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.

(a) Short Title.—This Act may be cited as the "Protecting Americans’ Retirement Savings from Politics Act".

(b) Table of Contents.—The table of contents for 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 POLITICS

2 SEC. 101. EXCLUSION OF CERTAIN SUBSTANTIALLY SIMILAR SHAREHOLDER PROPOSALS.

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

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

(2) if the most recent vote—

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

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

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

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

TITLE II—NO EXPENSIVE,
STIFLING GOVERNANCE

SEC. 201. EXCLUSION OF CERTAIN SHAREHOLDER PRO-
POSALS.

(a) Exclusion of Certain Shareholder Pro-
posals.—A shareholder proposal submitted to an issuer pursuant to section 240.14a-8 of title 17, Code of Federal Regulations, may be excluded by an issuer from its proxy
or consent solicitation material for a meeting of the shareholders of such issuer if the shareholder proposal—

(1) has been substantially implemented by the issuer by implementing policies, practices, or procedures that compare favorably with the guidelines of the proposal and address the proposal’s underlying concerns; or

(2) substantially duplicates by having the same principal thrust or principal focus as another proposal previously submitted to the issuer by another proponent that will be included in such material.

(b) NULLIFICATION OF PROPOSED RULE.—The Securities and Exchange Commission may not finalize or apply the positions contained in the proposed rule entitled “Substantial Implementation, Duplication, and Resubmission of Shareholder Proposals under Exchange Act Rule 14a-8” (87 Fed. Reg. 45052), issue any substantially similar rule, or apply any substantially similar rule, including with respect to a no-action or other interpretive request.
TITLE III—EXCLUSION OF CERTAIN ESG SHAREHOLDER PROPOSALS

SEC. 301. EXCLUSION OF CERTAIN ESG SHAREHOLDER PROPOSALS.

A shareholder proposal submitted to an issuer pursuant to section 240.14a-8 of title 17, Code of Federal Regulations, may be excluded by an issuer from its proxy or consent solicitation material for a meeting of the shareholders of such issuer if the subject matter of the shareholder proposal is environmental, social, or political (or a similar subject matter).

TITLE IV—EXCLUSIONS AVAILABLE REGARDLESS OF SIGNIFICANT SOCIAL POLICY ISSUE

SEC. 401. EXCLUSIONS AVAILABLE REGARDLESS OF SIGNIFICANT SOCIAL POLICY ISSUE.

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 shareholder proposal relates to a 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.

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

“(10) STUDY OF CERTAIN ISSUES WITH RESPECT TO SHAREHOLDER PROPOSALS, PROXY ADVISORY FIRMS, AND THE PROXY PROCESS.—

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

“(B) SCOPE OF STUDY.—The studies required under subparagraph (A) shall cover—

“(i) the previous 10 years, with respect to the initial study; and

“(ii) the previous 5 years, with respect to each other study.
“(C) CONTENTS.—Each study required under subparagraph (A) shall address the following issues:

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

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

“(iii) An analysis of whether regulations and financial incentives have created and protected the outsized influence of proxy advisors or a duopoly in proxy advice, and if so, what are the benefits and costs of that outsized influence or duopoly.

“(iv) The costs incurred by issuers in responding to politically-, environmentally-, or socially-motivated shareholder proposals.

“(v) An assessment, including a cost-benefit analysis, of the adequacy of the current submission thresholds in Rule 14a-8 (17 CFR 240.14a-8) to ensure that shareholder proponents have demonstrated
a meaningful economic stake in a company, which is appropriate to effectively serve markets and shareholders at large.

“(vi) An examination of the extent to which the politicization of the shareholder proposal process is increasing the operating costs of public companies.

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

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

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

“(x) A review of the extent to which institutional investors, who owe fiduciary duties, rely on proxy advisory firm recommendations.

“(xi) An assessment of whether, in light of their significant influence on cor-
porate actions and vote outcomes, proxy advisors are subject to sufficient and effective regulation to ensure that their policies and recommendations are accurate, free of conflicts, and benefit the economic best interest of shareholders at large.

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

**TITLE VI—REGISTRATION OF PROXY ADVISORY FIRMS**

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

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

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

“(a) CONDUCT PROHIBITED.—It shall be unlawful for a proxy advisory firm to make use of the mails or any means or instrumentality of interstate commerce to provide proxy voting advice, research, analysis, ratings or rec-
ommendations to any client, unless such proxy advisory
firm is registered under this section.

