

**AMENDMENT IN THE NATURE OF A SUBSTITUTE  
TO H.R. 4767  
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—PERFORMANCE OVER POLITICS

Sec. 101. Exclusion of certain substantially similar shareholder proposals.

TITLE II—NO EXPENSIVE, STIFLING GOVERNANCE

Sec. 201. Exclusion of certain shareholder proposals.

TITLE III—EXCLUSION OF CERTAIN ESG SHAREHOLDER  
PROPOSALS

Sec. 301. Exclusion of certain ESG shareholder proposals.

TITLE IV—EXCLUSIONS AVAILABLE REGARDLESS OF  
SIGNIFICANT SOCIAL POLICY ISSUE

Sec. 401. Exclusions available regardless of significant social policy issue.

TITLE V—CORPORATE GOVERNANCE EXAMINATION

Sec. 501. Study of certain issues with respect to shareholder proposals, proxy advisory firms, and the proxy process.

TITLE VI—REGISTRATION OF PROXY ADVISORY FIRMS

Sec. 601. Registration of proxy advisory firms.

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

Sec. 701. Liability for certain failures to disclose material information or making of material misstatements.

**TITLE VIII—DUTIES OF INVESTMENT ADVISORS, ASSET MANAGERS, AND PENSION FUNDS**

Sec. 801. Duties of investment advisors, asset managers, and pension funds.

**TITLE IX—PROTECTING AMERICANS' SAVINGS**

Sec. 901. Requirements related to proxy voting.

**TITLE X—EMPOWERING SHAREHOLDERS**

Sec. 1001. Proxy voting of passively managed funds.

**TITLE XI—PROTECTING RETAIL INVESTORS' SAVINGS**

Sec. 1101. Best interest based on pecuniary factors.

Sec. 1102. Study on climate change and other environmental disclosures in municipal bond market.

Sec. 1103. Study on solicitation of municipal securities business.

1     **TITLE I—PERFORMANCE OVER**  
2                                     **POLITICS**

3     **SEC. 101. EXCLUSION OF CERTAIN SUBSTANTIALLY SIMI-**  
4                                     **LAR SHAREHOLDER PROPOSALS.**

5             The Securities and Exchange Commission shall revise  
6 the resubmission requirements in section 240.14a-8(i)(12)  
7 of title 17, Code of Federal Regulations, to provide that  
8 a shareholder proposal may be excluded by an issuer from  
9 its proxy or consent solicitation material for a meeting of  
10 the shareholders of such issuer if the shareholder proposal  
11 addresses substantially the same subject matter as a pro-  
12 posal, or proposals, previously included in the proxy or

1 consent solicitation material for a meeting of the share-  
2 holders of such issuer—

3 (1) for a meeting of the shareholders conducted  
4 in the preceding 5 calendar years; and

5 (2) if the most recent vote—

6 (A) occurred in the preceding 3 calendar  
7 years; and

8 (B)(i) if voted on once during such 5-year  
9 period, received less than 10 percent of the  
10 votes cast;

11 (ii) if voted on twice during such 5-year  
12 period, received less than 20 percent of the  
13 votes cast; or

14 (iii) if voted on three or more times during  
15 such 5-year period, received less 40 percent of  
16 the votes cast.

17 **TITLE II—NO EXPENSIVE,**  
18 **STIFLING GOVERNANCE**

19 **SEC. 201. EXCLUSION OF CERTAIN SHAREHOLDER PRO-**  
20 **POSALS.**

21 (a) **EXCLUSION OF CERTAIN SHAREHOLDER PRO-**  
22 **POSALS.**—A shareholder proposal submitted to an issuer  
23 pursuant to section 240.14a-8 of title 17, Code of Federal  
24 Regulations, may be excluded by an issuer from its proxy

1 or consent solicitation material for a meeting of the share-  
2 holders of such issuer if the shareholder proposal—

3 (1) has been substantially implemented by the  
4 issuer by implementing policies, practices, or proce-  
5 dures that compare favorably with the guidelines of  
6 the proposal and address the proposal’s underlying  
7 concerns; or

8 (2) substantially duplicates by having the same  
9 principal thrust or principal focus as another pro-  
10 posal previously submitted to the issuer by another  
11 proponent that will be included in such material.

12 (b) NULLIFICATION OF PROPOSED RULE.—The Se-  
13 curities and Exchange Commission may not finalize or  
14 apply the positions contained in the proposed rule entitled  
15 “Substantial Implementation, Duplication, and Resubmis-  
16 sion of Shareholder Proposals under Exchange Act Rule  
17 14a-8” (87 Fed. Reg. 45052), issue any substantially  
18 similar rule, or apply any substantially similar rule, in-  
19 cluding with respect to a no-action or other interpretive  
20 request.

