

MEMORANDUM

To: Members of the Committee on Financial Services
From: Committee Staff
Date: July 10, 2023
Re: Subcommittee on Capital Markets Hearing entitled “Reforming the Proxy Process to Safeguard Investor Interests.”

On Thursday, July 13, 2023, at 10:00 a.m. (ET) in 2128 Rayburn House Office Building, the Subcommittee on Capital Markets will hold a hearing entitled “Reforming the Proxy Process to Safeguard Investor Interests.” Testifying at the hearing will be:

- **Christopher Netram**, Managing Vice President, Policy, National Association of Manufacturers
- **Dr. Joshua White**, Assistant Professor of Finance and the Brownlee O. Currey Jr. Dean's Faculty Fellow at Vanderbilt University's Owen Graduate School of Management
- **Tim Doyle**, Senior Policy Advisor, Bipartisan Policy Center
- **Jonathan Berry**, Managing Partner, Boyden Gray PLLC
- **Ms. Nell Minow**, Vice Chair, ValueEdge Advisors

Background

The federal government's focus on costly non-material environmental, social, and political issues at the expense of sound financial regulation has troubling consequences. This approach significantly drives up the costs and burdens associated with participating in the U.S. public markets, leading to decreased attractiveness for private companies considering going public or remaining public. Additionally, these increased costs hinder the ability of American public companies to compete on a global scale. Ultimately, these non-core regulations impact retail investors who rely on solid financial returns for their retirement savings. The resulting scenario not only discourages private companies from entering the public market but also places undue strain on existing public companies and the investors who depend on them.

One area that requires greater transparency and accountability is the proxy process, which no longer promotes long-term shareholder value efficiently and effectively. Currently, untethered shareholder activism diverts attention and resources from core issues, thereby undermining the attractiveness of U.S. markets and deterring companies from going public. The Securities and Exchange Commission (SEC) has exacerbated this problem by promulgating changes that facilitate the inclusion of politically motivated shareholder proposals in annual proxy statements

and reversing important reforms to proxy solicitation rules. This shift in focus towards advancing environmental, social, and political policies detracts from the primary purpose of public markets—to enable companies to raise capital and foster economic growth.

Legislative Proposals

- **H.R. ____**, to authorize the exclusion of shareholder proposals from proxy or consent solicitation material if such proposals are substantially similar to previously included proposals.
- **H.R. ____**, to authorize the exclusion of shareholder proposals from proxy or consent solicitation material if such proposals substantially implement, substantially duplicate, or are substantially similar to previously included proposals.
- **H.R. ____**, to authorize the exclusion of shareholder proposals from proxy or consent solicitation material if the subject matter of the shareholder proposal is environmental, social, or political.
- **H.R. ____**, to clarify that an issuer may exclude a shareholder proposal pursuant to section 240.14a-8(i) of title 17, Code of Federal Regulations, without regard to whether such proposal relates to a significant social policy issue.
- **H.R. ____**, to amend the Securities Exchange Act of 1934 to prohibit the Securities and Exchange Commission from compelling the discussion of shareholder proposals or proxy or consent solicitation materials.
- **H.R. ____**, to require the Securities and Exchange Commission to conduct a study of certain issues with respect to shareholder proposals, proxy advisory firms, and the proxy process, and for other purposes.
- **H.R. ____**, to amend the Securities Exchange Act of 1934 to provide for the registration of proxy advisory firms, and for other purposes.
- **H.R. ____**, to amend the Securities Exchange Act of 1934 to provide for liability for certain failures to disclose material information in connection with proxy voting advice, and for other purposes.
- **H.R. ____**, to amend the Securities Exchange Act of 1934 to provide for duties of certain investment advisors, asset managers, and pension funds with respect to voting on shareholder proposals, and for other purposes.
- **H.R. ____**, to amend the Securities Exchange Act of 1934 to prohibit robovoting with respect to votes related to proxy or consent solicitation materials, and for other purposes.

- **H.R. _____**, to amend the Investment Advisers Act of 1940 with respect to proxy voting of passively managed funds, and for other purposes.
- **H.R. _____, the Mandatory Materiality Requirement Act of 2022**, to amend the Securities Act of 1933 and the Securities Exchange Act of 1934 to require that information required to be disclosed to the Securities and Exchange Commission by issuers be material to investors of those issuers, and for other purposes.
- **H.R. _____**, to amend the Securities Exchange Act of 1934 to require the Securities and Exchange Commission to disclose and report on non-material disclosure mandates, and for other purposes.