

DECEMBER 7, 2017

RULES COMMITTEE PRINT 115–46
TEXT OF H. R. 4015, CORPORATE GOVERNANCE
REFORM AND TRANSPARENCY ACT OF 2017

**[Showing the text of H. R. 4015 as ordered reported by the
Committee on Financial Services.]**

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Corporate Governance
3 Reform and Transparency Act of 2017”.

4 **SEC. 2. DEFINITIONS.**

5 (a) SECURITIES EXCHANGE ACT OF 1934.—Section
6 3(a) of the Securities Exchange Act of 1934 (15 U.S.C.
7 78c(a)) is amended by adding at the end the following new
8 paragraphs:

9 “(81) PROXY ADVISORY FIRM.—The term
10 ‘proxy advisory firm’ means any person who is pri-
11 marily engaged in the business of providing proxy
12 voting research, analysis, ratings, or recommenda-
13 tions to clients, which conduct constitutes a sollicita-
14 tion within the meaning of section 14 and the Com-
15 mission’s rules and regulations thereunder, except to
16 the extent that the person is exempted by such rules
17 and regulations from requirements otherwise appli-
18 cable to persons engaged in a solicitation.

1 “(82) PERSON ASSOCIATED WITH A PROXY AD-
2 VISORY FIRM.—The term ‘person associated with’ a
3 proxy advisory firm means any partner, officer, or
4 director of a proxy advisory firm (or any person oc-
5 cupying a similar status or performing similar func-
6 tions), any person directly or indirectly controlling,
7 controlled by, or under common control with a proxy
8 advisory firm, or any employee of a proxy advisory
9 firm, except that persons associated with a proxy ad-
10 visory firm whose functions are clerical or ministe-
11 rial shall not be included in the meaning of such
12 term. The Commission may by rules and regulations
13 classify, for purposes or any portion or portions of
14 this Act, persons, including employees controlled by
15 a proxy advisory firm.”.

16 (b) APPLICABLE DEFINITIONS.—As used in this
17 Act—

18 (1) the term “Commission” means the Securi-
19 ties and Exchange Commission; and

20 (2) the term “proxy advisory firm” has the
21 same meaning as in section 3(a)(81) of the Securi-
22 ties Exchange Act of 1934, as added by this Act.

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

2 (a) AMENDMENT.—The Securities Exchange Act of
3 1934 is amended by inserting after section 15G the fol-
4 lowing new section:

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

6 “(a) CONDUCT PROHIBITED.—It shall be unlawful
7 for a proxy advisory firm to make use of the mails or any
8 means or instrumentality of interstate commerce to pro-
9 vide proxy voting research, analysis, or recommendations
10 to any client, unless such proxy advisory firm is registered
11 under this section.

12 “(b) REGISTRATION PROCEDURES.—

13 “(1) APPLICATION FOR REGISTRATION.—

14 “(A) IN GENERAL.—A proxy advisory firm
15 must file with the Commission an application
16 for registration, in such form as the Commis-
17 sion shall require, by rule or regulation, and
18 containing the information described in sub-
19 paragraph (B).

20 “(B) REQUIRED INFORMATION.—An appli-
21 cation for registration under this section shall
22 contain information regarding—

23 “(i) a certification that the applicant
24 is able to consistently provide proxy advice
25 based on accurate information;

1 “(ii) the procedures and methodolo-
2 gies that the applicant uses in developing
3 proxy voting recommendations, including
4 whether and how the applicant considers
5 the size of a company when making proxy
6 voting recommendations;

7 “(iii) the organizational structure of
8 the applicant;

9 “(iv) whether or not the applicant has
10 in effect a code of ethics, and if not, the
11 reasons therefor;

12 “(v) any potential or actual conflict of
13 interest relating to the ownership structure
14 of the applicant or the provision of proxy
15 advisory services by the applicant, includ-
16 ing whether the proxy advisory firm en-
17 gages in services ancillary to the provision
18 of proxy advisory services such as con-
19 sulting services for corporate issuers, and
20 if so the revenues derived therefrom;

21 “(vi) the policies and procedures in
22 place to manage conflicts of interest under
23 subsection (f); and

24 “(vii) any other information and docu-
25 ments concerning the applicant and any

1 person associated with such applicant as
2 the Commission, by rule, may prescribe as
3 necessary or appropriate in the public in-
4 terest or for the protection of investors.

