFORMATION OR**
4 **MAKING OF MATERIAL**
5 **MISSTATEMENTS**

6 **SEC. 601. LIABILITY FOR CERTAIN FAILURES TO DISCLOSE**
7 **MATERIAL INFORMATION OR MAKING OF MA-**
8 **TERIAL MISSTATEMENTS.**

9 Section 14 of the Securities Exchange Act of 1934
10 (15 U.S.C. 78n) is amended by adding at the end the fol-
11 lowing:

12 “(1) FALSE OR MISLEADING STATEMENTS.—For
13 purposes of subsection (a) and Rule 14a-9 (17 CFR
14 240.14a-9) and any successor rule, the failure to disclose
15 material information (such as a proxy voting advice
16 business’s methodology, sources of information, or con-
17 flicts of interest) or the making of a material
18 misstatement regarding proxy voting advice that makes a
19 recommendation to a security holder as to the security
20 holder’s vote, consent, or authorization on a specific mat-
21 ter for which security holder approval is solicited, and that
22 is furnished by a person that markets the person’s exper-
23 tise as a provider of such proxy voting advice separately
24 from other forms of investment advice, and sells such

1 proxy voting advice for a fee, shall be considered to be
2 false or misleading with respect to a material fact.”.

3 **TITLE VII—DUTIES OF INVEST-**
4 **MENT ADVISERS, ASSET MAN-**
5 **AGERS, AND PENSION FUNDS**

6 **SEC. 701. DUTIES OF INVESTMENT ADVISERS, ASSET MAN-**
7 **AGERS, AND PENSION FUNDS.**

8 Section 13(f) of the Securities Exchange Act of 1934
9 (15 U.S.C. 78m(f)) is amended by adding at the end the
10 following:

11 “(7) DISCLOSURES BY INSTITUTIONAL INVEST-
12 MENT MANAGERS IN CONNECTION WITH PROXY AD-
13 VISORY FIRMS.—

14 “(A) IN GENERAL.—Every institutional in-
15 vestment manager which uses the mails, or any
16 means or instrumentality of interstate com-
17 merce in the course of its business as an insti-
18 tutional investment manager, which engages a
19 proxy advisory firm, and which exercises voting
20 power with respect to accounts holding equity
21 securities of a class described in subsection
22 (d)(1) or otherwise becomes or is deemed to be-
23 come a beneficial owner of any security of a
24 class described in subsection (d)(1) upon the
25 purchase or sale of a security-based swap that

1 the Commission may define by rule, shall file an
2 annual report with the Commission con-
3 taining—

4 “(i) an explanation of how the institu-
5 tional investment manager voted with re-
6 spect to each shareholder proposal;

7 “(ii) the percentage of votes cast on
8 shareholder proposals that were consistent
9 with proxy advisory firm recommendations,
10 for each proxy advisory firm retained by
11 the institutional investment manager;

12 “(iii) an explanation of—

13 “(I) how the institutional invest-
14 ment manager took into consideration
15 proxy advisory firm recommendations
16 in making voting decisions, including
17 the degree to which the institutional
18 investment manager used those rec-
19 ommendations in making voting deci-
20 sions;

21 “(II) how often the institutional
22 investment manager voted consistent
23 with a recommendation made by a
24 proxy advisory firm, expressed as a
25 percentage;

1 “(III) how such votes are rec-
2 onciled with the fiduciary duty of the
3 institutional investment manager to
4 vote in the best economic interests of
5 shareholders;

6 “(IV) how frequently votes were
7 changed when an error occurred or
8 due to new information from issuers;
9 and

10 “(V) the degree to which invest-
11 ment professionals of the institutional
12 investment manager were involved in
13 proxy voting decisions; and

14 “(iv) a certification that the voting de-
15 cisions of the institutional investment man-
16 ager were based solely on the best eco-
17 nomic interest of the shareholders on be-
18 half of whom the institutional investment
19 manager holds shares.

