

115TH CONGRESS  
2D SESSION

# S. 3614

To amend the Investment Advisers Act of 1940 to require proxy advisory firms to register as investment advisers under that Act, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

NOVEMBER 13, 2018

Mr. REED (for himself, Mr. PERDUE, Ms. HEITKAMP, Mr. TILLIS, Mr. JONES, and Mr. KENNEDY) introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

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## A BILL

To amend the Investment Advisers Act of 1940 to require proxy advisory firms to register as investment advisers under that Act, 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.**

4 This Act may be cited as the “Corporate Governance  
5 Fairness Act”.

6 **SEC. 2. PROXY ADVISORY FIRMS.**

7 The Investment Advisers Act of 1940 (15 U.S.C.  
8 80b–1 et seq.) is amended—

9 (1) in section 202(a) (15 U.S.C. 80b–2(a))—

1 (A) in paragraph (11)—

2 (i) in the matter preceding subpara-  
3 graph (A), by inserting “, and includes a  
4 proxy advisory firm” after “promulgates  
5 analyses or reports concerning securities”;  
6 and

7 (ii) in subparagraph (F), by striking  
8 “on behalf of others;” and inserting “on  
9 behalf of others or acts as a proxy advisory  
10 firm;”;

11 (B) by redesignating the second paragraph  
12 (29) as paragraph (31); and

13 (C) by adding at the end the following:

14 “(32)(A) The term ‘proxy advisory firm’—

15 “(i) subject to clause (ii), means any per-  
16 son that is engaged in the business of providing  
17 proxy voting research, analysis, ratings, or rec-  
18 ommendations to investors in issuers by means  
19 of written or oral statements that are reason-  
20 ably designed to meet the objectives or needs of  
21 specific clients, investors, or their accounts, in-  
22 cluding proxy voting research, analysis, ratings,  
23 or recommendations that are tailored to or re-  
24 flect particular proxy voting guidelines devel-  
25 oped or selected by investors; and

1           “(ii) does not include any person described  
2           in clause (i) that, together with the parent, sub-  
3           sidiaries, and affiliates of the person, receives  
4           on a consolidated basis in a fiscal year gross re-  
5           ceipts from the clients of the person in an  
6           amount that is not more than \$5,000,000, as  
7           adjusted annually by the Commission to reflect  
8           the percentage change for the previous calendar  
9           year in the gross domestic product of the  
10          United States, as calculated by the Bureau of  
11          Economic Analysis of the Department of Com-  
12          merce, except that a person described in this  
13          clause may choose to be considered a proxy ad-  
14          visory firm for the purposes of this Act.

15          “(B) Notwithstanding any other provision of  
16          law or regulation—

17                 “(i) for the purposes of this Act, a proxy  
18                 advisory firm may not be considered to be ex-  
19                 cluded from the definition of the term ‘invest-  
20                 ment adviser’ under paragraph (11) because of  
21                 the application of subparagraph (D) of that  
22                 paragraph; and

23                 “(ii) only the Commission, under subpara-  
24                 graph (H) of paragraph (11), may designate a  
25                 proxy advisory firm as a person described in

1 that subparagraph, except that the Commission  
 2 may not make such a designation if the proxy  
 3 advisory firm is described in any of paragraphs  
 4 (1) through (9) of section 203(e).”;

5 (2) in section 203 (15 U.S.C. 80b–3), by add-  
 6 ing at the end the following:

7 “(o) RULE OF CONSTRUCTION.—Nothing in sub-  
 8 sections (b) through (n) may be construed to exempt a  
 9 proxy advisory firm from the application of the provisions  
 10 of subsection (a).”;

11 (3) in section 203A(a)(1) (15 U.S.C. 80b–  
 12 3a(a)(1))—

13 (A) in subparagraph (A), by striking “or”  
 14 at the end;

15 (B) in subparagraph (B), by striking the  
 16 period at the end and inserting “; or”; and

17 (C) by adding at the end the following:

18 “(C) is a proxy advisory firm.”;

19 (4) in section 204 (15 U.S.C. 80b–4)—

20 (A) by redesignating the second subsection

21 (d) (relating to records of persons with custody

22 or use) as subsection (e); and

23 (B) by adding at the end the following:

24 “(f) EXAMINATION OF RECORDS OF PROXY ADVI-

25 SORY FIRMS.—

1           “(1) PERIODIC AND SPECIAL EXAMINATIONS.—

2           The Commission—

3                 “(A) shall—

4                         “(i) beginning not later than 1 year  
5                         after the date of enactment of this sub-  
6                         section, conduct periodic inspections of the  
7                         records of proxy advisory firms in accord-  
8                         ance with a schedule established by the  
9                         Commission; and

10                        “(ii) when conducting each inspection  
11                        under clause (i), review—

12                                 “(I) whether any proxy advisory  
13                                 firm, with respect to any statement  
14                                 made by the firm to a client of the  
15                                 proxy advisory firm, knowingly—

16   “(aa) made any false state-  
17   ment to the client; or

18   “(bb) omitted to state a ma-  
19   terial fact that would be nec-  
20   essary to make the statement to  
21   the client not misleading; and

22                                 “(II) policies and programs re-  
23                                 garding conflicts of interest at proxy  
24                                 advisory firms; and

1           “(B) may conduct, in addition to the in-  
2           spections conducted under subparagraph (A), at  
3           any time and from time to time, such addi-  
4           tional, special, and other examinations of proxy  
5           advisory firms and the records of proxy advi-  
6           sory firms as the Commission may prescribe as  
7           necessary and appropriate in the public interest  
8           and for the protection of investors.

9           “(2) AVAILABILITY OF RECORDS.—A proxy ad-  
10          visory firm shall make available to the Commission  
11          any copies or extracts from the records described in  
12          subparagraph (A)(i) or (B) of paragraph (1), as ap-  
13          plicable, as may be prepared without undue effort,  
14          expense, or delay, as the Commission or its rep-  
15          resentatives may reasonably request.”; and

16          (5) in section 211(h) (15 U.S.C. 80b–11(h))—

17                 (A) by redesignating paragraphs (1) and  
18                 (2) as subparagraphs (A) and (B), respectively,  
19                 and adjusting the margins accordingly;

20                 (B) in the matter preceding subparagraph  
21                 (A), as so redesignated, by striking “The Com-  
22                 mission” and inserting the following:

23                 “(1) IN GENERAL.—The Commission”;

24                 (C) in paragraph (1), as so redesignated—

1 (i) in subparagraph (A), as so redesignated,  
2 nated, by striking “and” at the end;

3 (ii) in subparagraph (B), as so redesignated,  
4 by striking the period at the end  
5 and inserting “; and”; and

6 (iii) by adding at the end the following:  
7

8 “(C) not later than 2 years after the date  
9 of enactment of the Corporate Governance  
10 Fairness Act, and after consulting with all relevant  
11 stakeholders, submit to the Committee on  
12 Banking, Housing, and Urban Affairs of the  
13 Senate and the Committee on Financial Services  
14 of the House of Representatives a report  
15 that—

16 “(i) evaluates existing, as of the date  
17 on which the report is submitted—

18 “(I) policies and programs regarding conflicts of interest at proxy  
19 advisory firms; and  
20

21 “(II) policies and procedures at  
22 proxy advisory firms that are designed  
23 to avoid knowingly making any false  
24 statement, or omitting to state a material  
25 fact, that would be necessary to

1           make a statement to a client of the  
2           proxy advisory firm not misleading;  
3           and

4           “(ii) examines whether any additional  
5           protection to investors under subparagraph  
6           (B) would be helpful to those investors, in-  
7           cluding policies and procedures that allow  
8           investors to consider, in a reasonably time-  
9           ly manner, material information that is  
10          necessary for the investors to—

11                   “(I) make informed investment  
12                   decisions; and

13                           “(II) exercise any of the rights of  
14                           the investors that are conferred by se-  
15                           curities held by the investors.”; and

16                   (D) by adding at the end the following:

17                           “(2) UPDATES OF PROXY ADVISORY FIRMS RE-  
18                           PORT.—Not less frequently than once every 5 years,  
19                           beginning on the date on which the Commission sub-  
20                           mits the report required under paragraph (1)(C),  
21                           the Commission shall submit to the congressional  
22                           committees described in that paragraph an updated  
23                           version of that report, which shall evaluate whether  
24                           the existing rules of the Commission, as of the date  
25                           on which the applicable updated report is submitted,



1 sufficiently protect investors, including the ability of  
2 investors to consider, in a reasonably timely manner,  
3 material information that is necessary for the inves-  
4 tors to—

5 “(A) make informed investment decisions;

6 and

7 “(B) exercise any of the rights of the in-  
8 vestors that are conferred by securities held by  
9 the investors.”.

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