5 “(2) REVIEW OF APPLICATION.—

6 “(A) INITIAL DETERMINATION.—Not later
7 than 90 days after the date on which the appli-
8 cation for registration is filed with the Commis-
9 sion under paragraph (1) (or within such longer
10 period as to which the applicant consents) the
11 Commission shall—

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

13 “(ii) institute proceedings to deter-
14 mine whether registration should be de-
15 nied.

16 “(B) CONDUCT OF PROCEEDINGS.—

17 “(i) CONTENT.—Proceedings referred
18 to in subparagraph (A)(ii) shall—

19 “(I) include notice of the grounds
20 for denial under consideration and an
21 opportunity for hearing; and

22 “(II) be concluded not later than
23 120 days after the date on which the
24 application for registration is filed

1 with the Commission under paragraph
2 (1).

3 “(ii) DETERMINATION.—At the con-
4 clusion of such proceedings, the Commis-
5 sion, by order, shall grant or deny such ap-
6 plication for registration.

7 “(iii) EXTENSION AUTHORIZED.—The
8 Commission may extend the time for con-
9 clusion of such proceedings for not longer
10 than 90 days, if it finds good cause for
11 such extension and publishes its reasons
12 for so finding, or for such longer period as
13 to which the applicant consents.

14 “(C) GROUNDS FOR DECISION.—The Com-
15 mission shall grant registration under this sub-
16 section—

17 “(i) if the Commission finds that the
18 requirements of this section are satisfied;
19 and

20 “(ii) unless the Commission finds (in
21 which case the Commission shall deny such
22 registration) that—

23 “(I) the applicant has failed to
24 certify to the Commission’s satisfac-
25 tion that it is able to consistently pro-

1 vide proxy advice based on accurate
2 information and to materially comply
3 with the procedures and methodolo-
4 gies disclosed under paragraph (1)(B)
5 and with subsections (f) and (g); or

6 “(II) if the applicant were so reg-
7 istered, its registration would be sub-
8 ject to suspension or revocation under
9 subsection (e).

10 “(3) PUBLIC AVAILABILITY OF INFORMATION.—

11 Subject to section 24, the Commission shall make
12 the information and documents submitted to the
13 Commission by a proxy advisory firm in its com-
14 pleted application for registration, or in any amend-
15 ment submitted under paragraph (1) or (2) of sub-
16 section (e), publicly available on the Commission’s
17 website, or through another comparable, readily ac-
18 cessible means.

19 “(c) UPDATE OF REGISTRATION.—

20 “(1) UPDATE.—Each registered proxy advisory
21 firm shall promptly amend and update its applica-
22 tion for registration under this section if any infor-
23 mation or document provided therein becomes mate-
24 rially inaccurate, except that a registered proxy advi-
25 sory firm is not required to amend the information

1 required to be filed under subsection (b)(1)(B)(i) by
2 filing information under this paragraph, but shall
3 amend such information in the annual submission of
4 the organization under paragraph (2) of this sub-
5 section.

6 “(2) CERTIFICATION.—Not later than 90 cal-
7 endar days after the end of each calendar year, each
8 registered proxy advisory firm shall file with the
9 Commission an amendment to its registration, in
10 such form as the Commission, by rule, may prescribe
11 as necessary or appropriate in the public interest or
12 for the protection of investors—

13 “(A) certifying that the information and
14 documents in the application for registration of
15 such registered proxy advisory firm continue to
16 be accurate in all material respects; and

17 “(B) listing any material change that oc-
18 curred to such information or documents during
19 the previous calendar year.

