

[DISCUSSION DRAFT]

119TH CONGRESS
1ST SESSION

H. R. _____

To amend the Securities Exchange Act of 1934 to require certain disclosures by institutional investment managers in connection with proxy advisory firms, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

Mr. LOUDERMILK introduced the following bill; which was referred to the Committee on _____

A BILL

To amend the Securities Exchange Act of 1934 to require certain disclosures by institutional investment managers in connection with proxy advisory firms, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. DUTIES OF INVESTMENT ADVISORS, ASSET**
4 **MANAGERS, AND PENSION FUNDS.**

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

1 “(7) DISCLOSURES BY INSTITUTIONAL INVEST-
2 MENT MANAGERS IN CONNECTION WITH PROXY AD-
3 VISORY FIRMS.—

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

19 “(i) an explanation of how the institu-
20 tional investment manager voted with re-
21 spect to each shareholder proposal;

22 “(ii) the percentage of votes cast on
23 shareholder proposals that were consistent
24 with proxy advisory firm recommendations,

1 for each proxy advisory firm retained by
2 the institutional investment manager;

3 “(iii) an explanation of—

4 “(I) how the institutional invest-
5 ment manager took into consideration
6 proxy advisory firm recommendations
7 in making voting decisions, including
8 the degree to which the institutional
9 investment manager used those rec-
10 ommendations in making voting deci-
11 sions;

12 “(II) how often the institutional
13 investment manager voted consistent
14 with a recommendation made by a
15 proxy advisory firm, expressed as a
16 percentage;

17 “(III) how such votes are rec-
18 onciled with the fiduciary duty of the
19 institutional investment manager to
20 vote in the best economic interests of
21 shareholders;

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

1 “(V) the degree to which invest-
2 ment professionals of the institutional
3 investment manager were involved in
4 proxy voting decisions; and

5 “(iv) a certification that the voting de-
6 cisions of the institutional investment man-
7 ager were based solely on the best eco-
8 nomic interest of the shareholders on be-
9 half of whom the institutional investment
10 manager holds shares.

11 “(B) REQUIREMENTS FOR LARGER INSTI-
12 TUTIONAL INVESTMENT MANAGERS.—Every in-
13 stitutional investment manager described in
14 subparagraph (A) that has assets under man-
15 agement with an aggregate fair market value on
16 the last trading day in any of the preceding
17 twelve months of at least \$100,000,000,000
18 shall—

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

23 “(ii) with respect to each shareholder
24 proposal for which the institutional invest-
25 ment manager votes (other than votes con-

1 sistent with the recommendation of a
2 board of directors composed of a majority
3 of independent directors) perform an eco-
4 nomic analysis before making such vote, to
5 determine that the vote is in the best eco-
6 nomic interest of the shareholders on be-
7 half of whom the institutional investment
8 manager holds shares; and

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

12 “(C) DEFINITIONS.—In this paragraph:

13 “(i) BEST ECONOMIC INTEREST.—The
14 term ‘best economic interest’ means deci-
15 sions that seek to maximize investment re-
16 turns over a time horizon consistent with
17 the investment objectives and risk manage-
18 ment profile of the fund in which share-
19 holders are invested.

20 “(ii) PROXY ADVISORY FIRM.—The
21 term ‘proxy advisory firm’—

22 “(I) means any person who is
23 primarily engaged in the business of
24 providing proxy voting advice, re-
25 search, analysis, ratings, or rec-

1 ommendations to clients, which con-
2 duct constitutes a solicitation within
3 the meaning of section 14; and

4 “**(II)** does not include any person
5 that is exempt under law or regulation
6 from the requirements otherwise ap-
7 plicable to persons engaged in such a
8 solicitation.”.