“(b) Registration Procedures.—

“(1) Application for registration.—

“(A) In general.—A proxy advisory firm
shall file with the Commission an application
for registration, in such form as the Commiss-
ion shall require, by rule, and containing the
information described in subparagraph (B).

“(B) Required information.—An appli-
cation for registration under this section shall
contain—

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

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

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

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

tions are in the best economic interest of those shareholders;

“(iii) information on the procedures and methodologies that the applicant uses to ensure that proxy voting recommendations are in the best economic interest of the ultimate shareholders;

“(iv) information on the organizational structure of the applicant;

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

“(vi) a description of any potential or actual conflict of interest relating to the provision of proxy advisory services, including those arising out of or resulting from the ownership structure of the applicant or the provision of other services by the applicant or any person associated with the applicant;

“(vii) the policies and procedures in place to publicly disclose and manage conflicts of interest under subsection (f);

“(viii) information related to the professional and academic qualifications of
staff tasked with providing proxy advisory services; and

“(ix) any other information and documents concerning the applicant and any person associated with such applicant as the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of investors.

“(2) Review of application.—

“(A) Initial determination.—Not later than 90 days after the date on which the application for registration is filed with the Commission under paragraph (1) (or within such longer period as to which the applicant consents) the Commission shall—

“(i) by order, grant registration; or

“(ii) institute proceedings to determine whether registration should be denied.

“(B) Conduct of proceedings.—

“(i) Content.—Proceedings referred to in subparagraph (A)(ii) shall—

“(I) include notice of the grounds for denial under consideration and an opportunity for hearing; and
“(II) be concluded not later than 120 days after the date on which the application for registration is filed with the Commission under paragraph (1).

“(ii) **DETERMINATION.**—At the conclusion of such proceedings, the Commission, by order, shall grant or deny such application for registration.

“(iii) **EXTENSION AUTHORIZED.**—The Commission may extend the time for conclusion of such proceedings for not longer than 90 days, if the Commission finds good cause for such extension and publishes its reasons for so finding, or for such longer period as to which the applicant consents.

“(C) **GROUNDS FOR DECISION.**—The Commission shall grant registration under this subsection—

“(i) if the Commission finds that the requirements of this section are satisfied; and
“(ii) unless the Commission finds (in which case the Commission shall deny such registration) that—

“(I) the applicant has failed to certify to the Commission’s satisfaction that it is able to consistently provide proxy advice based on accurate information and to materially comply with the procedures and methodologies disclosed under paragraph (1)(B) and with subsections (f) and (g); or

“(II) if the applicant were so registered, its registration would be subject to suspension or revocation under subsection (d).

“(3) **Public Availability of Information.**—

Subject to section 24, the Commission shall make the information and documents submitted to the Commission by a proxy advisory firm in its completed application for registration, or in any amendment submitted under paragraph (1) or (2) of subsection (c), publicly available on the Commission’s website, or through another comparable, readily accessible means.

“(c) **Update of Registration.**—
“(1) UPDATE.—Each registered proxy advisory firm shall promptly amend and update its application for registration under this section if any information or document provided therein becomes materially inaccurate, except that a registered proxy advisory firm is not required to amend the information required to be filed under subsection (b)(1)(B)(i) by filing information under this paragraph, but shall amend such information in the annual submission of the organization under paragraph (2) of this subsection.

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

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

“(B) listing any material change that occurred to such information or documents during the previous calendar year.
“(d) Censure, Denial, or Suspension of Registration; Notice and Hearing.—The Commission, by order, shall censure, place limitations on the activities, functions, or operations of, suspend for a period not exceeding 12 months, or revoke the registration of any registered proxy advisory firm if the Commission finds, on the record after notice and opportunity for hearing, that such censure, placing of limitations, suspension, or revocation is necessary for the protection of investors and in the public interest and that such registered proxy advisory firm, or any person associated with such an organization, whether prior to or subsequent to becoming so associated—

“(1) has committed or omitted any act, or is subject to an order or finding, enumerated in subparagraph (A), (D), (E), (H), or (G) of section 15(b)(4), has been convicted of any offense specified in section 15(b)(4)(B), or is enjoined from any action, conduct, or practice specified in subparagraph (C) of section 15(b)(4), during the 10-year period preceding the date of commencement of the proceedings under this subsection, or at any time thereafter;

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

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

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

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

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

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

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

“(7) fails to maintain adequate expertise to ensure that proxy advisory services for clients that vote shares held on behalf of shareholders are tied to the best economic interest of those shareholders; or
“(8) engages in a prohibited act enumerated in subsection (j).