20 “(d) CENSURE, DENIAL, OR SUSPENSION OF REG-
21 ISTRATION; NOTICE AND HEARING.—The Commission, by
22 order, shall censure, place limitations on the activities,
23 functions, or operations of, suspend for a period not ex-
24 ceeding 12 months, or revoke the registration of any reg-
25 istered proxy advisory firm if the Commission finds, on

1 the record after notice and opportunity for hearing, that
2 such censure, placing of limitations, suspension, or revoca-
3 tion is necessary for the protection of investors and in the
4 public interest and that such registered proxy advisory
5 firm, or any person associated with such an organization,
6 whether prior to or subsequent to becoming so associ-
7 ated—

8 “(1) has committed or omitted any act, or is
9 subject to an order or finding, enumerated in sub-
10 paragraph (A), (D), (E), (H), or (G) of section
11 15(b)(4), has been convicted of any offense specified
12 in section 15(b)(4)(B), or is enjoined from any ac-
13 tion, conduct, or practice specified in subparagraph
14 (C) of section 15(b)(4), during the 10-year period
15 preceding the date of commencement of the pro-
16 ceedings under this subsection, or at any time there-
17 after;

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

22 “(A) any crime that is punishable by im-
23 prisonment for one or more years, and that is
24 not described in section 15(b)(4)(B); or

1 “(B) a substantially equivalent crime by a
2 foreign court of competent jurisdiction;

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

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

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

10 “(6) fails to maintain adequate financial and
11 managerial resources to consistently offer advisory
12 services with integrity, including by failing to comply
13 with subsections (f) or (g).

14 “(e) TERMINATION OF REGISTRATION.—

15 “(1) VOLUNTARY WITHDRAWAL.—A registered
16 proxy advisory firm may, upon such terms and con-
17 ditions as the Commission may establish as nec-
18 essary in the public interest or for the protection of
19 investors, which terms and conditions shall include
20 at a minimum that the registered proxy advisory
21 firm will no longer conduct such activities as to
22 bring it within the definition of proxy advisory firm
23 in section 3(a)(81) of the Securities Exchange Act
24 of 1934, withdraw from registration by filing a writ-
25 ten notice of withdrawal to the Commission.

1 “(2) COMMISSION AUTHORITY.—In addition to
2 any other authority of the Commission under this
3 title, if the Commission finds that a registered proxy
4 advisory firm is no longer in existence or has ceased
5 to do business as a proxy advisory firm, the Com-
6 mission, by order, shall cancel the registration under
7 this section of such registered proxy advisory firm.

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

9 “(1) ORGANIZATION POLICIES AND PROCE-
10 DURES.—Each registered proxy advisory firm shall
11 establish, maintain, and enforce written policies and
12 procedures reasonably designed, taking into consid-
13 eration the nature of the business of such registered
14 proxy advisory firm and associated persons, to ad-
15 dress and manage any conflicts of interest that can
16 arise from such business.

17 “(2) COMMISSION AUTHORITY.—The Commis-
18 sion shall issue final rules to prohibit, or require the
19 management and disclosure of, any conflicts of inter-
20 est relating to the offering of proxy advisory services
21 by a registered proxy advisory firm, including, with-
22 out limitation, conflicts of interest relating to—

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

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

3 “(B) the provision of consulting, advisory,
4 or other services by a registered proxy advisory
5 firm, or any person associated with such reg-
6 istered proxy advisory firm, to the client;

7 “(C) business relationships, ownership in-
8 terests, or any other financial or personal inter-
9 ests between a registered proxy advisory firm,
10 or any person associated with such registered
11 proxy advisory firm, and any client, or any af-
12 filiate of such client;

13 “(D) transparency around the formulation
14 of proxy voting policies;

15 “(E) the execution of proxy votes if such
16 votes are based upon recommendations made by
17 the proxy advisory firm in which someone other
18 than the issuer is a proponent;

19 “(F) issuing recommendations where proxy
20 advisory firms provide advisory services to a
21 company; and

22 “(G) any other potential conflict of inter-
23 est, as the Commission deems necessary or ap-
24 propriate in the public interest or for the pro-
25 tection of investors.