1 **TITLE III—EXCLUSION OF CER-**  
2 **TAIN ESG SHAREHOLDER**  
3 **PROPOSALS**

4 **SEC. 301. EXCLUSION OF CERTAIN ESG SHAREHOLDER**  
5 **PROPOSALS.**

6 A shareholder proposal submitted to an issuer pursu-  
7 ant to section 240.14a-8 of title 17, Code of Federal Regu-  
8 lations, may be excluded by an issuer from its proxy or  
9 consent solicitation material for a meeting of the share-  
10 holders of such issuer if the subject matter of the share-  
11 holder proposal is environmental, social, or political (or a  
12 similar subject matter).

13 **TITLE IV—EXCLUSIONS AVAIL-**  
14 **ABLE REGARDLESS OF SIG-**  
15 **NIFICANT SOCIAL POLICY**  
16 **ISSUE**

17 **SEC. 401. EXCLUSIONS AVAILABLE REGARDLESS OF SIG-**  
18 **NIFICANT SOCIAL POLICY ISSUE.**

19 An issuer may exclude a shareholder proposal pursu-  
20 ant to section 240.14a-8(i) of title 17, Code of Federal  
21 Regulations, without regard to whether such shareholder  
22 proposal relates to a significant social policy issue.

1                   **TITLE V—CORPORATE**  
2                   **GOVERNANCE EXAMINATION**

3   **SEC. 501. STUDY OF CERTAIN ISSUES WITH RESPECT TO**  
4                   **SHAREHOLDER PROPOSALS, PROXY ADVI-**  
5                   **SORY FIRMS, AND THE PROXY PROCESS.**

6           Section 4(j) of the Securities Exchange Act of 1934  
7 (15 U.S.C. 78d(j)) is amended by adding at the end the  
8 following:

9                   “(10) STUDY OF CERTAIN ISSUES WITH RE-  
10                   SPECT TO SHAREHOLDER PROPOSALS, PROXY ADVI-  
11                   SORY FIRMS, AND THE PROXY PROCESS.—

12                   “(A) IN GENERAL.—Not later than 180  
13                   days after the date of the enactment of this  
14                   paragraph, and every 5 years thereafter, the  
15                   Commission shall conduct a comprehensive  
16                   study on shareholder proposals, proxy advisory  
17                   firms, and the proxy process.

18                   “(B) SCOPE OF STUDY.—The studies re-  
19                   quired under subparagraph (A) shall cover—

20                   “(i) the previous 10 years, with re-  
21                   spect to the initial study; and

22                   “(ii) the previous 5 years, with respect  
23                   to each other study.

1           “(C) CONTENTS.—Each study required  
2           under subparagraph (A) shall address the fol-  
3           lowing issues:

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

7                   “(ii) A consideration of whether finan-  
8                   cial and other incentives have created a  
9                   process that no longer serves the economic  
10                  interests of long-term retail investors.

11                  “(iii) An analysis of whether regula-  
12                  tions and financial incentives have created  
13                  and protected the outsized influence of  
14                  proxy advisors or a duopoly in proxy ad-  
15                  vice, and if so, what are the benefits and  
16                  costs of that outsized influence or duopoly.

17                  “(iv) The costs incurred by issuers in  
18                  responding to politically-, environmentally-,  
19                  , or socially-motivated shareholder pro-  
20                  posals.

21                  “(v) An assessment, including a cost-  
22                  benefit analysis, of the adequacy of the  
23                  current submission thresholds in Rule 14a-  
24                  8 (17 CFR 240.14a-8) to ensure that  
25                  shareholder proponents have demonstrated

1 a meaningful economic stake in a com-  
2 pany, which is appropriate to effectively  
3 serve markets and shareholders at large.

4 “(vi) An examination of the extent to  
5 which the politicization of the shareholder  
6 proposal process is increasing the oper-  
7 ating costs of public companies.

8 “(vii) An analysis of the impact that  
9 shareholder proposals have on discouraging  
10 private companies from going public.

11 “(viii) An evaluation of the risk that  
12 shareholder proposals may contribute to  
13 the balkanization of the U.S. economy over  
14 time.

15 “(ix) A thorough assessment of the  
16 economic analysis, if any, conducted by  
17 proxy advisory firms and institutional  
18 shareholders when recommending or voting  
19 in favor of shareholder proposals.

