

Union Calendar No. 263

118TH CONGRESS
1ST SESSION

H. R. 4767

[Report No. 118-324]

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

JULY 20, 2023

Mr. STEIL introduced the following bill; which was referred to the Committee on Financial Services

DECEMBER 19, 2023

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in italics]

[For text of introduced bill, see copy of bill as introduced on July 20, 2023]

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.

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. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) *SHORT TITLE.*—*This Act may be cited as the “Pro-*
 5 *tecting Americans’ Retirement Savings from Politics Act”.*

6 (b) *TABLE OF CONTENTS.*—*The table of contents for*
 7 *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 ad-
visory 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 MA-
TERIAL INFORMATION OR MAKING OF MATERIAL
MISSTATEMENTS

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

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

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

TITLE IX—PROTECTING AMERICANS’ SAVINGS

Sec. 901. Requirements related to proxy voting.

TITLE X—EMPOWERING SHAREHOLDERS

Sec. 1001. Proxy voting of passively managed funds.

TITLE XI—PROTECTING RETAIL INVESTORS' SAVINGS

Sec. 1101. Best interest based on pecuniary factors.

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

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

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

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

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

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

17 *(2) if the most recent vote—*

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

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

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

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

10 **TITLE II—NO EXPENSIVE,**
11 **STIFLING GOVERNANCE**

12 **SEC. 201. EXCLUSION OF CERTAIN SHAREHOLDER PRO-**
13 **POSALS.**

14 (a) *EXCLUSION OF CERTAIN SHAREHOLDER PRO-*
15 *POSALS.*—A shareholder proposal submitted to an issuer
16 pursuant to section 240.14a-8 of title 17, Code of Federal
17 Regulations, may be excluded by an issuer from its proxy
18 or consent solicitation material for a meeting of the share-
19 holders of such issuer if the shareholder proposal—

20 (1) has been substantially implemented by the
21 issuer by implementing policies, practices, or proce-
22 dures that compare favorably with the guidelines of
23 the proposal and address the proposal’s underlying
24 concerns; or

1 (2) *substantially duplicates by having the same*
2 *principal thrust or principal focus as another pro-*
3 *posal previously submitted to the issuer by another*
4 *proponent that will be included in such material.*

5 **(b) NULLIFICATION OF PROPOSED RULE.**—*The Securi-*
6 *ties and Exchange Commission may not finalize or apply*
7 *the positions contained in the proposed rule entitled “Sub-*
8 *stantial Implementation, Duplication, and Resubmission of*
9 *Shareholder Proposals under Exchange Act Rule 14a-8” (87*
10 *Fed. Reg. 45052), issue any substantially similar rule, or*
11 *apply any substantially similar rule, including with re-*
12 *spect to a no-action or other interpretive request.*

13 **TITLE III—EXCLUSION OF CER-**
14 **TAIN ESG SHAREHOLDER**
15 **PROPOSALS**

16 **SEC. 301. EXCLUSION OF CERTAIN ESG SHAREHOLDER PRO-**
17 **POSALS.**

18 *A shareholder proposal submitted to an issuer pursu-*
19 *ant to section 240.14a-8 of title 17, Code of Federal Regula-*
20 *tions, may be excluded by an issuer from its proxy or con-*
21 *sent solicitation material for a meeting of the shareholders*
22 *of such issuer if the subject matter of the shareholder pro-*
23 *posal is environmental, social, or political (or a similar*
24 *subject matter).*

1 **TITLE IV—EXCLUSIONS AVAIL-**
 2 **ABLE REGARDLESS OF SIG-**
 3 **NIFICANT SOCIAL POLICY**
 4 **ISSUE**

5 **SEC. 401. EXCLUSIONS AVAILABLE REGARDLESS OF SIG-**
 6 **NIFICANT SOCIAL POLICY ISSUE.**

7 *An issuer may exclude a shareholder proposal pursu-*
 8 *ant to section 240.14a-8(i) of title 17, Code of Federal Regu-*
 9 *lations, without regard to whether such shareholder pro-*
 10 *posal relates to a significant social policy issue.*

11 **TITLE V—CORPORATE**
 12 **GOVERNANCE EXAMINATION**

13 **SEC. 501. STUDY OF CERTAIN ISSUES WITH RESPECT TO**
 14 **SHAREHOLDER PROPOSALS, PROXY ADVI-**
 15 **SORY FIRMS, AND THE PROXY PROCESS.**

16 *Section 4(j) of the Securities Exchange Act of 1934 (15*
 17 *U.S.C. 78d(j)) is amended by adding at the end the fol-*
 18 *lowing:*

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

22 *“(A) IN GENERAL.—Not later than 180*
 23 *days after the date of the enactment of this para-*
 24 *graph, and every 5 years thereafter, the Commis-*
 25 *sion shall conduct a comprehensive study on*

