[DISCUSSION DRAFT]

118TH CONGRESS 1ST SESSION

H. R. ______

To amend the Investment Advisers Act of 1940 with respect to proxy voting of passively managed funds, and for other purposes.

___________________________

IN THE HOUSE OF REPRESENTATIVES

M. introduced the following bill; which was referred to the Committee on ________________________

___________________________

A BILL

To amend the Investment Advisers Act of 1940 with respect to proxy voting of passively managed funds, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. PROXY VOTING OF PASSIVELY MANAGED FUNDS.

(a) In General.—The Investment Advisers Act of 1940 (15 U.S.C. 80b–1 et seq.) is amended by inserting after section 208 (15 U.S.C. 80b–8) the following:
SEC. 208A. PROXY VOTING OF PASSIVELY MANAGED FUNDS.

“(a) INVESTMENT ADVISER PROXY VOTING.—

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

“(A) vote in accordance with the instructions of the beneficial owner of such covered securities;

“(B) vote in accordance with the voting instructions of such issuer; or

“(C) abstain from voting.

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

“(b) SAFE HARBOR.—With respect to a matter that is not a routine matter, in the case of a vote described in subsection (a)(1), an investment adviser shall not be liable to any person under any law or regulation of the United States, any constitution, law, or regulation of any State or political subdivision thereof, or under any contract or other legally enforceable agreement (including any arbitration agreement), for any of the following:
“(1) Not soliciting voting instructing from any person under subsection (a)(1) with respect to such vote.

“(2) Voting in accordance with the voting instructions of an issuer pursuant to subparagraph (B) of such subsection.

“(3) Abstaining from voting in accordance with subparagraph (C) of such subsection.

“(e) DEFINITIONS.—In this section:

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

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

“(B) does not include any voting security (as defined in subparagraph (A)) of an issuer registered with the Commission as an investment company under section 8 of the Investment Company Act of 1940 (15 U.S.C. 80a–8).

“(2) PASSIVELY MANAGED FUND.—The term ‘passively managed fund’ means a qualified fund that—
“(A) is designed to track, or is derived from, an index of securities or a portion of such an index;

“(B) discloses that the qualified fund is a passive index fund; or

“(C) allocates not less than 40 percent of the total assets of the qualified fund to an investment strategy that is designed to track, or is derived from, an index of securities or a portion of such an index fund.

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

“(A) an investment company, as that term is defined in section 3 of the Investment Company Act of 1940 (15 U.S.C. 80a–3);

“(B) a private fund;

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

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

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

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

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

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

“(4) Registrant.—The term ‘registrant’ means an issuer of covered securities.

“(5) Routine matter.—The term ‘routine matter’—

“(A) includes a proposal that relates to—

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

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

“(iii) the selection of auditors;

“(iv) material conflicts;

“(v) declassification; or

“(vi) transactions that would transform the structure of the registrant, including—
“(I) a merger or consolidation;
and
“(II) the sale, lease, or exchange of all, or substantially all, of the property and assets of a registrant; and
“(B) does not include—
“(i) a proposal that is not submitted to a holder of covered securities by means of a proxy statement comparable to that described in section 240.14a–101 of title 17, Code of Federal Regulations, or any successor regulation;
“(ii) a proposal that is—
“(I) the subject of a counter-solicitation; or
“(II) part of a proposal made by a person other than the applicable registrant;
“(iii) any other matter determined by the Commission or an exchange registered under section 6 of the Securities Exchange Act of 1934 (15 U.S.C. 78f) to be not routine.”.
(b) EFFECTIVE DATE.—The amendment made by this section shall take effect on the first August 1 that
occurs after the date that is 2 years after the date of enactment of this Act.