“(e) TERMINATION OF REGISTRATION.—

“(1) VOLUNTARY WITHDRAWAL.—A registered proxy advisory firm may, upon such terms and conditions as the Commission may establish as necessary in the public interest or for the protection of investors, which terms and conditions shall include at a minimum that the registered proxy advisory firm will no longer conduct such activities as to bring it within the definition of proxy advisory firm in section 3(a)(81), withdraw from registration by filing a written notice of withdrawal to the Commission.

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

“(f) MANAGEMENT OF CONFLICTS OF INTEREST.—

“(1) ORGANIZATION POLICIES AND PROCEDURES.—Each registered proxy advisory firm shall establish, maintain, and enforce written policies and
procedures reasonably designed, taking into consider-
ation the nature of the business of such registered
proxy advisory firm and associated persons, to pub-
licly disclose and manage any conflicts of interest
that arise or would reasonably be expected to arise
from such business.

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

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

“(B) business relationships, ownership in-
terests, or any other financial or personal inter-
est between a registered proxy advisory firm,
or any person associated with such registered
proxy advisory firm, and any client, or any af-
iliate of such client;

“(C) the formulation of proxy voting poli-
cies;
“(D) the execution, or assistance with the execution, of proxy votes if such votes are based upon recommendations made by the proxy advisory firm in which a person other than the issuer is a proponent; and

“(E) any other potential conflict of interest, as the Commission deems necessary or appropriate in the public interest or for the protection of investors.

“(3) Disclosure on Factors Influencing Recommendations.—Each registered proxy advisory firm shall annually disclose to the Commission and make publicly available the economic and other factors that a reasonable investor would expect to influence the recommendations of such proxy advisory firm, including the ownership composition of such proxy advisory firm and any meetings with, or feedback received from, outside entities.

“(g) Reliability of Proxy Advisory Firm Services.—

“(1) In General.—Each registered proxy advisory firm shall—

“(A) have staff and other resources sufficient to produce proxy voting recommendations that are based on accurate and current infor-
information and designed for clients that vote shares held on behalf of shareholders to advance the best economic interest of those shareholders;

“(B) implement procedures that permit issuers that are the subject of proxy voting recommendations—

“(i) access in a reasonable time to data and information used to make recommendations; and

“(ii) a reasonable opportunity to provide meaningful comment and corrections to such data and information, including the opportunity to present (in person or telephonically) details to the person responsible for developing such data and information prior to the publication of proxy voting recommendations to clients;

“(C) employ an ombudsman to receive complaints about the accuracy of information used in making recommendations from the companies that are the subject of the proxy advisory firm’s voting recommendations and seek to resolve those complaints in a timely fashion and prior to the publication of proxy voting recommendations to clients; and
“(D) if the ombudsman is unable to resolve a complaint to a company’s satisfaction prior to the publication of proxy voting recommendations to clients, include in the final report of the firm to clients—

“(i) a statement detailing the company’s complaints, if requested in writing by the company; and

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

“(2) DEFINITIONS.—In this subsection:

“(A) DATA AND INFORMATION USED TO MAKE RECOMMENDATIONS.—The term ‘data and information used to make voting recommendations’—

“(i) means the financial, operational, or descriptive data and information on an issuer used by proxy advisory firms and any contextual or substantive analysis impacting the recommendation; and

“(ii) does not include the entirety of the proxy advisory firm’s final report to its clients.
“(B) REASONABLE TIME.—The term ‘reasonable time’—

“(i) means not less than 1 week before the publication of proxy voting recommendations for clients; and

“(ii) shall not otherwise interfere with a proxy advisory firm’s ability to provide its clients with timely access to accurate proxy voting research, analysis, or recommendations.

“(h) PRIVATE RIGHT OF ACTION WITH RESPECT TO ILLEGAL RECOMMENDATIONS.—Any proxy advisory firm that endorses a proposal that is not supported by the issuer but is approved and subsequently found by a court of competent jurisdiction to violate State or Federal law shall be liable to the applicable issuer for the costs associated with the approval of such proposal, including implementation costs and any penalties incurred by the issuer.