20 “(x) A review of the extent to which  
21 institutional investors, who owe fiduciary  
22 duties, rely on proxy advisory firm rec-  
23 ommendations.

24 “(xi) An assessment of whether, in  
25 light of their significant influence on cor-



1           porate actions and vote outcomes, proxy  
2           advisors are subject to sufficient and effec-  
3           tive regulation to ensure that their policies  
4           and recommendations are accurate, free of  
5           conflicts, and benefit the economic best in-  
6           terest of shareholders at large.

7           “(D) REPORT.—At the completion of each  
8           study required under subparagraph (A) the  
9           Commission shall issue a report to the Com-  
10          mittee on Banking, Housing, and Urban Affairs  
11          of the Senate and the Committee on Financial  
12          Services of the House of Representatives that  
13          includes the results of the study.”.

## 14           **TITLE VI—REGISTRATION OF** 15           **PROXY ADVISORY FIRMS**

### 16           **SEC. 601. REGISTRATION OF PROXY ADVISORY FIRMS.**

17           (a) AMENDMENT.—The Securities Exchange Act of  
18           1934 (15 U.S.C. 78a et seq.) is amended by inserting after  
19           section 15G the following new section:

### 20           **“SEC. 15H. REGISTRATION OF PROXY ADVISORY FIRMS.**

21           “(a) CONDUCT PROHIBITED.—It shall be unlawful  
22           for a proxy advisory firm to make use of the mails or any  
23           means or instrumentality of interstate commerce to pro-  
24           vide proxy voting advice, research, analysis, ratings or rec-

1 ommendations to any client, unless such proxy advisory  
2 firm is registered under this section.

3 “(b) REGISTRATION PROCEDURES.—

4 “(1) APPLICATION FOR REGISTRATION.—

5 “(A) IN GENERAL.—A proxy advisory firm  
6 shall file with the Commission an application  
7 for registration, in such form as the Commis-  
8 sion shall require, by rule, and containing the  
9 information described in subparagraph (B).

10 “(B) REQUIRED INFORMATION.—An appli-  
11 cation for registration under this section shall  
12 contain—

13 “(i) a certification that the applicant  
14 is able to consistently provide proxy advice  
15 based on accurate information;

16 “(ii) with respect to clients of the ap-  
17 plicant that vote shares held on behalf of  
18 shareholders, a certification that the appli-  
19 cant—

20 “(I) will provide proxy voting ad-  
21 vice only in the best economic interest  
22 of those shareholders; and

23 “(II) has the requisite expertise  
24 to ensure that voting recommenda-

1                   tions are in the best economic interest  
2                   of those shareholders;

3                   “(iii) information on the procedures  
4                   and methodologies that the applicant uses  
5                   to ensure that proxy voting recommenda-  
6                   tions are in the best economic interest of  
7                   the ultimate shareholders;

8                   “(iv) information on the organiza-  
9                   tional structure of the applicant;

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

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

21                  “(vii) the policies and procedures in  
22                  place to publicly disclose and manage con-  
23                  flicts of interest under subsection (f);

24                  “(viii) information related to the pro-  
25                  fessional and academic qualifications of

1 staff tasked with providing proxy advisory  
2 services; and

3 “(ix) any other information and docu-  
4 ments concerning the applicant and any  
5 person associated with such applicant as  
6 the Commission, by rule, may prescribe as  
7 necessary or appropriate in the public in-  
8 terest or for the protection of investors.

9 “(2) REVIEW OF APPLICATION.—

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

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

17 “(ii) institute proceedings to deter-  
18 mine whether registration should be de-  
19 nied.

20 “(B) CONDUCT OF PROCEEDINGS.—

21 “(i) CONTENT.—Proceedings referred  
22 to in subparagraph (A)(ii) shall—

23 “(I) include notice of the grounds  
24 for denial under consideration and an  
25 opportunity for hearing; and

1                   “(II) be concluded not later than  
2                   120 days after the date on which the  
3                   application for registration is filed  
4                   with the Commission under paragraph  
5                   (1).

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

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

18                   “(C) GROUNDS FOR DECISION.—The Com-  
19                   mission shall grant registration under this sub-  
20                   section—

21                   “(i) if the Commission finds that the  
22                   requirements of this section are satisfied;  
23                   and

1 “(ii) unless the Commission finds (in  
2 which case the Commission shall deny such  
3 registration) that—

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

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

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

25 “(c) UPDATE OF REGISTRATION.—

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

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

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

23           “(B) listing any material change that oc-  
24 curred to such information or documents during  
25 the previous calendar year.

