118TH CONGRESS
1ST SESSION

H. R. ______

To make revisions to the Federal securities laws with respect to shareholder proposals, proxy voting, and the registration of proxy advisory firms, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

Mr. Steil introduced the following bill; which was referred to the Committee on ____________________________

A BILL

To make revisions to the Federal securities laws with respect to shareholder proposals, proxy voting, and the registration of proxy advisory firms, and for other purposes.

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

SECTION 1. 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:

1
2
3
4
5
6
7
8
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.
TITLE I—PERFORMANCE OVER POLITICS

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

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 shareholders 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 PROPOSALS.

(a) Exclusion of Certain 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 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 corporate 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 recommendations 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 Commission shall require, by rule, and containing the information described in subparagraph (B).

“(B) Required Information.—An application 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 applicant that vote shares held on behalf of shareholders, a certification that the applicant—

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

“(II) has the requisite expertise to ensure that voting recommendations 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 Commis-
sion 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 sub-
ject 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 consideration the nature of the business of such registered proxy advisory firm and associated persons, to publicly disclose and manage any conflicts of interest that arise or would reasonably be expected to arise from such business.

“(2) COMMISSION AUTHORITY.—The Commission 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 limitation, conflicts of interest relating to—

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

“(B) business relationships, ownership interests, or any other financial or personal interests between a registered proxy advisory firm, or any person associated with such registered proxy advisory firm, and any client, or any affiliate of such client;

“(C) the formulation of proxy voting policies;

“(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 advi-
sory firm shall annually disclose to the Commission
and make publicly available the economic and other
factors that a reasonable investor would expect to in-
fluence the recommendations of such proxy advisory
firm, including the ownership composition of such
proxy advisory firm and any meetings with, or feed-
back received from, outside entities.
“(g) RELIABILITY OF PROXY ADVISORY FIRM SERV-
ICES.—
“(1) IN GENERAL.—Each registered proxy advi-
sory firm shall—
“(A) have staff and other resources suffi-
cient to produce proxy voting recommendations
that are based on accurate and current infor-
mation 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 rec-
ommendations—
“(i) access in a reasonable time to
data and information used to make rec-
ommendations; and
“(ii) a reasonable opportunity to pro-
vide meaningful comment and corrections
to such data and information, including
the opportunity to present (in person or
telephonically) details to the person re-
 sponsible for developing such data and in-
formation 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 com-
panies that are the subject of the proxy advi-
sory firm’s voting recommendations and seek to
resolve those complaints in a timely fashion and
prior to the publication of proxy voting rec-
ommendations to clients; and

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

“(i) a statement detailing the com-
pany’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, including 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 adopted 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, cer-
tified (if required by the rules or regulations of the Com-
mission) by an independent public auditor, and informa-
tion 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 advi-
sory 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 re-
viewed 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 rec-
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 shareholders 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 ma-
ajority of independent directors) delivered to cli-
 ents that vote shares held on behalf of share-
holders in the last fiscal year—

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

dnal 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 formul-

tion 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 13(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 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:

“(l) FALSE OR MISLEADING STATEMENTS.—For purposes of section 18, the failure to disclose material in-
formation (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 com-
merce in the course of its business as an instit-
tutional 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 be-
come 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 con-
taining—

“(i) an explanation of how the institu-
tional investment manager voted with re-
spect 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 invest-
ment manager took into consideration
proxy advisory firm recommendations
in making voting decisions, including
the degree to which the institutional
investment manager used those rec-
ommendations in making voting deci-
sions;

“(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 re-
ociled 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 invest-
ment professionals of the institutional
investment manager were involved in
proxy voting decisions; and

“(iv) a certification that the voting de-
cisions of the institutional investment man-
ager were based solely on the best eco-

nomic interest of the shareholders on be-

half of whom the institutional investment

manager holds shares.

“(B) REQUIREMENTS FOR LARGER INSTITUTIONAL INVESTMENT MANAGERS.—Every insti-
tutional investment manager described in

subparagraph (A) that has 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-

nomic analysis before making such vote, to
determine that the vote is in the best eco-
nomic 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 report required under subparagraph (A).

“(C) Certification requirement.—

Each report required under this paragraph shall be certified by the chief executive officer and chief financial officer of the institutional investment manager.

“(D) Best economic interest defined.—In this paragraph, 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 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.—An institutional investor may not outsource voting decisions with respect to votes related to proxy or consent solicitation materials.

“(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 such covered securities;

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

“(C) abstain from voting.

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

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

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

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

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

“(c) 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 40 percent of the total assets of the qualified fund to an investment strategy that is designed to track, or is derived from, an index of securities or a portion of such an index fund.

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

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

“(B) a private fund;

“(C) an eligible deferred compensation plan, as that term is defined in section 457(b) of the Internal Revenue Code of 1986;
“(D) a trust, plan, account, or other entity described in section 3(c)(11) of the Investment Company Act of 1940 (15 U.S.C. 80a–3(c)(11));

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

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

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

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

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

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

“(A) includes a proposal that relates to—

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

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

“(iii) the selection of auditors;
“(iv) material conflicts;
“(v) declassification; or
“(vi) transactions that would transform the structure of the registrant, including—
“(I) a merger or consolidation;
and
“(II) the sale, lease, or exchange of all, or substantially all, of the property and assets of a registrant; and
“(B) does not include—
“(i) a proposal that is not submitted to a holder of covered securities by means of a proxy statement comparable to that described in section 240.14a–101 of title 17, Code of Federal Regulations, or any successor regulation;
“(ii) a proposal that is—
“(I) the subject of a counter-solicitation; or
“(II) part of a proposal made by a person other than the applicable registrant;
“(iii) any other matter determined by the Commission or an exchange registered
under section 6 of the Securities Exchange Act of 1934 (15 U.S.C. 78f) to be not rou-
tine.”.

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect on the first August 1 that occurs after the date that is 2 years after the date of enactment of this Act.

TITLE XI—PROTECTING RETAIL INVESTORS’ SAVINGS

SEC. 1101. BEST INTEREST BASED ON PECUNIARY FACTORS.

(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 paragraph (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-pecuniary factors be considered.

“(B) DISCLOSURE OF PECUNIARY FACTORS.—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 subsection (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 ENVIRONMENTAL 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 Exchange 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 subsection (a) shall consider and analyze—

(1) the frequency with which disclosures described 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 SECURITIES 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 exchange for the receipt of government business in connection with the offer or sale of municipal securities; and

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

(b) CONTENTS.—The study required under subsection (a) shall consider and analyze—

(1) the effectiveness of each covered rule, including whether each covered rule accomplishes the intended effect of such covered rule and has any unintended adverse effects;

(2) the frequency and scope of enforcement actions 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)).