“(i) DESIGNATION OF COMPLIANCE OFFICER.—Each registered proxy advisory firm shall designate an individual who reports directly to senior management as responsible for administering the policies and procedures that are required to be established pursuant to subsections (f) and (g), and for ensuring compliance with the securities laws and the rules and regulations thereunder, includ-
ing those promulgated by the Commission pursuant to this section.

“(j) Prohibited Conduct.—

“(1) Prohibited acts and practices.—Not later than one year after the date of enactment of this section, the Commission shall issue final rules to prohibit any act or practice relating to the offering of proxy advisory services by a registered proxy advisory firm that the Commission determines to be unfair, coercive, or abusive, including any act or practice relating to—

“(A) advisory or consulting services (offered directly or indirectly, including through an affiliate) related to corporate governance issues; or

“(B) modifying a voting recommendation or otherwise departing from its adopted systematic procedures and methodologies in the provision of proxy advisory services, based on whether an issuer, or affiliate thereof, subscribes or will subscribe to other services or product of the registered proxy advisory firm or any person associated with such organization.

“(2) Rule of construction.—Nothing in paragraph (1), or in any rules or regulations adopt-
ed thereunder, may be construed to modify, impair, or supersede the operation of any of the antitrust laws (as defined in the first section of the Clayton Act, except that such term includes section 5 of the Federal Trade Commission Act, to the extent that such section 5 applies to unfair methods of competition).

“(k) STATEMENTS OF FINANCIAL CONDITION.—
Each registered proxy advisory firm shall, on a confidential basis, file with the Commission, at intervals determined by the Commission, such financial statements, certified (if required by the rules or regulations of the Commission) by an independent public auditor, and information concerning its financial condition, as the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of investors.

“(l) ANNUAL REPORT.—
“(1) IN GENERAL.—Each registered proxy advisory firm shall, not later than 90 calendar days after the end of each fiscal year, file with the Commission and make publicly available an annual report in such form as the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of investors.
“(2) CONTENTS.—Each annual report required under paragraph (1) shall include, at a minimum, disclosure by the registered proxy advisory firm of the following:

“(A) A list of shareholder proposals the staff of the registered proxy advisory firm reviewed in the prior fiscal year.

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

“(C) The economic analysis conducted to determine that final recommendations provided in the prior fiscal year (other than recommendations relating to an issuer-sponsored proposal or recommendations consistent with that of a board of directors composed of a majority of independent directors) delivered to clients that vote shares held on behalf of shareholders were in the best economic interest of those shareholders.

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

“(E) The qualifications of such staff to ensure that each of the recommendations for clients that vote shares held on behalf of share-
holders were tied to the best economic interest of those shareholders.

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

“(G) A certification by the chief executive officer, chief financial officer, and the primary executive responsible for overseeing the compilation and dissemination of proxy voting advice that the final recommendations (other than recommendations relating to an issuer-sponsored proposal or recommendations consistent with that of a board of directors composed of a majority of independent directors) delivered to clients that vote shares held on behalf of shareholders in the last fiscal year—

“(i) were based on internal controls and procedures that are designed to ensure accurate information and that such internal controls and procedures are effective;

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

“(iii) were based on the best economic interest of those shareholders.
“(H) The economic and other factors that a reasonable investor would expect to influence the recommendations of such proxy advisory firm, including the ownership composition of such proxy advisory firm.

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

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

“(o) REGULATIONS.—

“(1) NEW PROVISIONS.—Such rules and regulations as are required by this section or are otherwise necessary to carry out this section, including the application form required under subsection (a)—
“(A) shall be issued by the Commission, not later than 180 days after the date of enactment of this section; and

“(B) shall become effective not later than 1 year after the date of enactment of this section.

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

“(A) review its existing rules and regulations which affect the operations of proxy advisory firms; and

“(B) amend or revise such rules and regulations in accordance with the purposes of this section, and issue such guidance as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors.

“(p) APPLICABILITY.—This section, other than subsection (n), which shall apply on the date of enactment of this section, shall apply on the earlier of—

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

“(2) 270 days after the date of enactment of this section.
“(q) BEST ECONOMIC INTEREST DEFINED.—In this section, the term ‘best economic interest’ means decisions that seek to maximize investment returns over a time horizon consistent with the investment objectives and risk management profile of the fund in which the shareholders are invested.”.

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

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

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

“(A) means any person who is primarily engaged in the business of providing proxy voting advice, research, analysis, ratings, or recommendations to clients, which conduct constitutes a solicitation within the meaning of section 14; and

“(B) does not include any person that is exempt under law or regulation from the re-
requirements otherwise applicable to persons engaged in such a solicitation.