1 *shareholder proposals, proxy advisory firms, and*
2 *the proxy process.*

3 “(B) *SCOPE OF STUDY.*—*The studies re-*
4 *quired under subparagraph (A) shall cover—*

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

7 “(ii) *the previous 5 years, with respect*
8 *to each other study.*

9 “(C) *CONTENTS.*—*Each study required*
10 *under subparagraph (A) shall address the fol-*
11 *lowing issues:*

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

15 “(ii) *A consideration of whether finan-*
16 *cial and other incentives have created a*
17 *process that no longer serves the economic*
18 *interests of long-term retail investors.*

19 “(iii) *An analysis of whether regula-*
20 *tions and financial incentives have created*
21 *and protected the outsized influence of*
22 *proxy advisors or a duopoly in proxy ad-*
23 *vice, and if so, what are the benefits and*
24 *costs of that outsized influence or duopoly.*

1 “(iv) *The costs incurred by issuers in*
2 *responding to politically-, environmentally-*
3 *, or socially-motivated shareholder pro-*
4 *posals.*

5 “(v) *An assessment, including a cost-*
6 *benefit analysis, of the adequacy of the cur-*
7 *rent submission thresholds in Rule 14a-8*
8 *(17 CFR 240.14a-8) to ensure that share-*
9 *holder proponents have demonstrated a*
10 *meaningful economic stake in a company,*
11 *which is appropriate to effectively serve*
12 *markets and shareholders at large.*

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

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

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

24 “(ix) *A thorough assessment of the eco-*
25 *nomical analysis, if any, conducted by proxy*

1 *advisory firms and institutional share-*
2 *holders when recommending or voting in*
3 *favor of shareholder proposals.*

4 “(x) A review of the extent to which in-
5 stitutional investors, who owe fiduciary du-
6 ties, rely on proxy advisory firm rec-
7 ommendations.

8 “(xi) An assessment of whether, in
9 light of their significant influence on cor-
10 porate actions and vote outcomes, proxy ad-
11 visors are subject to sufficient and effective
12 regulation to ensure that their policies and
13 recommendations are accurate, free of con-
14 flicts, and benefit the economic best interest
15 of shareholders at large.

16 “(D) REPORT.—At the completion of each
17 study required under subparagraph (A) the Com-
18 mission shall issue a report to the Committee on
19 Banking, Housing, and Urban Affairs of the
20 Senate and the Committee on Financial Services
21 of the House of Representatives that includes the
22 results of the study.”.

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

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

4 (a) *AMENDMENT.*—*The Securities Exchange Act of*
5 *1934 (15 U.S.C. 78a et seq.) is amended by inserting after*
6 *section 15G the following new section:*

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

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

14 “(b) *REGISTRATION PROCEDURES.*—

15 “(1) *APPLICATION FOR REGISTRATION.*—

16 “(A) *IN GENERAL.*—*A proxy advisory firm*
17 *shall file with the Commission an application for*
18 *registration, in such form as the Commission*
19 *shall require, by rule, and containing the infor-*
20 *mation described in subparagraph (B).*

21 “(B) *REQUIRED INFORMATION.*—*An appli-*
22 *cation for registration under this section shall*
23 *contain—*

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

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

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

11 “(II) has the requisite expertise to
12 ensure that voting recommendations
13 are in the best economic interest of
14 those shareholders;

15 “(iii) information on the procedures
16 and methodologies that the applicant uses to
17 ensure that proxy voting recommendations
18 are in the best economic interest of the ulti-
19 mate shareholders;

20 “(iv) information on the organiza-
21 tional structure of the applicant;

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

1 “(vi) a description of any potential or
2 actual conflict of interest relating to the
3 provision of proxy advisory services, includ-
4 ing those arising out of or resulting from
5 the ownership structure of the applicant or
6 the provision of other services by the appli-
7 cant or any person associated with the ap-
8 plicant;

9 “(vii) the policies and procedures in
10 place to publicly disclose and manage con-
11 flicts of interest under subsection (f);

12 “(viii) information related to the pro-
13 fessional and academic qualifications of
14 staff tasked with providing proxy advisory
15 services; and

16 “(ix) any other information and docu-
17 ments concerning the applicant and any
18 person associated with such applicant as the
19 Commission, by rule, may prescribe as nec-
20 essary or appropriate in the public interest
21 or for the protection of investors.