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

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

24           “(2) has been convicted during the 10-year pe-  
25   riod preceding the date on which an application for



1 registration is filed with the Commission under this  
2 section, or at any time thereafter, of—

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

6 “(B) a substantially equivalent crime by a  
7 foreign court of competent jurisdiction;

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

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

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

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

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

1           “(8) engages in a prohibited act enumerated in  
2 subsection (j).

3           “(e) TERMINATION OF REGISTRATION.—

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

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

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

23           “(1) ORGANIZATION POLICIES AND PROCE-  
24 DURES.—Each registered proxy advisory firm shall  
25 establish, maintain, and enforce written policies and

1 procedures reasonably designed, taking into consid-  
2 eration the nature of the business of such registered  
3 proxy advisory firm and associated persons, to pub-  
4 licly disclose and manage any conflicts of interest  
5 that arise or would reasonably be expected to arise  
6 from such business.

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

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

18 “(B) business relationships, ownership in-  
19 terests, or any other financial or personal inter-  
20 ests between a registered proxy advisory firm,  
21 or any person associated with such registered  
22 proxy advisory firm, and any client, or any af-  
23 filiate of such client;

24 “(C) the formulation of proxy voting poli-  
25 cies;

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

6           “(E) any other potential conflict of inter-  
7           est, as the Commission deems necessary or ap-  
8           propriate in the public interest or for the pro-  
9           tection of investors.

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

19          “(g) RELIABILITY OF PROXY ADVISORY FIRM SERV-  
20          ICES.—

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

23                 “(A) have staff and other resources suffi-  
24                 cient to produce proxy voting recommendations  
25                 that are based on accurate and current infor-

1           mation and designed for clients that vote shares  
2           held on behalf of shareholders to advance the  
3           best economic interest of those shareholders;

4           “(B) implement procedures that permit  
5           issuers that are the subject of proxy voting rec-  
6           ommendations—

7           “(i) access in a reasonable time to  
8           data and information used to make rec-  
9           ommendations; and

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

18          “(C) employ an ombudsman to receive  
19          complaints about the accuracy of information  
20          used in making recommendations from the com-  
21          panies that are the subject of the proxy advi-  
22          sory firm’s voting recommendations and seek to  
23          resolve those complaints in a timely fashion and  
24          prior to the publication of proxy voting rec-  
25          ommendations to clients; and

1           “(D) if the ombudsman is unable to re-  
2 solve a complaint to a company’s satisfaction  
3 prior to the publication of proxy voting rec-  
4 ommendations to clients, include in the final re-  
5 port of the firm to clients—

6           “(i) a statement detailing the com-  
7 pany’s complaints, if requested in writing  
8 by the company; and

9           “(ii) a statement explaining why the  
10 proxy voting recommendation is in the best  
11 economic interest of shareholders.

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

13           “(A) DATA AND INFORMATION USED TO  
14 MAKE RECOMMENDATIONS.—The term ‘data  
15 and information used to make voting rec-  
16 ommendations’—

17           “(i) means the financial, operational,  
18 or descriptive data and information on an  
19 issuer used by proxy advisory firms and  
20 any contextual or substantive analysis im-  
21 pacting the recommendation; and

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

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

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

6                   “(ii) shall not otherwise interfere with  
7                   a proxy advisory firm’s ability to provide  
8                   its clients with timely access to accurate  
9                   proxy voting research, analysis, or rec-  
10                  ommendations.

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

19               “(i) DESIGNATION OF COMPLIANCE OFFICER.—Each  
20 registered proxy advisory firm shall designate an indi-  
21 vidual who reports directly to senior management as re-  
22 sponsible for administering the policies and procedures  
23 that are required to be established pursuant to subsections  
24 (f) and (g), and for ensuring compliance with the securi-  
25 ties laws and the rules and regulations thereunder, includ-

1 ing those promulgated by the Commission pursuant to this  
2 section.

3 “(j) PROHIBITED CONDUCT.—

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

12 “(A) advisory or consulting services (of-  
13 fered directly or indirectly, including through  
14 an affiliate) related to corporate governance  
15 issues; or

16 “(B) modifying a voting recommendation  
17 or otherwise departing from its adopted system-  
18 atic procedures and methodologies in the provi-  
19 sion of proxy advisory services, based on wheth-  
20 er an issuer, or affiliate thereof, subscribes or  
21 will subscribe to other services or product of the  
22 registered proxy advisory firm or any person as-  
23 sociated with such organization.