“(83) PERSON ASSOCIATED WITH A PROXY ADVISORY FIRM.—With respect to a proxy advisory firm—

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

“(i) a partner, officer, or director of the proxy advisory firm (or any person occupying a similar status or performing similar functions);

“(ii) a person directly or indirectly controlling, controlled by, or under common control with the proxy advisory firm;

“(iii) an employee of the proxy advisory firm; or

“(iv) a person the Commission determines by rule is controlled by the proxy advisory firm; and

“(B) a person is not ‘associated’ with the proxy advisory firm if the person only performs clerical or ministerial functions with respect to a proxy advisory firm.”.
TITLE VII—LIABILITY FOR CERTAIN FAILURES TO DISCLOSE MATERIAL INFORMATION OR MAKING OF MATERIAL MISSTATEMENTS

SECTION 701. LIABILITY FOR CERTAIN FAILURES TO DISCLOSE MATERIAL INFORMATION OR MAKING OF MATERIAL MISSTATEMENTS.

Section 14 of the Securities Exchange Act of 1934 (15 U.S.C. 78n) is amended by adding at the end the following:

“(1) FALSE OR MISLEADING STATEMENTS.—For purposes of section 18, the failure to disclose material information (such as a proxy voting advice business’s methodology, sources of information, or conflicts of interest) or the making of a material misstatement regarding proxy voting advice that makes a recommendation to a security holder as to the security holder’s vote, consent, or authorization on a specific matter for which security holder approval is solicited, and that is furnished by a person that markets the person’s expertise as a provider of such proxy voting advice separately from other forms of investment advice, and sells such proxy voting advice for a fee, shall be considered to be false or misleading with respect to a material fact.”.
TITLE VIII—DUTIES OF INVESTMENT ADVISORS, ASSET MANAGERS, AND PENSION FUNDS

SEC. 801. DUTIES OF INVESTMENT ADVISORS, ASSET MANAGERS, AND PENSION FUNDS.

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

“(7) DISCLOSURES BY INSTITUTIONAL INVESTMENT MANAGERS IN CONNECTION WITH PROXY ADVISORY FIRMS.—

“(A) IN GENERAL.—Every institutional investment manager which uses the mails, or any means or instrumentality of interstate commerce in the course of its business as an institutional investment manager, which engages a proxy advisory firm, and which exercises voting power with respect to accounts holding equity securities of a class described in subsection (d)(1) or otherwise becomes or is deemed to become a beneficial owner of any security of a class described in subsection (d)(1) upon the purchase or sale of a security-based swap that the Commission may define by rule, shall file an
annual report with the Commission containing—

“(i) an explanation of how the institutional investment manager voted with respect to each shareholder proposal;

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

“(iii) an explanation of—

“(I) how the institutional investment manager took into consideration proxy advisory firm recommendations in making voting decisions, including the degree to which the institutional investment manager used those recommendations in making voting decisions;

“(II) how often the institutional investment manager voted consistent with a recommendation made by a proxy advisory firm, expressed as a percentage;
“(III) how such votes are reconciled with the fiduciary duty of the institutional investment manager to vote in the best economic interests of shareholders;

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

“(V) the degree to which investment professionals of the institutional investment manager were involved in proxy voting decisions; and

“(iv) a certification that the voting decisions of the institutional investment manager were based solely on the best economic interest of the shareholders on behalf of whom the institutional investment manager holds shares.

“(B) REQUIREMENTS FOR LARGER INSTITUTIONAL INVESTMENT MANAGERS.—Every institutional investment manager described in subparagraph (A) that has assets under management with an aggregate fair market value on the last trading day in any of the preceding
twelve months of at least $100,000,000,000
shall—

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

“(ii) with respect to each shareholder
proposal for which the institutional invest-
ment manager votes (other than votes con-
sistent with the recommendation of a
board of directors composed of a majority
of independent directors) perform an eco-

demic analysis before making such vote, to
determine that the vote is in the best eco-

omic interest of the shareholders on be-
half of whom the institutional investment
manager holds shares; and

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

“(C) BEST ECONOMIC INTEREST DE-
FINED.—In this paragraph, the term ‘best eco-

momic interest’ means decisions that seek to
maximize investment returns over a time hori-
zon consistent with the investment objectives
and risk management profile of the fund in which shareholders are invested.”.