22 “(2) REVIEW OF APPLICATION.—

23 “(A) INITIAL DETERMINATION.—Not later
24 than 90 days after the date on which the appli-
25 cation for registration is filed with the Commis-

1 *sion under paragraph (1) (or within such longer*
2 *period as to which the applicant consents) the*
3 *Commission shall—*

4 *“(i) by order, grant registration; or*

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

7 *“(B) CONDUCT OF PROCEEDINGS.—*

8 *“(i) CONTENT.—Proceedings referred to*
9 *in subparagraph (A)(ii) shall—*

10 *“(I) include notice of the grounds*
11 *for denial under consideration and an*
12 *opportunity for hearing; and*

13 *“(II) be concluded not later than*
14 *120 days after the date on which the*
15 *application for registration is filed*
16 *with the Commission under paragraph*
17 *(1).*

18 *“(ii) DETERMINATION.—At the conclu-*
19 *sion of such proceedings, the Commission,*
20 *by order, shall grant or deny such applica-*
21 *tion for registration.*

22 *“(iii) EXTENSION AUTHORIZED.—The*
23 *Commission may extend the time for con-*
24 *clusion of such proceedings for not longer*
25 *than 90 days, if the Commission finds good*

1 *cause for such extension and publishes its*
2 *reasons for so finding, or for such longer pe-*
3 *riod as to which the applicant consents.*

4 “(C) *GROUND* *FOR DECISION*.—*The Com-*
5 *mission shall grant registration under this sub-*
6 *section—*

7 “(i) *if the Commission finds that the*
8 *requirements of this section are satisfied;*
9 *and*

10 “(ii) *unless the Commission finds (in*
11 *which case the Commission shall deny such*
12 *registration) that—*

13 “(I) *the applicant has failed to*
14 *certify to the Commission’s satisfaction*
15 *that it is able to consistently provide*
16 *proxy advice based on accurate infor-*
17 *mation and to materially comply with*
18 *the procedures and methodologies dis-*
19 *closed under paragraph (1)(B) and*
20 *with subsections (f) and (g); or*

21 “(II) *if the applicant were so reg-*
22 *istered, its registration would be sub-*
23 *ject to suspension or revocation under*
24 *subsection (d).*

1 “(3) *PUBLIC AVAILABILITY OF INFORMATION.*—
2 *Subject to section 24, the Commission shall make the*
3 *information and documents submitted to the Commis-*
4 *sion by a proxy advisory firm in its completed appli-*
5 *cation for registration, or in any amendment sub-*
6 *mitted under paragraph (1) or (2) of subsection (c),*
7 *publicly available on the Commission’s website, or*
8 *through another comparable, readily accessible means.*

9 “(c) *UPDATE OF REGISTRATION.*—

10 “(1) *UPDATE.*—*Each registered proxy advisory*
11 *firm shall promptly amend and update its applica-*
12 *tion for registration under this section if any infor-*
13 *mation or document provided therein becomes materi-*
14 *ally inaccurate, except that a registered proxy advi-*
15 *sory firm is not required to amend the information*
16 *required to be filed under subsection (b)(1)(B)(i) by*
17 *filing information under this paragraph, but shall*
18 *amend such information in the annual submission of*
19 *the organization under paragraph (2) of this sub-*
20 *section.*

21 “(2) *CERTIFICATION.*—*Not later than 90 cal-*
22 *endar days after the end of each calendar year, each*
23 *registered proxy advisory firm shall file with the*
24 *Commission an amendment to its registration, in*
25 *such form as the Commission, by rule, may prescribe*

1 *as necessary or appropriate in the public interest or*
2 *for the protection of investors—*

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

7 “(B) *listing any material change that oc-*
8 *curred to such information or documents during*
9 *the previous calendar year.*

10 “(d) *CENSURE, DENIAL, OR SUSPENSION OF REG-*
11 *ISTRATION; NOTICE AND HEARING.—The Commission, by*
12 *order, shall censure, place limitations on the activities,*
13 *functions, or operations of, suspend for a period not exceed-*
14 *ing 12 months, or revoke the registration of any registered*
15 *proxy advisory firm if the Commission finds, on the record*
16 *after notice and opportunity for hearing, that such censure,*
17 *placing of limitations, suspension, or revocation is nec-*
18 *essary for the protection of investors and in the public inter-*
19 *est and that such registered proxy advisory firm, or any*
20 *person associated with such an organization, whether prior*
21 *to or subsequent to becoming so associated—*

22 “(1) *has committed or omitted any act, or is*
23 *subject to an order or finding, enumerated in sub-*
24 *paragraph (A), (D), (E), (H), or (G) of section*
25 *15(b)(4), has been convicted of any offense specified in*

1 *section 15(b)(4)(B), or is enjoined from any action,*
2 *conduct, or practice specified in subparagraph (C) of*
3 *section 15(b)(4), during the 10-year period preceding*
4 *the date of commencement of the proceedings under*
5 *this subsection, or at any time thereafter;*