1 “(g) RELIABILITY OF PROXY ADVISORY FIRM SERV-
2 ICES.—

3 “(1) IN GENERAL.—Each registered proxy advi-
4 sory firm shall have staff sufficient to produce proxy
5 voting recommendations that are based on accurate
6 and current information. Each registered proxy advi-
7 sory firm shall detail procedures sufficient to permit
8 companies receiving proxy advisory firm rec-
9 ommendations access in a reasonable time to the
10 draft recommendations, with an opportunity to pro-
11 vide meaningful comment thereon, including the op-
12 portunity to present details to the person responsible
13 for developing the recommendation in person or tele-
14 phonically. Each registered proxy advisory firm shall
15 employ an ombudsman to receive complaints about
16 the accuracy of voting information used in making
17 recommendations from the subjects of the proxy ad-
18 visory firm’s voting recommendations, and shall seek
19 to resolve those complaints in a timely fashion and
20 in any event prior to voting on the matter to which
21 the recommendation relates. If the ombudsman is
22 unable to resolve such complaints prior to voting on
23 the matter, the proxy advisory firm shall include in
24 its final report to its clients a statement from the

1 company detailing its complaints, if requested in
2 writing by the company.

3 “(2) REASONABLE TIME DEFINED.—For pur-
4 poses of this subsection, the term ‘reasonable
5 time’—

6 “(A) means not less than 3 business days
7 unless otherwise defined through a final rule
8 issued by the Commission; and

9 “(B) shall not otherwise interfere with a
10 proxy advisory firm’s ability to provide its cli-
11 ents with timely access to accurate proxy voting
12 research, analysis, or recommendations.

13 “(3) DRAFT RECOMMENDATIONS DEFINED.—
14 For purposes of this subsection, the term ‘draft rec-
15 ommendations’—

16 “(A) means the overall conclusions of
17 proxy voting recommendations prepared for the
18 clients of a proxy advisory firm, including any
19 public data cited therein, any company informa-
20 tion or substantive analysis impacting the rec-
21 ommendation, and the specific voting rec-
22 ommendations on individual proxy ballot issues;
23 and

24 “(B) does not include the entirety of the
25 proxy advisory firm’s final report to its clients.

1 “(h) DESIGNATION OF COMPLIANCE OFFICER.—

2 Each registered proxy advisory firm shall designate an in-
3 dividual responsible for administering the policies and pro-
4 cedures that are required to be established pursuant to
5 subsections (f) and (g), and for ensuring compliance with
6 the securities laws and the rules and regulations there-
7 under, including those promulgated by the Commission
8 pursuant to this section.

9 “(i) PROHIBITED CONDUCT.—

10 “(1) PROHIBITED ACTS AND PRACTICES.—The
11 Commission shall issue final rules to prohibit any
12 act or practice relating to the offering of proxy advi-
13 sory services by a registered proxy advisory firm
14 that the Commission determines to be unfair, coer-
15 cive, or abusive, including any act or practice relat-
16 ing to—

17 “(A) conditioning a voting recommendation
18 or other proxy advisory firm recommendation
19 on the purchase by an issuer or an affiliate
20 thereof of other services or products, of the reg-
21 istered proxy advisory firm or any person asso-
22 ciated with such registered proxy advisory firm;
23 and

24 “(B) modifying a voting recommendation
25 or otherwise departing from its adopted system-

1 atic procedures and methodologies in the provi-
2 sion of proxy advisory services, based on wheth-
3 er an issuer, or affiliate thereof, subscribes or
4 will subscribe to other services or product of the
5 registered proxy advisory firm or any person as-
6 sociated with such organization.