TITLE IX—PROTECTING AMERICANS’ SAVINGS

SEC. 901. REQUIREMENTS RELATED TO PROXY VOTING.

Section 14 of the Securities Exchange Act of 1934 (15 U.S.C. 78n), as amended by section 701, is further amended by adding at the end the following:

“(m) PROHIBITION ON ROBOVOTING.—

“(1) IN GENERAL.—The Commission shall issue final rules prohibiting the use of robovoting with respect to votes related to proxy or consent solicitation materials.

“(2) ROBOVOTING DEFINED.—In this subsection, the term ‘robovoting’ means the practice of automatically voting in a manner consistent with the recommendations of a proxy advisory firm or pre-populating votes on a proxy advisory firm’s electronic voting platform with the proxy advisory firm’s recommendations, in either case, without independent review and analysis.

“(n) PROHIBITION ON OUTSOURCING VOTING DECISIONS BY INSTITUTIONAL INVESTORS.—With respect to votes related to proxy or consent solicitation materials, an institutional investor may not outsource voting decisions
to any person other than an investment adviser or a broker or dealer that is registered with the Commission and has a fiduciary or best interest duty to the institutional investor.

“(o) No Requirement to Vote.—No person may be required to cast votes related to proxy or consent solicitation materials.

“(p) Proxy Advisory Firm Calculation of Votes.—With respect to votes related to proxy or consent solicitation materials with respect to an issuer, a proxy advisor firm shall calculate the vote result consistent with the law of the State in which the issuer is incorporated.”.

**TITLE X—EMPOWERING SHAREHOLDERS**

**SEC. 1001. 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 a voting security of the passively managed fund;

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

“(C) abstain from voting but make reasonable efforts to be considered present for purposes of establishing a quorum.

“(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) Voting in accordance with the instructions of the beneficial owner of a voting security of the passively managed fund.
“(2) Not soliciting voting instructing from any person under subsection (a)(1) with respect to such vote.

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

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

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

“(d) 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 invest-
ment 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 60 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) a matter where there is a material conflict of interest between or among the issuer, members of management, members of the board of directors, or an affiliate of the issuer;

“(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; or

“(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.”.

(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 en-
actment of this Act.

TITLE XI—PROTECTING RETAIL
INVESTORS’ SAVINGS

SEC. 1101. BEST INTEREST BASED ON PECUNIARY FAC-
TORS.

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

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

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

“(B) DISCLOSURE OF PECUNIARY FACT-
ORS.—If a customer provides a broker, dealer,
or investment adviser with the informed consent to consider non-pecuniary factors described under subparagraph (A), the broker, dealer, or investment adviser shall—

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

“(ii) at the end of the time period described in clause (i), disclose, by comparison to a reasonably comparable index or basket of securities selected by the customer, the actual pecuniary effects of that time period, including all fees, costs, and other expenses incurred to consider non-pecuniary factors.

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

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

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

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

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

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

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

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

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

(2) whether such disclosures made by issuers of
municipal securities in connection with offerings of
securities align with such disclosures made by issuers of municipal securities in other contexts or to audiences other than investors;

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

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

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

(c) REPORT.—Not later than 1 year after the date of the enactment of this Act, the Securities and Exchange Commission shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives a report that includes—

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

(2) a detailed discussion of the financial risks to investors from investments in municipal securities;

(3) whether such risks are adequately disclosed to investors; and
(4) recommended regulatory or legislative steps
to address any concerns identified in the study.

SEC. 1103. STUDY ON SOLICITATION OF MUNICIPAL SECURI-
RITIES BUSINESS.

(a) In General.—The Securities and Exchange
Commission shall—

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

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

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

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

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

(3) the degree to which—

(A) persons subject to each covered rule—
(i) have in effect policies and procedures intended to ensure compliance with each such covered rule; and

(ii) are disadvantaged from participating in the political process generally and in relation to persons who solicit or receive government business or government licenses, permits, and approvals other than in connection with the offer or sale of municipal securities; and

(B) other State and Federal laws and regulations impact the solicitation of municipal securities business; and

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

(e) Report.—Not later than 1 year after the date of the enactment of this Act, the Securities and Exchange Commission shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives a report that includes—

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

(2) an analysis of the extent to which persons affiliated with small businesses, as well as persons
affiliated with minority and women opened businesses, have been affected by the covered rules; and

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

(d) DEFINITIONS.—In this section:

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

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

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

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