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

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

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

15 *“(3) is subject to any order of the Commission*
16 *barring or suspending the right of the person to be as-*
17 *sociated with a registered proxy advisory firm;*

18 *“(4) fails to furnish the certifications required*
19 *under subsections (b)(2)(C)(i)(I) and (c)(2);*

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

22 *“(6) fails to maintain adequate financial and*
23 *managerial resources to consistently offer advisory*
24 *services to clients that vote shares held on behalf of*
25 *shareholders consistent with the best economic interest*

1 *of those shareholders, including by failing to comply*
2 *with subsections (f) or (g);*

3 *“(7) fails to maintain adequate expertise to en-*
4 *sure that proxy advisory services for clients that vote*
5 *shares held on behalf of shareholders are tied to the*
6 *best economic interest of those shareholders; or*

7 *“(8) engages in a prohibited act enumerated in*
8 *subsection (j).*

9 *“(e) TERMINATION OF REGISTRATION.—*

10 *“(1) VOLUNTARY WITHDRAWAL.—A registered*
11 *proxy advisory firm may, upon such terms and con-*
12 *ditions as the Commission may establish as necessary*
13 *in the public interest or for the protection of investors,*
14 *which terms and conditions shall include at a min-*
15 *imum that the registered proxy advisory firm will no*
16 *longer conduct such activities as to bring it within*
17 *the definition of proxy advisory firm in section*
18 *3(a)(82), withdraw from registration by filing a writ-*
19 *ten notice of withdrawal to the Commission.*

20 *“(2) COMMISSION AUTHORITY.—In addition to*
21 *any other authority of the Commission under this*
22 *title, if the Commission finds that a registered proxy*
23 *advisory firm is no longer in existence or has ceased*
24 *to do business as a proxy advisory firm, the Commis-*

1 *sion, by order, shall cancel the registration under this*
2 *section of such registered proxy advisory firm.*

3 *“(f) MANAGEMENT OF CONFLICTS OF INTEREST.—*

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

13 *“(2) COMMISSION AUTHORITY.—The Commission*
14 *shall, within one year of the date of enactment of this*
15 *section, issue final rules to prohibit, or require the*
16 *management and public disclosure of, any conflicts of*
17 *interest relating to the offering of proxy advisory*
18 *services by a registered proxy advisory firm, includ-*
19 *ing, without limitation, conflicts of interest relating*
20 *to—*

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

1 “(B) *business relationships, ownership in-*
2 *terests, or any other financial or personal inter-*
3 *ests between a registered proxy advisory firm, or*
4 *any person associated with such registered proxy*
5 *advisory firm, and any client, or any affiliate of*
6 *such client;*

7 “(C) *the formulation of proxy voting poli-*
8 *cies;*

9 “(D) *the execution, or assistance with the*
10 *execution, of proxy votes if such votes are based*
11 *upon recommendations made by the proxy advi-*
12 *sory firm in which a person other than the issuer*
13 *is a proponent; and*

14 “(E) *any other potential conflict of interest,*
15 *as the Commission deems necessary or appro-*
16 *priate in the public interest or for the protection*
17 *of investors.*

18 “(3) *DISCLOSURE ON FACTORS INFLUENCING*
19 *RECOMMENDATIONS.—Each registered proxy advisory*
20 *firm shall annually disclose to the Commission and*
21 *make publicly available the economic and other fac-*
22 *tors that a reasonable investor would expect to influ-*
23 *ence the recommendations of such proxy advisory*
24 *firm, including the ownership composition of such*

1 *proxy advisory firm and any meetings with, or feed-*
2 *back received from, outside entities.*

3 “(g) *RELIABILITY OF PROXY ADVISORY FIRM SERV-*
4 *ICES.—*

5 “(1) *IN GENERAL.—Each registered proxy advi-*
6 *sory firm shall—*

7 “(A) *have staff and other resources suffi-*
8 *cient to produce proxy voting recommendations*
9 *that are based on accurate and current informa-*
10 *tion and designed for clients that vote shares*
11 *held on behalf of shareholders to advance the best*
12 *economic interest of those shareholders;*

13 “(B) *implement procedures that permit*
14 *issuers that are the subject of proxy voting rec-*
15 *ommendations—*

16 “(i) *access in a reasonable time to data*
17 *and information used to make recommenda-*
18 *tions; and*

19 “(ii) *a reasonable opportunity to pro-*
20 *vide meaningful comment and corrections to*
21 *such data and information, including the*
22 *opportunity to present (in person or tele-*
23 *phonically) details to the person responsible*
24 *for developing such data and information*