20 “(B) REQUIREMENTS FOR LARGER INSTI-
21 TUTIONAL INVESTMENT MANAGERS.—Every in-
22 stitutional investment manager described in
23 subparagraph (A) that has regulatory assets
24 under management with an aggregate fair mar-
25 ket value on the last trading day in any of the

1 preceding twelve months of at least
2 \$100,000,000,000 shall—

3 “(i) in any materials provided to cus-
4 tomers and related to customers voting
5 their shares, clarify that shareholders are
6 not required to vote on every proposal;

7 “(ii) with respect to each shareholder
8 proposal for which the institutional invest-
9 ment manager votes (other than votes con-
10 sistent with the recommendation of a
11 board of directors composed of a majority
12 of independent directors) perform an eco-
13 nomic analysis before making such vote, to
14 determine that the vote is in the best eco-
15 nomic interest of the shareholders on be-
16 half of whom the institutional investment
17 manager holds shares; and

18 “(iii) include each economic analysis
19 required under clause (ii) in the annual re-
20 port required under subparagraph (A).

21 “(C) BEST ECONOMIC INTEREST DE-
22 FINED.—In this paragraph, the term ‘best eco-
23 nomic interest’ means decisions that seek to
24 maximize investment returns over a time hori-
25 zon consistent with the investment objectives

1 and risk management profile of the fund in
2 which shareholders are invested.”.

3 **TITLE VIII—PROTECTING** 4 **AMERICANS’ SAVINGS**

5 **SEC. 801. REQUIREMENTS RELATED TO PROXY VOTING.**

6 Section 14 of the Securities Exchange Act of 1934
7 (15 U.S.C. 78n), as amended by section 601, is further
8 amended by adding at the end the following:

9 “(m) PROHIBITION ON ROBOVOTING.—

10 “(1) IN GENERAL.—The Commission shall issue
11 final rules prohibiting the use of robovoting with re-
12 spect to votes related to proxy or consent solicitation
13 materials.

14 “(2) ROBOVOTING DEFINED.—In this sub-
15 section, the term ‘robovoting’ means the practice of
16 automatically voting in a manner consistent with the
17 recommendations of a proxy advisory firm or on a
18 proxy advisory firm’s electronic voting platform with
19 the proxy advisory firm’s recommendations, in either
20 case, without independent review and analysis.

21 “(n) PROHIBITION ON OUTSOURCING VOTING DECI-
22 SIONS BY INSTITUTIONAL INVESTORS.—With respect to
23 votes related to proxy or consent solicitation materials, an
24 institutional investor may not outsource voting decisions
25 to any person other than an investment adviser or a

1 broker or dealer that is registered with the Commission,
2 or is exempt from such registration, and has a fiduciary
3 or best interest duty to the institutional investor.

4 “(o) NO REQUIREMENT TO VOTE.—No person may
5 be required to cast votes related to proxy or consent solici-
6 tation materials, unless obligated by their fiduciary duty
7 or Rule 206(4)–6 (17 CFR 275.206(4)–6).”.

8 **TITLE IX—EMPOWERING**
9 **SHAREHOLDERS**

10 **SEC. 901. PROXY VOTING OF PASSIVELY MANAGED FUNDS.**

11 (a) IN GENERAL.—The Investment Advisers Act of
12 1940 (15 U.S.C. 80b-1 et seq.) is amended by inserting
13 after section 208 (15 U.S.C. 80b-8) the following:

14 **“SEC. 208A. PROXY VOTING OF PASSIVELY MANAGED**
15 **FUNDS.**

16 “(a) INVESTMENT ADVISER PROXY VOTING.—

17 “(1) IN GENERAL.—An investment adviser that
18 holds authority to vote a proxy solicited by an issuer
19 pursuant to section 14 of the Securities Exchange
20 Act of 1934 (15 U.S.C. 78n) in connection with any
21 vote of covered securities held by a passively man-
22 aged fund shall—

23 “(A) vote in accordance with the instruc-
24 tions (which may include the selection or de-
25 fault choice of a published voting policy) of the

1 beneficial owner (or fiduciary or other designee
2 with investment and proxy voting authority on
3 their behalf) of a voting security of the pas-
4 sively managed fund;

5 “(B) vote in accordance with the voting
6 recommendations of the board of directors (or
7 similar governing body) of such issuer;

8 “(C) abstain from voting such securities
9 but make reasonable efforts to be considered
10 present for purposes of establishing a quorum;
11 or

12 “(D) pursuant to rules issued by the Com-
13 mission, instruct vote tabulators to make a rea-
14 sonable effort to mirror vote shares to reflect
15 the elections of the other shareholders in the
16 covered security.

17 “(2) EXCEPTION.—Paragraph (1) shall not
18 apply with respect to a vote on a routine matter.