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

16 “(j) STATEMENTS OF FINANCIAL CONDITION.—Each
17 registered proxy advisory firm shall, on a confidential
18 basis, file with the Commission, at intervals determined
19 by the Commission, such financial statements, certified (if
20 required by the rules or regulations of the Commission)
21 by an independent public auditor, and information con-
22 cerning its financial condition, as the Commission, by rule,
23 may prescribe as necessary or appropriate in the public
24 interest or for the protection of investors.

1 “(k) ANNUAL REPORT.—Each registered proxy advi-
2 sory firm shall, at the beginning of each fiscal year of such
3 firm, report to the Commission on the number of share-
4 holder proposals its staff reviewed in the prior fiscal year,
5 the number of recommendations made in the prior fiscal
6 year, the number of staff who reviewed and made rec-
7 ommendations on such proposals in the prior fiscal year,
8 and the number of recommendations made in the prior
9 fiscal year where the proponent of such recommendation
10 was a client of or received services from the proxy advisory
11 firm.

12 “(l) 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 “(m) RULES OF CONSTRUCTION.—

17 “(1) NO WAIVER OF RIGHTS, PRIVILEGES, OR
18 DEFENSES.—Registration under and compliance
19 with this section does not constitute a waiver of, or
20 otherwise diminish, any right, privilege, or defense
21 that a registered proxy advisory firm may otherwise
22 have under any provision of State or Federal law,
23 including any rule, regulation, or order thereunder.

24 “(2) NO PRIVATE RIGHT OF ACTION.—Nothing
25 in this section may be construed as creating any pri-

1 vate right of action, and no report filed by a reg-
2 istered proxy advisory firm in accordance with this
3 section or section 17 shall create a private right of
4 action under section 18 or any other provision of
5 law.

6 “(n) REGULATIONS.—

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

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

14 “(B) shall become effective not later than
15 1 year after the date of enactment of this sec-
16 tion.

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

20 “(A) review its existing rules and regula-
21 tions which affect the operations of proxy advi-
22 sory firms;

23 “(B) amend or revise such rules and regula-
24 tions in accordance with the purposes of this
25 section, and issue such guidance, as the Com-

1 mission may prescribe as necessary or appro-
2 priate in the public interest or for the protec-
3 tion of investors; and

4 “(C) direct Commission staff to withdraw
5 the Egan Jones Proxy Services (May 27, 2004),
6 and Institutional Shareholder Services, Inc.
7 (September 15, 2004), no-action letters.

8 “(o) APPLICABILITY.—This section, other than sub-
9 section (n), which shall apply on the date of enactment
10 of this section, shall apply on the earlier of—

11 “(1) the date on which regulations are issued in
12 final form under subsection (n)(1); or

13 “(2) 270 days after the date of enactment of
14 this section.”.

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

20 **SEC. 4. COMMISSION ANNUAL REPORT.**

21 The Commission shall make an annual report publicly
22 available on the Commission’s Internet website. Such re-
23 port shall, with respect to the year to which the report
24 relates—

1 (1) identify applicants for registration under
2 section 15H of the Securities Exchange Act of 1934,
3 as added by this Act;

4 (2) specify the number of and actions taken on
5 such applications;

6 (3) specify the views of the Commission on the
7 state of competition, transparency, policies and
8 methodologies, and conflicts of interest among proxy
9 advisory firms;

10 (4) include the determination of the Commis-
11 sion with regards to—

12 (A) the quality of proxy advisory services
13 issued by proxy advisory firms;

14 (B) the financial markets;

15 (C) competition among proxy advisory
16 firms;

17 (D) the incidence of undisclosed conflicts
18 of interest by proxy advisory firms;

19 (E) the process for registering as a proxy
20 advisory firm; and

21 (F) such other matters relevant to the im-
22 plementation of this Act and the amendments
23 made by this Act, as the Commission deter-
24 mines necessary to bring to the attention of the
25 Congress;

1 (5) identify problems, if any, that have resulted
2 from the implementation of this Act and the amend-
3 ments made by this Act; and

4 (6) recommend solutions, including any legisla-
5 tive or regulatory solutions, to any problems identi-
6 fied under paragraphs (4) and (5).