24 “(2) RULE OF CONSTRUCTION.—Nothing in  
25 paragraph (1), or in any rules or regulations adopt-



1 ed thereunder, may be construed to modify, impair,  
2 or supersede the operation of any of the antitrust  
3 laws (as defined in the first section of the Clayton  
4 Act, except that such term includes section 5 of the  
5 Federal Trade Commission Act, to the extent that  
6 such section 5 applies to unfair methods of competi-  
7 tion).

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

17 “(l) ANNUAL REPORT.—

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

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

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

8                   “(B) A list of the recommendations made  
9                   in the prior fiscal year.

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

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

23                   “(E) The qualifications of such staff to en-  
24                   sure that each of the recommendations for cli-  
25                   ents that vote shares held on behalf of share-

1 holders were tied to the best economic interest  
2 of those shareholders.

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

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

18 “(i) were based on internal controls  
19 and procedures that are designed to ensure  
20 accurate information and that such inter-  
21 nal controls and procedures are effective;

22 “(ii) do not violate applicable State or  
23 Federal law; and

24 “(iii) were based on the best economic  
25 interest of those shareholders.

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

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

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

20          “(o) REGULATIONS.—

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

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

4           “(B) shall become effective not later than  
5           1 year after the date of enactment of this sec-  
6           tion.

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

10           “(A) review its existing rules and regula-  
11           tions which affect the operations of proxy advi-  
12           sory firms; and

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

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

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

24           “(2) 270 days after the date of enactment of  
25           this section.

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

7           (b) CONFORMING AMENDMENT.—Section 17(a)(1) of  
8 the Securities Exchange Act of 1934 (15 U.S.C.  
9 78q(a)(1)) is amended by inserting “proxy advisory firm,”  
10 after “nationally recognized statistical rating organiza-  
11 tion,”.

12           (c) PROXY ADVISORY FIRM DEFINITIONS.—Section  
13 3(a) of the Securities Exchange Act of 1934 (15 U.S.C.  
14 78c(a)) is amended by adding at the end the following:

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

17                       “(A) means any person who is primarily  
18                       engaged in the business of providing proxy vot-  
19                       ing advice, research, analysis, ratings, or rec-  
20                       ommendations to clients, which conduct con-  
21                       stitutes a solicitation within the meaning of sec-  
22                       tion 14; and

23                       “(B) does not include any person that is  
24                       exempt under law or regulation from the re-

1           quirements otherwise applicable to persons en-  
2           gaged in such a solicitation.

3           “(83) PERSON ASSOCIATED WITH A PROXY AD-  
4           VISORY FIRM.—With respect to a proxy advisory  
5           firm—

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

8                           “(i) a partner, officer, or director of  
9                           the proxy advisory firm (or any person oc-  
10                          cupying a similar status or performing  
11                          similar functions);

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

15                           “(iii) an employee of the proxy advi-  
16                          sory firm; or

17                           “(iv) a person the Commission deter-  
18                          mines by rule is controlled by the proxy  
19                          advisory firm; and

20                           “(B) a person is not ‘associated’ with the  
21           proxy advisory firm if the person only performs  
22           clerical or ministerial functions with respect to  
23           a proxy advisory firm.”.

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

6 **SECTION 701. LIABILITY FOR CERTAIN FAILURES TO DIS-**  
7 **CLOSE MATERIAL INFORMATION OR MAKING**  
8 **OF MATERIAL 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 section 18, the failure to disclose material in-  
14 formation (such as a proxy voting advice business’s meth-  
15 odology, sources of information, or conflicts of interest)  
16 or the making of a material misstatement regarding proxy  
17 voting advice that makes a recommendation to a security  
18 holder as to the security holder’s vote, consent, or author-  
19 ization on a specific matter for which security holder ap-  
20 proval is solicited, and that is furnished by a person that  
21 markets the person’s expertise as a provider of such proxy  
22 voting advice separately from other forms of investment  
23 advice, and sells such proxy voting advice for a fee, shall  
24 be considered to be false or misleading with respect to a  
25 material fact.”.



1 **TITLE VIII—DUTIES OF INVEST-**  
2 **MENT ADVISORS, ASSET MAN-**  
3 **AGERS, AND PENSION FUNDS**

4 **SEC. 801. DUTIES OF INVESTMENT ADVISORS, ASSET MAN-**  
5 **AGERS, AND PENSION FUNDS.**

6 Section 13(f) of the Securities Exchange Act of 1934  
7 (15 U.S.C. 78m(f)) is amended by adding at the end the  
8 following:

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

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

1 annual report with the Commission con-  
2 taining—

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

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

11 “(iii) an explanation of—

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

20 “(II) how often the institutional  
21 investment manager voted consistent  
22 with a recommendation made by a  
23 proxy advisory firm, expressed as a  
24 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 assets under man-  
24                  agement with an aggregate fair market value on  
25                  the last trading day in any of the preceding

1 twelve months of at least \$100,000,000,000  
2 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 IX—PROTECTING**  
4 **AMERICANS’ SAVINGS**

5 **SEC. 901. 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 701, 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 pre-  
18 populating votes on a proxy advisory firm’s elec-  
19 tronic voting platform with the proxy advisory firm’s  
20 recommendations, in either case, without inde-  
21 pendent review and analysis.

