

116TH CONGRESS
1ST SESSION

H. R. 5116

To improve the quality of proxy advisory firms for the protection of investors and the U.S. economy, and in the public interest, by fostering accountability, transparency, responsiveness, and competition in the proxy advisory firm industry.

IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 15, 2019

Mr. STEIL (for himself, Mrs. WAGNER, Mr. RIGGLEMAN, and Mr. BARR) introduced the following bill; which was referred to the Committee on Financial Services

A BILL

To improve the quality of proxy advisory firms for the protection of investors and the U.S. economy, and in the public interest, by fostering accountability, transparency, responsiveness, and competition in the proxy advisory firm industry.

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 Reform and Transparency Act of 2019”.

1 **SEC. 2. DEFINITIONS.**

2 (a) SECURITIES EXCHANGE ACT OF 1934.—Section
3 3(a) of the Securities Exchange Act of 1934 (15 U.S.C.
4 78c(a)) is amended by adding at the end the following new
5 paragraphs:

6 “(81) PROXY ADVISORY FIRM.—The term
7 ‘proxy advisory firm’ means any person who is pri-
8 marily engaged in the business of providing proxy
9 voting research, analysis, ratings, or recommenda-
10 tions to clients, which conduct constitutes a sollicita-
11 tion within the meaning of section 14 and the Com-
12 mission’s rules and regulations thereunder, except to
13 the extent that the person is exempted by such rules
14 and regulations from requirements otherwise appli-
15 cable to persons engaged in a solicitation.

16 “(82) PERSON ASSOCIATED WITH A PROXY AD-
17 VISORY FIRM.—The term ‘person associated with’ a
18 proxy advisory firm means any partner, officer, or
19 director of a proxy advisory firm (or any person oc-
20 cupying a similar status or performing similar func-
21 tions), any person directly or indirectly controlling,
22 controlled by, or under common control with a proxy
23 advisory firm, or any employee of a proxy advisory
24 firm, except that persons associated with a proxy ad-
25 visory firm whose functions are clerical or ministe-
26 rial shall not be included in the meaning of such

1 term. The Commission may by rules and regulations
2 classify, for purposes or any portion or portions of
3 this Act, persons, including employees controlled by
4 a proxy advisory firm.”.

5 (b) APPLICABLE DEFINITIONS.—As used in this
6 Act—

7 (1) the term “Commission” means the Securi-
8 ties and Exchange Commission; and

9 (2) the term “proxy advisory firm” has the
10 same meaning as in section 3(a)(81) of the Securi-
11 ties Exchange Act of 1934, as added by this Act.

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

13 (a) AMENDMENT.—The Securities Exchange Act of
14 1934 is amended by inserting after section 15G the fol-
15 lowing new section:

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

17 “(a) CONDUCT PROHIBITED.—It shall be unlawful
18 for a proxy advisory firm to make use of the mails or any
19 means or instrumentality of interstate commerce to pro-
20 vide proxy voting research, analysis, or recommendations
21 to any client, unless such proxy advisory firm is registered
22 under this section.

23 “(b) REGISTRATION PROCEDURES.—

24 “(1) APPLICATION FOR REGISTRATION.—

1 “(A) IN GENERAL.—A proxy advisory firm
2 must file with the Commission an application
3 for registration, in such form as the Commis-
4 sion shall require, by rule or regulation, and
5 containing the information described in sub-
6 paragraph (B).

7 “(B) REQUIRED INFORMATION.—An appli-
8 cation for registration under this section shall
9 contain information regarding—

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

13 “(ii) the procedures and methodolo-
14 gies that the applicant uses in developing
15 proxy voting recommendations, including
16 whether and how the applicant considers
17 the size of a company when making proxy
18 voting recommendations;

19 “(iii) the organizational structure of
20 the applicant;

21 “(iv) whether or not the applicant has
22 in effect a code of ethics, and if not, the
23 reasons therefor;

24 “(v) any potential or actual conflict of
25 interest relating to the ownership structure

1 of the applicant or the provision of proxy
2 advisory services by the applicant, includ-
3 ing whether the proxy advisory firm en-
4 gages in services ancillary to the provision
5 of proxy advisory services such as con-
6 sulting services for corporate issuers, and
7 if so the revenues derived therefrom;

8 “(vi) the policies and procedures in
9 place to manage conflicts of interest under
10 subsection (f); and

11 “(vii) any other information and docu-
12 ments concerning the applicant and any
13 person associated with such applicant as
14 the Commission, by rule, may prescribe as
15 necessary or appropriate in the public in-
16 terest or for the protection of investors.