19 “(b) SAFE HARBOR.—With respect to a routine or
20 non-routine vote, voted in the manner required by sub-
21 section (a)(1), an investment adviser shall not be liable
22 to any person under any law or regulation of the United
23 States, any constitution, law, or regulation of any State
24 or political subdivision thereof, or under any contract or

1 other legally enforceable agreement (including any arbitra-
2 tion agreement), for any of the following:

3 “(1) Voting in accordance with the instructions
4 of the beneficial owner (or that beneficial owner’s
5 designee with investment and proxy voting author-
6 ity) of a voting security of the passively managed
7 fund.

8 “(2) Not soliciting voting instructions from any
9 person.

10 “(3) Voting in accordance with the voting rec-
11 ommendations of an issuer under subsection
12 (a)(1)(B) with respect to such vote.

13 “(4) Abstaining from voting in accordance with
14 subsection (a)(1)(C) with respect to such vote.

15 “(5) Instructing vote tabulators to make a rea-
16 sonable effort to mirror vote shares to reflect the
17 elections of the other shareholders in a covered secu-
18 rity, pursuant to rules issued by the Commission de-
19 scribed in subsection (a)(1)(D).

20 “(c) FOREIGN PRIVATE ISSUERS EXEMPTION.—Sub-
21 section (a) shall not apply with respect to a foreign private
22 issuer if the published voting policy of the investment advi-
23 sor with respect to such foreign private issuer is fully and
24 fairly disclosed to beneficial owners, including the extent

1 to which such policy differs from the published voting pol-
2 icy for non-exempt issuers.

3 “(d) DISSEMINATION OF INFORMATION.—

4 “(1) IN GENERAL.—Any investment adviser
5 subject to the requirements of subsection (a)(1)
6 shall, with respect to the dissemination of informa-
7 tion and other material to a voting person, comply
8 with the following requirements, unless the voting
9 person affirmatively declines to receive that informa-
10 tion and other material:

11 “(A) Provide the voting person (or the rel-
12 evant intermediary with whom the investment
13 adviser has access) with a form to select a pub-
14 lished voting policy.

15 “(B) Provide the voting person with not
16 less than 5 business days after the date on
17 which the voting person receives the form de-
18 scribed under subparagraph (A) to return that
19 form to the investment adviser.

20 “(2) ELECTRONIC DELIVERY.—All, or any por-
21 tion, of the materials that an investment adviser is
22 required to provide under paragraph (1)(A) may be
23 provided electronically, including through—

24 “(A) an internet website;

1 “(B) another digital, internet, or elec-
2 tronic-based information repository; or

3 “(C) a mobile application.

4 “(e) DEFINITIONS.—In this section:

5 “(1) COVERED SECURITY.—The term ‘covered
6 security’—

7 “(A) means a voting security, as that term
8 is defined in section 2(a) of the Investment
9 Company Act of 1940 (15 U.S.C. 80a-2(a)), in
10 which a qualified fund is invested; and

11 “(B) does not include any voting security
12 (as defined in subparagraph (A)) of an issuer
13 registered with the Commission as an invest-
14 ment company under section 8 of the Invest-
15 ment Company Act of 1940 (15 U.S.C. 80a-8).

16 “(2) PASSIVELY MANAGED FUND.—The term
17 ‘passively managed fund’ means a qualified fund—

18 “(A) that—

19 “(i) is designed to track, or is derived
20 from, an index of securities or a portion of
21 such an index;

22 “(ii) discloses that the qualified fund
23 is a passive index fund; or

24 “(iii) allocates not less than 60 per-
25 cent of the total assets of the qualified

1 fund to an investment strategy that is de-
2 signed to track, or is derived from, an
3 index of securities or a portion of such an
4 index fund; and

5 “(B) that commits to refrain from exer-
6 cising control over an issuer through voting or
7 investment authority.

8 “(3) PUBLISHED VOTING POLICY.—The term
9 ‘published voting policy’ means—

10 “(A) a policy that—

11 “(i) articulates how proportionate
12 shares would be expected to be voted in an-
13 ticipated proxy voting matters; and

14 “(ii) is made available to investors, in-
15 cluding via website or other electronic
16 means; and

17 “(B) in the case of a policy of a passively
18 managed fund or an investment adviser, a pol-
19 icy that does not—

20 “(i) seek to set the strategy or day-to-
21 day management decisions of the issuer;

22 “(ii) involve submitting shareholder
23 proposals;

24 “(iii) seek to nominate directors; and

1 “(iv) coordinate votes with other index
2 managers.