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

1 to any person other than an investment adviser or a  
2 broker or dealer that is registered with the Commission  
3 and has a fiduciary or best interest duty to the institu-  
4 tional investor.

5 “(o) NO REQUIREMENT TO VOTE.—No person may  
6 be required to cast votes related to proxy or consent solici-  
7 tation materials.

8 “(p) PROXY ADVISORY FIRM CALCULATION OF  
9 VOTES.—With respect to votes related to proxy or consent  
10 solicitation materials with respect to an issuer, a proxy  
11 advisor firm shall calculate the vote result consistent with  
12 the law of the State in which the issuer is incorporated.”.

## 13 **TITLE X—EMPOWERING** 14 **SHAREHOLDERS**

### 15 **SEC. 1001. PROXY VOTING OF PASSIVELY MANAGED FUNDS.**

16 (a) IN GENERAL.—The Investment Advisers Act of  
17 1940 (15 U.S.C. 80b–1 et seq.) is amended by inserting  
18 after section 208 (15 U.S.C. 80b–8) the following:

#### 19 **“SEC. 208A. PROXY VOTING OF PASSIVELY MANAGED** 20 **FUNDS.**

21 “(a) INVESTMENT ADVISER PROXY VOTING.—

22 “(1) IN GENERAL.—An investment adviser that  
23 holds authority to vote a proxy solicited by an issuer  
24 pursuant to section 14 of the Securities Exchange  
25 Act of 1934 (15 U.S.C. 78n) in connection with any

1 vote of covered securities held by a passively man-  
2 aged fund shall—

3 “(A) vote in accordance with the instruc-  
4 tions of the beneficial owner of a voting security  
5 of the passively managed fund;

6 “(B) vote in accordance with the voting  
7 recommendations of such issuer; or

8 “(C) abstain from voting but make reason-  
9 able efforts to be considered present for pur-  
10 poses of establishing a quorum.

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

13 “(b) SAFE HARBOR.—With respect to a matter that  
14 is not a routine matter, in the case of a vote described  
15 in subsection (a)(1), an investment adviser shall not be  
16 liable to any person under any law or regulation of the  
17 United States, any constitution, law, or regulation of any  
18 State or political subdivision thereof, or under any con-  
19 tract or other legally enforceable agreement (including any  
20 arbitration agreement), for any of the following:

21 “(1) Voting in accordance with the instructions  
22 of the beneficial owner of a voting security of the  
23 passively managed fund.

1           “(2) Not soliciting voting instructing from any  
2           person under subsection (a)(1) with respect to such  
3           vote.

4           “(3) Voting in accordance with the voting rec-  
5           ommendations of an issuer pursuant to subpara-  
6           graph (B) of such subsection.

7           “(4) Abstaining from voting in accordance with  
8           subparagraph (C) of such subsection.

9           “(c) FOREIGN PRIVATE ISSUERS EXEMPTION.—Sub-  
10          section (a) shall not apply with respect to a foreign private  
11          issuer if the voting policy of the investment advisor with  
12          respect to such foreign private issuers is fully and fairly  
13          disclosed to beneficial owners, including the extent to  
14          which such policy differs from the voting policy for non-  
15          exempt issuers.

16          “(d) DEFINITIONS.—In this section:

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

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

23                         “(B) does not include any voting security  
24                         (as defined in subparagraph (A)) of an issuer  
25                         registered with the Commission as an invest-



1           ment company under section 8 of the Invest-  
2           ment Company Act of 1940 (15 U.S.C. 80a–8).

3           “(2) PASSIVELY MANAGED FUND.—The term  
4           ‘passively managed fund’ means a qualified fund  
5           that—

6                   “(A) is designed to track, or is derived  
7                   from, an index of securities or a portion of such  
8                   an index;

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

11                  “(C) allocates not less than 60 percent of  
12                  the total assets of the qualified fund to an in-  
13                  vestment strategy that is designed to track, or  
14                  is derived from, an index of securities or a por-  
15                  tion of such an index fund.