17 “(2) REVIEW OF APPLICATION.—

18 “(A) INITIAL DETERMINATION.—Not later
19 than 90 days after the date on which the appli-
20 cation for registration is filed with the Commis-
21 sion under paragraph (1) (or within such longer
22 period as to which the applicant consents) the
23 Commission shall—

24 “(i) by order, grant registration; or

1 “(ii) institute proceedings to deter-
2 mine whether registration should be de-
3 nied.

4 “(B) CONDUCT OF PROCEEDINGS.—

5 “(i) CONTENT.—Proceedings referred
6 to in subparagraph (A)(ii) shall—

7 “(I) include notice of the grounds
8 for denial under consideration and an
9 opportunity for hearing; and

10 “(II) be concluded not later than
11 120 days after the date on which the
12 application for registration is filed
13 with the Commission under paragraph
14 (1).

15 “(ii) DETERMINATION.—At the con-
16 clusion of such proceedings, the Commis-
17 sion, by order, shall grant or deny such ap-
18 plication for registration.

19 “(iii) EXTENSION AUTHORIZED.—The
20 Commission may extend the time for con-
21 clusion of such proceedings for not longer
22 than 90 days, if it finds good cause for
23 such extension and publishes its reasons
24 for so finding, or for such longer period as
25 to which the applicant consents.

1 “(C) GROUNDS FOR DECISION.—The Com-
2 mission shall grant registration under this sub-
3 section—

4 “(i) if the Commission finds that the
5 requirements of this section are satisfied;
6 and

7 “(ii) unless the Commission finds (in
8 which case the Commission shall deny such
9 registration) that—

10 “(I) the applicant has failed to
11 certify to the Commission’s satisfac-
12 tion that it is able to consistently pro-
13 vide proxy advice based on accurate
14 information and to materially comply
15 with the procedures and methodolo-
16 gies disclosed under paragraph (1)(B)
17 and with subsections (f) and (g); or

18 “(II) if the applicant were so reg-
19 istered, its registration would be sub-
20 ject to suspension or revocation under
21 subsection (e).

22 “(3) PUBLIC AVAILABILITY OF INFORMATION.—
23 Subject to section 24, the Commission shall make
24 the information and documents submitted to the
25 Commission by a proxy advisory firm in its com-

1 pleted application for registration, or in any amend-
2 ment submitted under paragraph (1) or (2) of sub-
3 section (c), publicly available on the Commission’s
4 website, or through another comparable, readily ac-
5 cessible means.

6 “(c) UPDATE OF REGISTRATION.—

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

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

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

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

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

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

1 tion, conduct, or practice specified in subparagraph
2 (C) of section 15(b)(4), during the 10-year period
3 preceding the date of commencement of the pro-
4 ceedings under this subsection, or at any time there-
5 after;

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
17 associated with a registered proxy advisory firm;

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

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

22 “(6) fails to maintain adequate financial and
23 managerial resources to consistently offer advisory
24 services with integrity, including by failing to comply
25 with subsection (f) or (g).

1 “(e) TERMINATION OF REGISTRATION.—

2 “(1) VOLUNTARY WITHDRAWAL.—A registered
3 proxy advisory firm may, upon such terms and con-
4 ditions as the Commission may establish as nec-
5 essary in the public interest or for the protection of
6 investors, which terms and conditions shall include
7 at a minimum that the registered proxy advisory
8 firm will no longer conduct such activities as to
9 bring it within the definition of proxy advisory firm
10 in section 3(a)(81) of the Securities Exchange Act
11 of 1934, withdraw from registration by filing a writ-
12 ten notice of withdrawal to the Commission.

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

20 “(f) MANAGEMENT OF CONFLICTS OF INTEREST.—

21 “(1) ORGANIZATION POLICIES AND PROCE-
22 DURES.—Each registered proxy advisory firm shall
23 establish, maintain, and enforce written policies and
24 procedures reasonably designed, taking into consid-
25 eration the nature of the business of such registered

1 proxy advisory firm and associated persons, to ad-
2 dress and manage any conflicts of interest that can
3 arise from such business.