1 *prior to the publication of proxy voting rec-*
2 *ommendations to clients;*

3 “(C) *employ an ombudsman to receive com-*
4 *plaints about the accuracy of information used*
5 *in making recommendations from the companies*
6 *that are the subject of the proxy advisory firm’s*
7 *voting recommendations and seek to resolve those*
8 *complaints in a timely fashion and prior to the*
9 *publication of proxy voting recommendations to*
10 *clients; and*

11 “(D) *if the ombudsman is unable to resolve*
12 *a complaint to a company’s satisfaction prior to*
13 *the publication of proxy voting recommendations*
14 *to clients, include in the final report of the firm*
15 *to clients—*

16 “(i) *a statement detailing the com-*
17 *pany’s complaints, if requested in writing*
18 *by the company; and*

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

22 “(2) *DEFINITIONS.—In this subsection:*

23 “(A) *DATA AND INFORMATION USED TO*
24 *MAKE RECOMMENDATIONS.—The term ‘data and*

1 *information used to make voting recommenda-*
2 *tions’—*

3 “(i) means the financial, operational,
4 or descriptive data and information on an
5 issuer used by proxy advisory firms and
6 any contextual or substantive analysis im-
7 pacting the recommendation; and

8 “(ii) does not include the entirety of
9 the proxy advisory firm’s final report to its
10 clients.

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

13 “(i) means not less than 1 week before
14 the publication of proxy voting rec-
15 ommendations for clients; and

16 “(ii) shall not otherwise interfere with
17 a proxy advisory firm’s ability to provide
18 its clients with timely access to accurate
19 proxy voting research, analysis, or rec-
20 ommendations.

21 “(h) PRIVATE RIGHT OF ACTION WITH RESPECT TO
22 ILLEGAL RECOMMENDATIONS.—Any proxy advisory firm
23 that endorses a proposal that is not supported by the issuer
24 but is approved and subsequently found by a court of com-
25 petent jurisdiction to violate State or Federal law shall be

1 *liable to the applicable issuer for the costs associated with*
2 *the approval of such proposal, including implementation*
3 *costs and any penalties incurred by the issuer.*

4 “(i) *DESIGNATION OF COMPLIANCE OFFICER.*—*Each*
5 *registered proxy advisory firm shall designate an indi-*
6 *vidual who reports directly to senior management as re-*
7 *sponsible for administering the policies and procedures that*
8 *are required to be established pursuant to subsections (f)*
9 *and (g), and for ensuring compliance with the securities*
10 *laws and the rules and regulations thereunder, including*
11 *those promulgated by the Commission pursuant to this sec-*
12 *tion.*

13 “(j) *PROHIBITED CONDUCT.*—

14 “(1) *PROHIBITED ACTS AND PRACTICES.*—*Not*
15 *later than one year after the date of enactment of this*
16 *section, the Commission shall issue final rules to pro-*
17 *hibit any act or practice relating to the offering of*
18 *proxy advisory services by a registered proxy advi-*
19 *sory firm that the Commission determines to be un-*
20 *fair, coercive, or abusive, including any act or prac-*
21 *tice relating to—*

22 “(A) *advisory or consulting services (offered*
23 *directly or indirectly, including through an affil-*
24 *iate) related to corporate governance issues; or*

1 “(B) *modifying a voting recommendation or*
2 *otherwise departing from its adopted systematic*
3 *procedures and methodologies in the provision of*
4 *proxy advisory services, based on whether an*
5 *issuer, or affiliate thereof, subscribes or will sub-*
6 *scribe to other services or product of the reg-*
7 *istered proxy advisory firm or any person asso-*
8 *ciated with such organization.*

9 “(2) *RULE OF CONSTRUCTION.—Nothing in*
10 *paragraph (1), or in any rules or regulations adopted*
11 *thereunder, may be construed to modify, impair, or*
12 *supersede the operation of any of the antitrust laws*
13 *(as defined in the first section of the Clayton Act, ex-*
14 *cept that such term includes section 5 of the Federal*
15 *Trade Commission Act, to the extent that such section*
16 *5 applies to unfair methods of competition).*

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

1 “(l) *ANNUAL REPORT.*—

2 “(1) *IN GENERAL.*—*Each registered proxy advisory*
3 *firm shall, not later than 90 calendar days after*
4 *the end of each fiscal year, file with the Commission*
5 *and make publicly available an annual report in such*
6 *form as the Commission, by rule, may prescribe as*
7 *necessary or appropriate in the public interest or for*
8 *the protection of investors.*

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

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

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

18 “(C) *The economic analysis conducted to*
19 *determine that final recommendations provided*
20 *in the prior fiscal year (other than recommenda-*
21 *tions relating to an issuer-sponsored proposal or*
22 *recommendations consistent with that of a board*
23 *of directors composed of a majority of inde-*
24 *pendent directors) delivered to clients that vote*