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

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

21                   “(B) a private fund;

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

1           “(D) a trust, plan, account, or other entity  
2 described in section 3(c)(11) of the Investment  
3 Company Act of 1940 (15 U.S.C. 80a–  
4 3(c)(11));

5           “(E) a plan maintained by an employer de-  
6 scribed in clause (i), (ii), or (iii) of section  
7 403(b)(1)(A) of the Internal Revenue Code of  
8 1986 to provide annuity contracts described in  
9 section 403(b) of such Code;

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

12           “(G) any fund established under section  
13 8438(b)(1) of title 5, United States Code; or

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

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

18           “(5) ROUTINE MATTER.—The term ‘routine  
19 matter’—

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

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

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

25                   “(iii) the selection of auditors;

1           “(iv) a matter where there is a mate-  
2           rial conflict of interest between or among  
3           the issuer, members of management, mem-  
4           bers of the board of directors, or an affil-  
5           iate of the issuer;

6           “(v) declassification; or

7           “(vi) transactions that would trans-  
8           form the structure of the registrant, in-  
9           cluding—

10                   “(I) a merger or consolidation;

11                   and

12                   “(II) the sale, lease, or exchange  
13                   of all, or substantially all, of the prop-  
14                   erty and assets of a registrant; and

15           “(B) does not include—

16                   “(i) a proposal that is not submitted  
17                   to a holder of covered securities by means  
18                   of a proxy statement comparable to that  
19                   described in section 240.14a-101 of title  
20                   17, Code of Federal Regulations, or any  
21                   successor regulation; or

22                   “(ii) a proposal that is—

23                           “(I) the subject of a counter-so-  
24                           licitation; or

1 “(II) part of a proposal made by  
2 a person other than the applicable  
3 registrant.”.

4 (b) EFFECTIVE DATE.—The amendment made by  
5 this section shall take effect on the first August 1 that  
6 occurs after the date that is 2 years after the date of en-  
7 actment of this Act.

8 **TITLE XI—PROTECTING RETAIL**  
9 **INVESTORS’ SAVINGS**

10 **SEC. 1101. BEST INTEREST BASED ON PECUNIARY FAC-**  
11 **TORS.**

12 (a) IN GENERAL.—Section 211(g) of the Investment  
13 Advisers Act of 1940 (15 U.S.C. 80b–11(g)) is amended  
14 by adding at the end the following:

15 “(3) BEST INTEREST BASED ON PECUNIARY  
16 FACTORS.—

17 “(A) IN GENERAL.—For purposes of para-  
18 graph (1), the best interest of a customer shall  
19 be determined using pecuniary factors, which  
20 may not be subordinated to or limited by non-  
21 pecuniary factors, unless the customer provides  
22 informed consent, in writing, that such non-pe-  
23 cuniary factors be considered.

24 “(B) DISCLOSURE OF PECUNIARY FAC-  
25 TORS.—If a customer provides a broker, dealer,

1 or investment adviser with the informed consent  
2 to consider non-pecuniary factors described  
3 under subparagraph (A), the broker, dealer, or  
4 investment adviser shall—

5 “(i) disclose the expected pecuniary  
6 effects to the customer over a time period  
7 selected by the customer and not to exceed  
8 three years; and

9 “(ii) at the end of the time period de-  
10 scribed in clause (i), disclose, by compari-  
11 son to a reasonably comparable index or  
12 basket of securities selected by the cus-  
13 tomer, the actual pecuniary effects of that  
14 time period, including all fees, costs, and  
15 other expenses incurred to consider non-pe-  
16 cuniary factors.

17 “(C) PECUNIARY FACTOR DEFINED.—In  
18 this paragraph, the term ‘pecuniary factor’  
19 means a factor that a fiduciary prudently deter-  
20 mines is expected to have a material effect on  
21 the risk or return of an investment based on  
22 appropriate investment horizons.”.

23 (b) RULEMAKING.—Not later than the end of the 12-  
24 month period beginning on the date of enactment of this  
25 Act, the Securities and Exchange Commission shall revise

1 or issue such rules as may be necessary to implement the  
2 amendment made by subsection (a).

3 (c) APPLICABILITY.—The amendment made by sub-  
4 section (a) shall apply to actions taken by a broker, dealer,  
5 or investment adviser beginning on the date that is 12  
6 months after the date of enactment of this Act.