4 “(2) COMMISSION AUTHORITY.—The Commis-
5 sion shall issue final rules to prohibit, or require the
6 management and disclosure of, any conflicts of inter-
7 est relating to the offering of proxy advisory services
8 by a registered proxy advisory firm, including, with-
9 out limitation, conflicts of interest relating to—

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

14 “(B) the provision of consulting, advisory,
15 or other services by a registered proxy advisory
16 firm, or any person associated with such reg-
17 istered proxy advisory firm, to the client;

18 “(C) business relationships, ownership in-
19 terests, or any other financial or personal inter-
20 ests between a registered proxy advisory firm,
21 or any person associated with such registered
22 proxy advisory firm, and any client, or any af-
23 filiate of such client;

24 “(D) transparency around the formulation
25 of proxy voting policies;

1 “(E) the execution of proxy votes if such
2 votes are based upon recommendations made by
3 the proxy advisory firm in which someone other
4 than the issuer is a proponent;

5 “(F) issuing recommendations where proxy
6 advisory firms provide advisory services to a
7 company; and

8 “(G) any other potential conflict of inter-
9 est, as the Commission deems necessary or ap-
10 propriate in the public interest or for the pro-
11 tection of investors.

12 “(g) RELIABILITY OF PROXY ADVISORY FIRM SERV-
13 ICES.—

14 “(1) IN GENERAL.—Each registered proxy advi-
15 sory firm shall have staff sufficient to produce proxy
16 voting recommendations that are based on accurate
17 and current information. Each registered proxy advi-
18 sory firm shall detail procedures sufficient to permit
19 companies receiving proxy advisory firm rec-
20 ommendations access in a reasonable time to the
21 draft recommendations, with an opportunity to pro-
22 vide meaningful comment thereon, including the op-
23 portunity to present details to the person responsible
24 for developing the recommendation in person or tele-
25 phonically. Each registered proxy advisory firm shall

1 employ an ombudsman to receive complaints about
2 the accuracy of voting information used in making
3 recommendations from the subjects of the proxy ad-
4 visory firm’s voting recommendations, and shall seek
5 to resolve those complaints in a timely fashion and
6 in any event prior to voting on the matter to which
7 the recommendation relates. If the ombudsman is
8 unable to resolve such complaints prior to voting on
9 the matter, the proxy advisory firm shall include in
10 its final report to its clients a statement from the
11 company detailing its complaints, if requested in
12 writing by the company.

13 “(2) REASONABLE TIME DEFINED.—For pur-
14 poses of this subsection, the term ‘reasonable
15 time’—

16 “(A) means not less than 3 business days
17 unless otherwise defined through a final rule
18 issued by the Commission; and

19 “(B) shall not otherwise interfere with a
20 proxy advisory firm’s ability to provide its cli-
21 ents with timely access to accurate proxy voting
22 research, analysis, or recommendations.

23 “(3) DRAFT RECOMMENDATIONS DEFINED.—
24 For purposes of this subsection, the term ‘draft rec-
25 ommendations’—

1 “(A) means the overall conclusions of
2 proxy voting recommendations prepared for the
3 clients of a proxy advisory firm, including any
4 public data cited therein, any company informa-
5 tion or substantive analysis impacting the rec-
6 ommendation, and the specific voting rec-
7 ommendations on individual proxy ballot issues;
8 and

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

11 “(h) DESIGNATION OF COMPLIANCE OFFICER.—

12 Each registered proxy advisory firm shall designate an in-
13 dividual responsible for administering the policies and pro-
14 cedures that are required to be established pursuant to
15 subsections (f) and (g), and for ensuring compliance with
16 the securities laws and the rules and regulations there-
17 under, including those promulgated by the Commission
18 pursuant to this section.

19 “(i) PROHIBITED CONDUCT.—

20 “(1) PROHIBITED ACTS AND PRACTICES.—The
21 Commission shall issue final rules to prohibit any
22 act or practice relating to the offering of proxy advi-
23 sory services by a registered proxy advisory firm
24 that the Commission determines to be unfair, coer-

1 cive, or abusive, including any act or practice relat-
2 ing to—

3 “(A) conditioning a voting recommendation
4 or other proxy advisory firm recommendation
5 on the purchase by an issuer or an affiliate
6 thereof of other services or products, of the reg-
7 istered proxy advisory firm or any person asso-
8 ciated with such registered proxy advisory firm;
9 and

10 “(B) modifying a voting recommendation
11 or otherwise departing from its adopted system-
12 atic procedures and methodologies in the provi-
13 sion of proxy advisory services, based on wheth-
14 er an issuer, or affiliate thereof, subscribes or
15 will subscribe to other services or product of the
16 registered proxy advisory firm or any person as-
17 sociated with such organization.

18 “(2) RULE OF CONSTRUCTION.—Nothing in
19 paragraph (1), or in any rules or regulations adopt-
20 ed thereunder, may be construed to modify, impair,
21 or supersede the operation of any of the antitrust
22 laws (as defined in the first section of the Clayton
23 Act, except that such term includes section 5 of the
24 Federal Trade Commission Act, to the extent that

1 such section 5 applies to unfair methods of competi-
2 tion).