3 “(4) QUALIFIED FUND.—The term ‘qualified
4 fund’ means—

5 “(A) an investment company;

6 “(B) a private fund;

7 “(C) an eligible deferred compensation
8 plan, as that term is defined in section 457(b)
9 of the Internal Revenue Code of 1986;

10 “(D) a trust, plan, account, or other entity
11 described in section 3(c)(11) of the Investment
12 Company Act of 1940 (15 U.S.C. 80a-
13 3(c)(11));

14 “(E) a plan maintained by an employer de-
15 scribed in clause (i), (ii), or (iii) of section
16 403(b)(1)(A) of the Internal Revenue Code of
17 1986 to provide annuity contracts described in
18 section 403(b) of such Code;

19 “(F) a common trust fund, or similar
20 fund, maintained by a bank;

21 “(G) any fund established under section
22 8438(b)(1) of title 5, United States Code; or

23 “(H) any separate managed account of a
24 client of an investment adviser.

1 “(5) ROUTINE MATTER.—The term ‘routine
2 matter’—

3 “(A) includes a proposal that relates to—

4 “(i) an election with respect to the
5 board of directors of a registrant;

6 “(ii) the compensation of management
7 or the board of directors of a registrant;

8 “(iii) the selection of auditors; or

9 “(iv) declassification; and

10 “(B) does not include—

11 “(i) a proposal that is not submitted
12 to a holder of covered securities by means
13 of a proxy statement comparable to that
14 described in section 240.14a-101 of title
15 17, Code of Federal Regulations, or any
16 successor regulation; or

17 “(ii) a proposal that is—

18 “(I) the subject of a counter-so-
19 licitation; or

20 “(II) part of a proposal made by
21 a person other than the applicable
22 registrant.”.

23 (b) EFFECTIVE DATE.—The amendment made by
24 this section shall take effect 1 year after the date of enact-
25 ment of this Act.

1 **TITLE X—BEST INTEREST BASED**
2 **ON PECUNIARY FACTORS**

3 **SEC. 1001. PROTECTING RETAIL INVESTORS' SAVINGS.**

4 (a) BEST INTEREST BASED ON PECUNIARY FAC-
5 TORS.—Section 211(g) of the Investment Advisers Act of
6 1940 (15 U.S.C. 80b–11(g)) is amended by adding at the
7 end the following:

8 “(3) BEST INTEREST BASED ON PECUNIARY
9 FACTORS.—

10 “(A) IN GENERAL.—For purposes of para-
11 graph (1), when providing personalized invest-
12 ment advice, the best interest of a customer
13 shall be determined using pecuniary factors,
14 which, subject to applicable law, may not be
15 subordinated to or limited by non-pecuniary
16 factors, unless—

17 “(i) the customer provides informed
18 consent, whether by e-delivery or e-sign,
19 that such non-pecuniary factors be consid-
20 ered; or

21 “(ii) the personalized investment ad-
22 vice is consistent with the customer’s writ-
23 ten investment profile information.

24 “(B) DISCLOSURE OF PECUNIARY EF-
25 FECTS.—If a customer provides a broker, deal-

1 er, or investment adviser with the informed con-
2 sent to consider non-pecuniary factors described
3 under subparagraph (A), the broker, dealer, or
4 investment adviser shall provide qualitative dis-
5 closure of the potential pecuniary effects to the
6 customer of prioritizing non-pecuniary factors
7 over pecuniary factors in making investment de-
8 cisions.

9 “(C) PECUNIARY FACTOR DEFINED.—In
10 this paragraph, the term ‘pecuniary factor’
11 means a factor that a fiduciary prudently deter-
12 mines is expected to have a material effect on
13 the risk or return of an investment based on in-
14 vestment objectives, risk tolerance, and time ho-
15 rizon.”.

16 (b) RULEMAKING.—Not later than the end of the 12-
17 month period beginning on the date of enactment of this
18 Act, the Securities and Exchange Commission shall revise
19 or issue such rules as may be necessary to implement the
20 amendment made by paragraph (1).

21 (c) APPLICABILITY.—The amendment made by para-
22 graph (1) shall apply to a recommendation made by a
23 broker or dealer and investment advice provided by an in-

- 1 vestment adviser beginning on the date that is 12 months
- 2 after the date of enactment of this Act.