1 *shares held on behalf of shareholders were in the*
2 *best economic interest of those shareholders.*

3 “(D) *The staff who reviewed and made rec-*
4 *ommendations on such proposals in the prior fis-*
5 *cal year.*

6 “(E) *The qualifications of such staff to en-*
7 *sure that each of the recommendations for clients*
8 *that vote shares held on behalf of shareholders*
9 *were tied to the best economic interest of those*
10 *shareholders.*

11 “(F) *The recommendations made in the*
12 *prior fiscal year where the proponent of such rec-*
13 *ommendation was a client of or received services*
14 *from the proxy advisory firm.*

15 “(G) *A certification by the chief executive*
16 *officer, chief financial officer, and the primary*
17 *executive responsible for overseeing the compila-*
18 *tion and dissemination of proxy voting advice*
19 *that the final recommendations (other than rec-*
20 *ommendations relating to an issuer-sponsored*
21 *proposal or recommendations consistent with*
22 *that of a board of directors composed of a major-*
23 *ity of independent directors) delivered to clients*
24 *that vote shares held on behalf of shareholders in*
25 *the last fiscal year—*

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

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

7 “(iii) were based on the best economic
8 interest of those shareholders.

9 “(H) The economic and other factors that a
10 reasonable investor would expect to influence the
11 recommendations of such proxy advisory firm,
12 including the ownership composition of such
13 proxy advisory firm.

14 “(m) *TRANSPARENT POLICIES.*—Each registered
15 proxy advisory firm shall file with the Commission and
16 make publicly available its methodology for the formulation
17 of proxy voting policies and voting recommendations to cli-
18 ents that vote shares held on behalf of shareholders and how
19 that methodology ensures that the firm’s voting rec-
20 ommendations are in the best economic interest of those
21 shareholders.

22 “(n) *RULES OF CONSTRUCTION.*—Registration under
23 and compliance with this section does not constitute a waiv-
24 er of, or otherwise diminish, any right, privilege, or defense
25 that a registered proxy advisory firm may otherwise have

1 *under any provision of State or Federal law, including any*
2 *rule, regulation, or order thereunder.*

3 “(0) *REGULATIONS.—*

4 “(1) *NEW PROVISIONS.—Such rules and regula-*
5 *tions as are required by this section or are otherwise*
6 *necessary to carry out this section, including the ap-*
7 *plication form required under subsection (a)—*

8 “(A) *shall be issued by the Commission, not*
9 *later than 180 days after the date of enactment*
10 *of this section; and*

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

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

16 “(A) *review its existing rules and regula-*
17 *tions which affect the operations of proxy advi-*
18 *sory firms; and*

19 “(B) *amend or revise such rules and regula-*
20 *tions in accordance with the purposes of this sec-*
21 *tion, and issue such guidance as the Commission*
22 *may prescribe as necessary or appropriate in the*
23 *public interest or for the protection of investors.*

1 “(p) *APPLICABILITY.*—*This section, other than sub-*
 2 *section (n), which shall apply on the date of enactment of*
 3 *this section, shall apply on the earlier of—*

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

6 “(2) *270 days after the date of enactment of this*
 7 *section.*

8 “(q) *BEST ECONOMIC INTEREST DEFINED.*—*In this*
 9 *section, the term ‘best economic interest’ means decisions*
 10 *that seek to maximize investment returns over a time hori-*
 11 *zon consistent with the investment objectives and risk man-*
 12 *agement profile of the fund in which the shareholders are*
 13 *invested.”.*

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

18 (c) *PROXY ADVISORY FIRM DEFINITIONS.*—*Section*
 19 *3(a) of the Securities Exchange Act of 1934 (15 U.S.C.*
 20 *78c(a)) is amended—*

21 (1) *by redesignating the second paragraph (80)*
 22 *(relating to funding portal) as paragraph (81); and*

23 (2) *by adding at the end the following:*

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

1 “(A) means any person who is primarily
2 engaged in the business of providing proxy vot-
3 ing advice, research, analysis, ratings, or rec-
4 ommendations to clients, which conduct con-
5 stitutes a solicitation within the meaning of sec-
6 tion 14; and

7 “(B) does not include any person that is ex-
8 empt under law or regulation from the require-
9 ments otherwise applicable to persons engaged in
10 such a solicitation.

11 “(83) *PERSON ASSOCIATED WITH A PROXY ADVI-*
12 *SORY FIRM.—With respect to a proxy advisory firm—*

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

15 “(i) a partner, officer, or director of
16 the proxy advisory firm (or any person oc-
17 cupying a similar status or performing
18 similar functions);

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

22 “(iii) an employee of the proxy advi-
23 sory firm; or

1 “(iv) a person the Commission deter-
 2 mines by rule is controlled by the proxy ad-
 3 visory firm; and

4 “(B) a person is not ‘associated’ with the
 5 proxy advisory firm if the person only performs
 6 clerical or ministerial functions with respect to
 7 a proxy advisory firm.”.