7 **SEC. 1102. STUDY ON CLIMATE CHANGE AND OTHER ENVI-  
8 RONMENTAL DISCLOSURES IN MUNICIPAL  
9 BOND MARKET.**

10 (a) IN GENERAL.—The Securities and Exchange  
11 Commission shall—

12 (1) conduct a study to determine the extent to  
13 which issuers of municipal securities (as such term  
14 is defined in section 3(a)(29) of the Securities Ex-  
15 change Act of 1934 (15 U.S.C. 78c(a)(29)) make  
16 disclosures to investors regarding climate change  
17 and other environmental matters; and

18 (2) solicit public comment with respect to such  
19 study.

20 (b) CONTENTS.—The study required under sub-  
21 section (a) shall consider and analyze—

22 (1) the frequency with which disclosures de-  
23 scribed in subsection (a)(1) are made;

24 (2) whether such disclosures made by issuers of  
25 municipal securities in connection with offerings of

1 securities align with such disclosures made by  
2 issuers of municipal securities in other contexts or to  
3 audiences other than investors;

4 (3) any voluntary or mandatory disclosure  
5 standards observed by issuers of municipal securities  
6 in the course of making such disclosures;

7 (4) the degree to which investors consider such  
8 disclosures in connection with making an investment  
9 decision; and

10 (5) such other information as the Securities  
11 and Exchange Commission determines appropriate.

12 (c) REPORT.—Not later than 1 year after the date  
13 of the enactment of this Act, the Securities and Exchange  
14 Commission shall submit to the Committee on Banking,  
15 Housing, and Urban Affairs of the Senate and the Com-  
16 mittee on Financial Services of the House of Representa-  
17 tives a report that includes—

18 (1) the results of the study required under this  
19 section;

20 (2) a detailed discussion of the financial risks  
21 to investors from investments in municipal securi-  
22 ties;

23 (3) whether such risks are adequately disclosed  
24 to investors; and

1 (4) recommended regulatory or legislative steps  
2 to address any concerns identified in the study.

3 **SEC. 1103. STUDY ON SOLICITATION OF MUNICIPAL SECURITIES BUSINESS.**  
4

5 (a) IN GENERAL.—The Securities and Exchange  
6 Commission shall—

7 (1) conduct a study on the effectiveness of each  
8 covered rule in preventing the payment of funds to  
9 elected officials or candidates for elected office in ex-  
10 change for the receipt of government business in  
11 connection with the offer or sale of municipal securi-  
12 ties; and

13 (2) solicit public comment with respect to such  
14 study.

15 (b) CONTENTS.—The study required under sub-  
16 section (a) shall consider and analyze—

17 (1) the effectiveness of each covered rule, in-  
18 cluding whether each covered rule accomplishes the  
19 intended effect of such covered rule and has any un-  
20 intended adverse effects;

21 (2) the frequency and scope of enforcement ac-  
22 tions undertaken pursuant to each covered rule;

23 (3) the degree to which—

24 (A) persons subject to each covered rule—



1 (i) have in effect policies and proce-  
2 dures intended to ensure compliance with  
3 each such covered rule; and

4 (ii) are disadvantaged from partici-  
5 pating in the political process generally  
6 and in relation to persons who solicit or re-  
7 ceive government business or government  
8 licenses, permits, and approvals other than  
9 in connection with the offer or sale of mu-  
10 nicipal securities; and

11 (B) other State and Federal laws and reg-  
12 ulations impact the solicitation of municipal se-  
13 curities business; and

14 (4) such other information as the Securities  
15 and Exchange Commission determines appropriate.

16 (c) REPORT.—Not later than 1 year after the date  
17 of the enactment of this Act, the Securities and Exchange  
18 Commission shall submit to the Committee on Banking,  
19 Housing, and Urban Affairs of the Senate and the Com-  
20 mittee on Financial Services of the House of Representa-  
21 tives a report that includes—

22 (1) the results of the study required under this  
23 section;

24 (2) an analysis of the extent to which persons  
25 affiliated with small businesses, as well as persons

1 affiliated with minority and women opened busi-  
2 nesses, have been affected by the covered rules; and

3 (3) recommended regulatory or legislative steps  
4 to address any concerns identified in the study.

5 (d) DEFINITIONS.—In this section:

6 (1) COVERED RULE.—The term “covered rule”  
7 means—

8 (A) Rule G–38 of the Municipal Securities  
9 Rulemaking Board; and

10 (B) Rule 206(4)–5 (17 CFR 275.206(4)–  
11 5).

12 (2) MUNICIPAL SECURITIES.—The term “mu-  
13 nicipal securities” has the meaning given the term in  
14 section 3(a)(29) of the Securities Exchange Act of  
15 1934 (15 U.S.C. 78c(a)(29)).