3 “(j) STATEMENTS OF FINANCIAL CONDITION.—Each
4 registered proxy advisory firm shall, on a confidential
5 basis, file with the Commission, at intervals determined
6 by the Commission, such financial statements, certified (if
7 required by the rules or regulations of the Commission)
8 by an independent public auditor, and information con-
9 cerning its financial condition, as the Commission, by rule,
10 may prescribe as necessary or appropriate in the public
11 interest or for the protection of investors.

12 “(k) ANNUAL REPORT.—Each registered proxy advi-
13 sory firm shall, at the beginning of each fiscal year of such
14 firm, report to the Commission on the number of share-
15 holder proposals its staff reviewed in the prior fiscal year,
16 the number of recommendations made in the prior fiscal
17 year, the number of staff who reviewed and made rec-
18 ommendations on such proposals in the prior fiscal year,
19 and the number of recommendations made in the prior
20 fiscal year where the proponent of such recommendation
21 was a client of or received services from the proxy advisory
22 firm.

23 “(l) TRANSPARENT POLICIES.—Each registered
24 proxy advisory firm shall file with the Commission and

1 make publicly available its methodology for the formula-
2 tion of proxy voting policies and voting recommendations.

3 “(m) RULES OF CONSTRUCTION.—

4 “(1) NO WAIVER OF RIGHTS, PRIVILEGES, OR
5 DEFENSES.—Registration under and compliance
6 with this section does not constitute a waiver of, or
7 otherwise diminish, any right, privilege, or defense
8 that a registered proxy advisory firm may otherwise
9 have under any provision of State or Federal law,
10 including any rule, regulation, or order thereunder.

11 “(2) NO PRIVATE RIGHT OF ACTION.—Nothing
12 in this section may be construed as creating any pri-
13 vate right of action, and no report filed by a reg-
14 istered proxy advisory firm in accordance with this
15 section or section 17 shall create a private right of
16 action under section 18 or any other provision of
17 law.

18 “(n) REGULATIONS.—

19 “(1) NEW PROVISIONS.—Such rules and regula-
20 tions as are required by this section or are otherwise
21 necessary to carry out this section, including the ap-
22 plication form required under subsection (a)—

23 “(A) shall be issued by the Commission,
24 not later than 180 days after the date of enact-
25 ment of this section; and

1 “(B) shall become effective not later than
2 1 year after the date of enactment of this sec-
3 tion.

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

7 “(A) review its existing rules and regula-
8 tions which affect the operations of proxy advi-
9 sory firms; and

10 “(B) amend or revise such rules and regu-
11 lations in accordance with the purposes of this
12 section, and issue such guidance, as the Com-
13 mission may prescribe as necessary or appro-
14 priate in the public interest or for the protec-
15 tion of investors.

16 “(o) APPLICABILITY.—This section, other than sub-
17 section (n), which shall apply on the date of enactment
18 of this section, shall apply on the earlier of—

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

21 “(2) 270 days after the date of enactment of
22 this section.”.

23 (b) CONFORMING AMENDMENT.—Section 17(a)(1) of
24 the Securities Exchange Act of 1934 (15 U.S.C.
25 78q(a)(1)) is amended by inserting “proxy advisory firm,”

1 after “nationally recognized statistical rating organiza-
2 tion,”.

3 **SEC. 4. COMMISSION ANNUAL REPORT.**

4 The Commission shall make an annual report publicly
5 available on the Commission’s internet website. Such re-
6 port shall, with respect to the year to which the report
7 relates—

8 (1) identify applicants for registration under
9 section 15H of the Securities Exchange Act of 1934,
10 as added by this Act;

11 (2) specify the number of and actions taken on
12 such applications;

13 (3) specify the views of the Commission on the
14 state of competition, transparency, policies and
15 methodologies, and conflicts of interest among proxy
16 advisory firms;

17 (4) include the determination of the Commis-
18 sion with regards to—

19 (A) the quality of proxy advisory services
20 issued by proxy advisory firms;

21 (B) the financial markets;

22 (C) competition among proxy advisory
23 firms;

24 (D) the incidence of undisclosed conflicts
25 of interest by proxy advisory firms;

1 (E) the process for registering as a proxy
2 advisory firm; and

3 (F) such other matters relevant to the im-
4 plementation of this Act and the amendments
5 made by this Act, as the Commission deter-
6 mines necessary to bring to the attention of the
7 Congress;

8 (5) identify problems, if any, that have resulted
9 from the implementation of this Act and the amend-
10 ments made by this Act; and

11 (6) recommend solutions, including any legisla-
12 tive or regulatory solutions, to any problems identi-
13 fied under paragraphs (4) and (5).

○