8 **TITLE VII—LIABILITY FOR CER-**
 9 **TAIN FAILURES TO DISCLOSE**
 10 **MATERIAL INFORMATION OR**
 11 **MAKING OF MATERIAL**
 12 **MISSTATEMENTS**

13 **SECTION 701. LIABILITY FOR CERTAIN FAILURES TO DIS-**
 14 **CLOSE MATERIAL INFORMATION OR MAKING**
 15 **OF MATERIAL MISSTATEMENTS.**

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

18 “(l) **FALSE OR MISLEADING STATEMENTS.**—For pur-
 19 poses of section 18, the failure to disclose material informa-
 20 tion (such as a proxy voting advice business’s methodology,
 21 sources of information, or conflicts of interest) or the mak-
 22 ing of a material misstatement regarding proxy voting ad-
 23 vice that makes a recommendation to a security holder as
 24 to the security holder’s vote, consent, or authorization on
 25 a specific matter for which security holder approval is solici-

1 *ited, and that is furnished by a person that markets the*
 2 *person’s expertise as a provider of such proxy voting advice*
 3 *separately from other forms of investment advice, and sells*
 4 *such proxy voting advice for a fee, shall be considered to*
 5 *be false or misleading with respect to a material fact.”.*

6 **TITLE VIII—DUTIES OF INVEST-**
 7 **MENT ADVISORS, ASSET MAN-**
 8 **AGERS, AND PENSION FUNDS**

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

11 *Section 13(f) of the Securities Exchange Act of 1934*
 12 *(15 U.S.C. 78m(f)) is amended by adding at the end the*
 13 *following:*

14 *“(7) DISCLOSURES BY INSTITUTIONAL INVEST-*
 15 *MENT MANAGERS IN CONNECTION WITH PROXY ADVI-*
 16 *SORY FIRMS.—*

17 *“(A) IN GENERAL.—Every institutional in-*
 18 *vestment manager which uses the mails, or any*
 19 *means or instrumentality of interstate commerce*
 20 *in the course of its business as an institutional*
 21 *investment manager, which engages a proxy ad-*
 22 *visory firm, and which exercises voting power*
 23 *with respect to accounts holding equity securities*
 24 *of a class described in subsection (d)(1) or other-*
 25 *wise becomes or is deemed to become a beneficial*

1 owner of any security of a class described in sub-
2 section (d)(1) upon the purchase or sale of a se-
3 curity-based swap that the Commission may de-
4 fine by rule, shall file an annual report with the
5 Commission containing—

6 “(i) an explanation of how the institu-
7 tional investment manager voted with re-
8 spect to each shareholder proposal;

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

14 “(iii) an explanation of—

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

23 “(II) how often the institutional
24 investment manager voted consistent
25 with a recommendation made by a

1 *proxy advisory firm, expressed as a*
2 *percentage;*

3 “(III) *how such votes are rec-*
4 *onciled with the fiduciary duty of the*
5 *institutional investment manager to*
6 *vote in the best economic interests of*
7 *shareholders;*

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

11 “(V) *the degree to which invest-*
12 *ment professionals of the institutional*
13 *investment manager were involved in*
14 *proxy voting decisions; and*

15 “(iv) *a certification that the voting de-*
16 *isions of the institutional investment man-*
17 *ager were based solely on the best economic*
18 *interest of the shareholders on behalf of*
19 *whom the institutional investment manager*
20 *holds shares.*

21 “(B) *REQUIREMENTS FOR LARGER INSTITU-*
22 *TIONAL INVESTMENT MANAGERS.—Every institu-*
23 *tional investment manager described in subpara-*
24 *graph (A) that has assets under management*
25 *with an aggregate fair market value on the last*

1 trading day in any of the preceding twelve
2 months of at least \$100,000,000,000 shall—

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

7 “(ii) with respect to each shareholder
8 proposal for which the institutional invest-
9 ment manager votes (other than votes con-
10 sistent with the recommendation of a board
11 of directors composed of a majority of inde-
12 pendent directors) perform an economic
13 analysis before making such vote, to deter-
14 mine that the vote is in the best economic
15 interest of the shareholders on behalf of
16 whom the institutional investment manager
17 holds shares; and

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

21 “(C) *BEST ECONOMIC INTEREST DE-*
22 *FINED.*—In this paragraph, the term ‘best eco-
23 nomic interest’ means decisions that seek to
24 maximize investment returns over a time horizon
25 consistent with the investment objectives and risk

1 *management profile of the fund in which share-*
 2 *holders are invested.”.*

3 ***TITLE IX—PROTECTING***
 4 ***AMERICANS’ SAVINGS***

5 ***SEC. 901. REQUIREMENTS RELATED TO PROXY VOTING.***

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

9 “(m) *PROHIBITION ON ROBOVOTING.—*

10 “(1) *IN GENERAL.—The Commission shall issue*
 11 *final rules prohibiting the use of robovoting with re-*
 12 *spect to votes related to proxy or consent solicitation*
 13 *materials.*

14 “(2) *ROBOVOTING DEFINED.—In this subsection,*
 15 *the term ‘robovoting’ means the practice of automati-*
 16 *cally voting in a manner consistent with the rec-*
 17 *ommendations of a proxy advisory firm or pre-*
 18 *populating votes on a proxy advisory firm’s electronic*
 19 *voting platform with the proxy advisory firm’s rec-*
 20 *ommendations, in either case, without independent re-*
 21 *view and analysis.*

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

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

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

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

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

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

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

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

21 “(a) *INVESTMENT ADVISER PROXY VOTING.*—

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

1 *of covered securities held by a passively managed*
2 *fund shall—*

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

6 “(B) *vote in accordance with the voting rec-*
7 *ommendations of such issuer; or*

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

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

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

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

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

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

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

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

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

17 “(1) *COVERED SECURITY.—The term ‘covered se-*
18 *curity’—*

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

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

1 *company under section 8 of the Investment Com-*
2 *pany Act of 1940 (15 U.S.C. 80a-8).*

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

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

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

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

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

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

21 “(B) *a private fund;*

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

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

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

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

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

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

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

17 “(5) ROUTINE MATTER.—The term ‘routine mat-
18 ter’—

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

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

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

24 “(iii) the selection of auditors;

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

6 “(v) declassification; or

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

10 “(I) a merger or consolidation;

11 and

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

15 “(B) does not include—

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

22 “(ii) a proposal that is—

23 “(I) the subject of a counter-solici-
24 tation; or

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

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

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

10 **SEC. 1101. BEST INTEREST BASED ON PECUNIARY FACTORS.**

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

14 “(3) *BEST INTEREST BASED ON PECUNIARY FAC-*
15 *TORS.*—

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

23 “(B) *DISCLOSURE OF PECUNIARY FAC-*
24 *TORS.*—If a customer provides a broker, dealer,
25 or investment adviser with the informed consent

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

4 “(i) disclose the expected pecuniary ef-
5 fects to the customer over a time period se-
6 lected by the customer and not to exceed
7 three years; and

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

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

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

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

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

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

10 (a) *IN GENERAL.*—The Securities and Exchange Com-
11 mission shall—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 **SEC. 1103. STUDY ON SOLICITATION OF MUNICIPAL SECURI-**
2 **TIES BUSINESS.**

3 (a) *IN GENERAL.*—*The Securities and Exchange Com-*
4 *mission shall—*

5 (1) *conduct a study on the effectiveness of each*
6 *covered rule in preventing the payment of funds to*
7 *elected officials or candidates for elected office in ex-*
8 *change for the receipt of government business in con-*
9 *nection with the offer or sale of municipal securities;*
10 *and*

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

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

15 (1) *the effectiveness of each covered rule, includ-*
16 *ing whether each covered rule accomplishes the in-*
17 *tended effect of such covered rule and has any unin-*
18 *tended adverse effects;*

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

21 (3) *the degree to which—*

22 (A) *persons subject to each covered rule—*

23 (i) *have in effect policies and proce-*
24 *dures intended to ensure compliance with*
25 *each such covered rule; and*

1 (ii) are disadvantaged from partici-
2 pating in the political process generally and
3 in relation to persons who solicit or receive
4 government business or government licenses,
5 permits, and approvals other than in con-
6 nection with the offer or sale of municipal
7 securities; and

8 (B) other State and Federal laws and regu-
9 lations impact the solicitation of municipal secu-
10 rities business; and

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

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

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

21 (2) an analysis of the extent to which persons af-
22 filiated with small businesses, as well as persons af-
23 filiated with minority and women opened businesses,
24 have been affected by the covered rules; and

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

3 (d) *DEFINITIONS.—In this section:*

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

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

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

9 (2) *MUNICIPAL SECURITIES.—The term “municipal securities”*
10 *has the meaning given the term in*
11 *section 3(a)(29) of the Securities Exchange Act of*
12 *1934 (15 U.S.C. 78c(a)(29)).*

Union Calendar No. 263

118TH CONGRESS
1ST Session

H. R. 4767

[Report No. 118-324]

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.

DECEMBER 19, 2023

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed